

**PRACTICE DIRECTION**

***Guidelines for Expert Witnesses in proceedings in the Federal Court of Australia***

Practitioners should give a copy of the following guidelines to any expert witness they propose to retain for the purpose of giving a report and giving evidence in a proceeding. The guidelines are not intended to address exhaustively all aspects of an expert's duties.

M.E.J. BLACK  
*Chief Justice*

**GUIDELINES**

**General Duty to the Court (footnote #1)**

- An expert witness has an overriding duty to assist the Court on matters relevant to the expert's area of expertise.
- An expert witness is not an advocate for a party.
- An expert witness's paramount duty is to the Court and not to the person retaining the expert.

**The Form of the Expert Evidence (footnote #2)**

- An expert's written report must give details of the expert's qualifications, and of the literature or other material used in making the report.
- All assumptions made by the expert should be clearly and fully stated.
- The report should identify who carried out any tests or experiments upon which the expert relied in compiling the report, and give details of the qualifications of the person who carried out any such test or experiment.
- Where several opinions are provided in the report, the expert should summarise them.
- The expert should give reasons for each opinion.
- At the end of the report the expert should declare that "[the expert] *has made all the inquiries which [the expert] believes are desirable and appropriate and that no matters of significance which [the expert] regards as relevant have, to [the expert's] knowledge, been withheld from the Court.*"
- There should be attached to the report, or summarised in it, the following: (i) all instructions (original and supplementary and whether in writing or oral) given to the expert which define the scope of the report; (ii) the facts, matters and assumptions upon which the report proceeds; and (iii) the documents and other materials which the expert has been instructed to consider.
- If, after exchange of reports or at any other stage, an expert witness changes his or her view on a material matter, having read another expert's report or for any other reason, the change of view should be

communicated in writing (through legal representatives) without delay to each party to whom the expert witness's report has been provided and, when appropriate, to the Court. (footnote #3)

- If an expert's opinion is not fully researched because the expert considers that insufficient data is available, or for any other reason, this must be stated with an indication that the opinion is no more than a provisional one. Where an expert witness who has prepared a report believes that it may be incomplete or inaccurate without some qualification, that qualification must be stated in the report. (footnote #4)
- The expert should make it clear when a particular question or issue falls outside his or her field of expertise.
- Where an expert's report refers to photographs, plans, calculations, analyses, measurements, survey reports or other extrinsic matter, these must be provided to the opposite party at the same time as the exchange of reports. (footnote #5)

### **Experts' Conference**

- If experts retained by the parties meet at the direction of the Court, it would be improper conduct for an expert to be given or to accept instructions not to reach agreement. If, at a meeting directed by the Court, the experts cannot reach agreement on matters of expert opinion, they should specify their reasons for being unable to do so.

**footnote #1.** See "Access to Justice" Draft Civil Proceedings Rules: The Rt. Hon.

**footnote #2.** See "Access to Justice" Draft Civil Proceedings Rules: The Rt. Hon. Lord Woolf, July 1996 at Pt. 32.9.

**footnote #3.** The "*Ikarian Reefer*" [1993] 20 FSR 563 at 565.

**footnote #4.** The "*Ikarian Reefer*" [1993] 20 FSR 563 at 565.

**footnote #5.** The "*Ikarian Reefer*" [1993] 20 FSR 563 at 565-566. See also Ormrod "*Scientific Evidence in Court*" [1968] Crim LR 240.