

Part 14—Expert reports

Division 1—Introduction

74.1—Definitions

In this Part, unless the contrary intention appears—

due date means 6 weeks after the close of pleadings or such other date as may be ordered by

the Court;

expert means a person having, or purporting to have, expertise or experience in a field qualifying the person to give expert evidence within the field (and, to avoid doubt, includes a party, partner or associate of a party or person employed by a party);

expert report means a written report by an expert relevant to issues in the proceeding in question including a summary expert report but excluding a report by a shadow expert;

shadow expert—see rule 74.13;

summary expert report—see rule 74.12.

Division 2—Obligations of parties

74.2—Letter requesting expert report

(1) A party who requests an expert to provide an expert report must, within 7 days of arranging for the expert to provide an expert report, send a letter to the expert—

(a) setting out the assumptions the expert is requested to make for the purpose of expressing an opinion;

(b) setting out any investigations the expert is requested to make for the purpose of expressing an opinion;

(c) setting out the materials provided to the expert for the purpose of expressing an opinion;

(d) setting out the questions on which the expert is asked to express an opinion; and

(e) attaching a copy of this Part.

(2) A party who requests an expert to provide an expert report must, within 7 days of sending a letter to the expert under subrule (1), serve on each party to the proceeding a copy of the letter.

Note—

Merely retaining an expert for a proceeding without providing any substantive instructions to

the expert does not constitute arranging for the expert to provide an expert report for the purposes of subrule (1).

74.3—Obtain and serve expert reports

(1) Subject to rule 74.13, a party must, within 7 days of the close of pleadings, serve on each other party to the proceeding a copy of each expert report in the party's possession, custody or power relevant to the subject matter of the proceeding not previously served on that party (whether or not the party intends to rely on the report at the trial).

(2) If a party intends to adduce expert evidence at trial, the party must, by the due date, obtain an expert report complying with rule 74.10 from each intended expert.

(3) Subject to rule 74.13, a party must, by the due date, serve on each other party to the proceeding a copy of each expert report in the party's possession, custody or power relevant to the subject matter of the proceeding not previously served on that party (whether or not the party intends to rely on it at the trial).

(4) If a party wishes to adduce at trial expert evidence of which notice should have been, but was not, given by an expert report from the witness (including evidence outside the scope of an expert report served under this rule)—

(a) the party must first obtain leave of the Court; and

(b) unless the Court otherwise orders, if leave is given, the party must pay the incremental costs of each other party caused by the failure to comply with this rule.

74.4—Provision of information and documents

(1) A party may request another party who has disclosed an expert report to provide—

(a) a copy of written communications and records of communications between the party or a representative of the party and the expert or between the expert and another expert relevant to the content of the report (relevant communications);

(b) details (date, parties and substantive content) of relevant communications if they

were oral and not recorded;

(c) a copy of documentary material on which the expert relied in making the report;

or

(d) details of any fee or benefit that the expert has received, or is or will become entitled to receive, for preparation of the report or giving evidence.

(2) A party who receives a request under subrule (1) must comply with it as soon as practicable.

Division 3—Expert code of conduct

Note—

This Division contains harmonised rules.

74.5—General duties to Court

An expert, other than a shadow expert, is not an advocate for a party and has a paramount duty, overriding any duty to the party to the proceeding or other person retaining the expert,

to assist the Court impartially on matters relevant to the area of expertise of the witness.

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74.6—Content of report

(1) Subject to rule 74.12, an expert report (including a supplementary report) must comply with the requirements set out in Division 4.

(2) An expert must prepare a supplementary report if required to do so under rule 74.11.

74.7—Change of opinion

When an expert has provided to a party an expert report, and the expert subsequently changes

their opinion on a material matter, the expert must as soon as practicable provide to the party

a supplementary report in accordance with rule 74.11(1).

74.8—Conferral with prior expert

(1) An expert preparing a report in response to, or in the same field of expertise or dealing with the same subject matter as, an expert report by another expert (a prior expert) should, to the extent practicable, confer with the prior expert about their respective

assumptions and opinions.

