

QCAT Practice Direction No 4 of 2009

Expert Evidence

1. This Practice Direction applies whenever a party proposes to call expert evidence in any proceeding, unless the tribunal orders otherwise.

Limit on number of experts

2. A party to a proceeding may call evidence from only one expert for each area of expertise.

Notice that expert evidence will be relied upon

3. A party who proposes to call expert evidence at a hearing must give each other party notice of each expert's name and area of expertise and the issue(s) that each expert will address.

An expert's primary duty is to the tribunal

4. An expert owes a duty to assist the tribunal which overrides any obligation to any party to the proceeding or any person who is liable for their fee or expenses. The expert's role is to assist and advise the tribunal on issues in dispute within the expert's area of expertise. A person must not give, and an expert must not accept, instructions to adopt or reject a particular opinion in relation to an issue in dispute in a proceeding.

Conclaves and joint reports

5. All experts engaged for a hearing must attend a conclave convened by a member, adjudicator or the principal registrar. The purpose of the conclave is to identify and clarify areas of agreement and disagreement amongst the experts on any issue in dispute, and the reasons for any disagreement.

6. Before a conclave, a party proposing to call an expert must give the expert:

- (a) reasonable notice of the conclave and any issue(s) in dispute which relates to the expert's area of expertise;
- (b) enough information and opportunity for the expert to adequately investigate the relevant facts.

7. The conclave may be conducted in the way decided by the convenor.
8. The experts who have attended a conclave must prepare a joint report. The joint report must identify what matters they agree upon, what matters they disagree about, and the reasons for their disagreement. It must also state that each expert understands their duty to the tribunal and that they have complied with it.
9. Before the joint report is finalised the experts may, by agreement between them and through the convenor, request all parties to respond to a specific inquiry.

10. Otherwise, the joint report must be prepared by the experts without further reference to or instruction from the parties.
11. The convenor is responsible for facilitating the conclave process until a joint report has been finalised.
12. The joint report must be filed in the tribunal and a copy given to each party.

Confidentiality of a conclave

13. Except as provided in clause 12 evidence of anything done or said or an admission made at a conclave is inadmissible at any stage of the proceeding.
14. Clause 13 does not apply to:
 - (a) those matters included in the joint report; or
 - (b) anything said or done that is relevant to a proceeding either for an offence relating to giving false or misleading information, or for contempt.
15. Unless all parties consent, the convenor of a conclave will not constitute or be a member of the panel which constitutes the tribunal for the hearing.
16. An expert's participation in a conclave is as a witness in the proceedings and pursuant to section 237(9) of the *Queensland Civil and Administrative Tribunal Act 2009* the expert has the same protection and immunity as a witness in a proceeding before the Supreme Court.

Expert evidence is based on written reports

17. Each expert must prepare a written statement of their evidence.
18. If experts have taken part in a conclave, the joint report is taken to be their statement of evidence.
19. An expert may submit a further statement of evidence which relates to an issue of disagreement recorded in the joint report.
20. Except with the tribunal's leave an expert may not, whether in a statement of evidence or in oral evidence:
 - (a) contradict, depart from or qualify an opinion about an issue the subject of agreement in the joint report; or
 - (b) raise a matter not already mentioned in the joint report.
21. The statement of evidence must be filed in the tribunal and a copy given to each party.
22. The statement of evidence must satisfy the requirements of rule 428 of the *Uniform Civil Procedure Rules*. (copy attached)

23. The joint report and statement of evidence are documents used for a hearing and pursuant to section 237(10) of the *Queensland Civil and Administrative Tribunal Act 2009* have the same protection as a document produced at, or used for, a hearing before the Supreme Court.

*Justice Alan Wilson
President*

11 November 2009

Uniform Civil Procedure Rules Rule 428

428 Requirements for report

1. An expert's report must be addressed to the court and signed by the expert.
2. The report must include the following information—
 - (a) the expert's qualifications;
 - (b) all material facts, whether written or oral, on which the report is based;
 - (c) references to any literature or other material relied on by the expert to prepare the report;
 - (d) for any inspection, examination or experiment conducted, initiated, or relied on by the expert to prepare the report –
 - (i) a description of what was done;
 - (ii) whether the inspection, examination or experiment was done by the expert or under the expert's supervision;
 - (iii) the name and qualifications of any other person involved; and the result
 - (e) if there is a range of opinion on matters dealt with in the report, a summary of the range of opinion, and the reasons why the expert adopted a particular opinion;
 - (f) a summary of the conclusions reached by the expert;
 - (g) a statement about whether access to any readily ascertainable additional facts would assist the expert in reaching a more reliable conclusion.
3. The expert must confirm, at the end of the report—
 - (a) the factual matters stated in the report are, as far as the expert knows, true;
 - (b) the expert has made all enquiries considered appropriate;
 - (c) the opinions stated in the report are genuinely held by the expert;
 - (d) the report contains reference to all matters the expert considers significant;

- (e) the expert understands the expert's duty to the court and has complied with the duty.