

Schedule 1 Expert witness code of conduct

(see r 1200)

1.1 **Application of code**

(PD 2/04; NSW sch 7)

This code of conduct applies to an expert witness.

1.2 **General duty to court**

(PD 2/04; NSW sch 7; Qld r 426)

- (1) An expert witness has an overriding duty to assist the court impartially on matters relevant to the expert's area of expertise.
- (2) An expert witness's paramount duty is to the court and not to the person retaining the expert.
- (3) An expert witness is not an advocate for a party.

1.3 **Form of expert reports**

(PD 2/04; NSW sch 7; Qld r 428 and r 429A)

- (1) A report by an expert witness must, in the body of the report or in an annexure, state the following:
 - (a) the expert's qualifications;
 - (b) all material facts and assumptions on which the report is based (a letter of instructions may be annexed);
 - (c) the reasons for each opinion expressed;
 - (d) if applicable, that a particular question or issue falls outside the expert's area of expertise;
 - (e) references to any literature or other materials relied on by the expert to support the expert's opinions;
 - (f) any examinations, tests or other investigations that the expert has relied on, and details of the qualifications of the person who carried them out.
- (2) If an expert witness who prepares a report believes that the report may be incomplete or inaccurate without some qualification, the expert must state the qualification in the report.
- (3) If an expert witness considers that the opinion expressed in the expert's report is not a concluded opinion because of insufficient research, or insufficient data, or for any other reason, the expert must state in the report that the opinion is not a concluded opinion.
- (4) If an expert witness, after giving an opinion to the party who engaged the expert, changes the opinion on a material matter, the expert must, as soon as possible, give the party a supplementary report—
 - (a) expressing the change of opinion; and
 - (b) stating the matters mentioned in subrule (1) that are appropriate.
- (5) If an expert witness is appointed by the court, subrule (4) applies as if the court were the party who engaged the expert.

1.4 Experts' conference

(PD 2/04; NSW sch 7; Qld r 429B)

- (1) An expert witness in a proceeding must comply with any direction of the court—
 - (a) to meet with another expert witness in the proceeding—
 - (i) to identify the matters on which they agree; and
 - (ii) to identify the matters on which they disagree and the reasons why; and
 - (iii) to try to resolve any disagreement; or
 - (b) to produce for the court's use a document identifying—
 - (i) the matters on which the experts agree; and
 - (ii) the matters on which the experts disagree; and
 - (iii) the reasons for any failure to reach agreement on any matter.
- (2) An expert witness must exercise independent, professional judgment in relation to any conference held, or document prepared, under subrule (1), and must not act on any instruction or request to withhold or avoid agreement.