(2) A prior expert asked to confer should, to the extent practicable, confer with the subsequent expert about their respective assumptions and opinions.

74.9—Conference of experts

(1) If directed to do so by the Court, an expert must—

- (a) confer with any other expert;
- (b) provide the Court with a joint report specifying (as the case requires) matters agreed and matters not agreed and the reasons for the experts not agreeing; and
- (c) abide in a timely way by any order of the Court.

(2) Each expert must—

- (a) exercise their independent judgment in relation to every conference in which the expert participates pursuant to an order of the Court and in relation to each report subsequently provided, and will not act on any instruction or request to withhold or avoid agreement; and
- (b) endeavour to reach agreement with the other expert (or experts) on any issue in dispute between them or, failing agreement, endeavour to identify and clarify the basis of disagreement on the issues which are in dispute.

Division 4—Content of expert report

Note—

This Division contains harmonised rules.

74.10—Content of report

An expert report prepared by an expert must—

- (a) state clearly the opinion, or opinions, of the expert;
- (b) state the name and address of the expert;
- (c) include an acknowledgment that the expert has read this Part and agrees to be bound by its provisions;
- (d) state the qualifications of the expert to prepare the report;

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- (e) state the assumptions and material facts on which each opinion expressed in the report

- is based (whether by annexing a letter of instructions or otherwise);
- (f) identify the reasons for, and any literature or other materials utilised in support of, such opinion;
 - (g) state (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise;
 - (h) identify any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications;
 - (i) to the extent to which any opinion that the expert has expressed involves the acceptance of another person's opinion, identify that other person and the opinion expressed by that other person;
 - (j) include a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate (save for any matters identified explicitly in the report), and that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the Court;
 - (k) state any qualifications on an opinion expressed in the report without which the report is, or may be, incomplete or inaccurate;
 - (l) state whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason;
 - (m) where the report is lengthy or complex, include a brief summary of the report at the beginning of the report;
 - (n) identify documents and other materials that the expert has been asked to consider (whether by annexing a letter of instructions or otherwise);
 - (o) attach copies of documents that record instructions given to the expert; and
 - (p) be signed by the expert.

74.11—Supplementary report

(1) When an expert has provided to a party an expert report, and the expert subsequently changes their opinion on a material matter, the expert must as soon as practicable provide to the party a supplementary report which shall state or provide the information referred to in paragraphs (a), (d), (e), (f), (h), (i), (j), (k) and (l) of rule 74.10 and, if

applicable, paragraph (g) of that rule.

(2) In any subsequent report (whether prepared in accordance with subrule (1) or not), the expert may refer to material contained in the earlier report without repeating it.

Division 5—Summary report and shadow experts

74.12—Summary report

(1) A party may seek and an expert may provide a written report that sets out in summary form assumptions made and opinions held by an expert without the expert complying with the requirements set out in rule 74.10 other than paragraphs (a), (b), (o) and (p) of that rule (a summary expert report).

(2) To avoid doubt, subrule (1) does not affect the obligation of a party to comply with rule 74.3(1) and rule 74.3(3).

74.13—Shadow expert

(1) A shadow expert is an expert who—

(a) is engaged to give advice or an opinion on or assist with the preparation or presentation of a party's case on the basis that the expert will not give evidence at trial;

(b) has not previously provided a report on the subject of the case other than as a shadow expert; and

(c) as part of the engagement gives a certificate in the prescribed form certifying that the expert—

(i) understands that it is not the expert's role to give evidence at trial; and

(ii) has not previously provided a report on the subject of the case other than as a shadow expert.

Prescribed form—

Form 75 Certificate by Shadow Expert

(2) A party who engages a shadow expert in relation to a proceeding must, as soon as practicable after the engagement takes effect, serve on each other party to the proceeding—

(a) written notice of the engagement, date of the engagement and qualifications of

the shadow expert; and

(b) a copy of the shadow expert's certificate under subrule (1)(c).

(3) Unless the Court otherwise orders for special reasons or all parties consent, evidence of a shadow expert is not admissible at trial.