



MAGISTRATES COURT OF TASMANIA

Practice Direction 3 of 2020

Coronial Division - Expert Witnesses Code of Conduct

Purpose:

The purpose of this Practice Direction is to set out a Code of Conduct which applies to expert witnesses within the Coronial Division - Magistrates Court of Tasmania.

This Practice Direction (Code of Conduct) applies to any expert witness engaged or appointed to provide an expert's report for use as evidence in a coronial investigation or inquest, or to give opinion evidence in a coronial investigation or inquest.

Background:

- The Coroner may require an external expert to provide an opinion in relation to the investigation.
- The expert evidence is to provide the Coroner with an objective and impartial assessment of an issue from a witness with specialised knowledge.
- Experts providing evidence in the Coronial Division must agree to abide by the Code of Conduct attached to this Practice Direction as Attachment A.

30 April 2020

CJ Geason

Chief Magistrate

ATTACHMENT A

CODE OF CONDUCT - EXPERT WITNESSES

General Duties to the Court:

- I. An expert witness is not an advocate for a party and has a paramount duty, overriding any duty to the party to the proceedings or other person retaining the expert witness, to assist the Coroner in an objective and unbiased manner only on matters relevant to the area of expertise of the witness.

Content of Report:

2. Every report prepared by an expert witness for use by the Coroner shall clearly state the opinion or opinions of the expert and shall state, specify or provide:
 - (a) the name and professional address of the expert;
 - (b) an acknowledgment that the expert has read this code and agrees to be bound by it;
 - (c) the qualifications of the expert to prepare the report;
 - (d) the assumptions and material facts on which each opinion expressed in the report is based (a letter of instruction may be annexed);
 - (e) the reasons for and any literature or other materials utilised in support of each such opinion;
 - (f) if applicable, that a particular question, issue or matter falls outside the expert's field of expertise;
 - (g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications;
 - (h) the extent to which any opinion which the expert has expressed involves the acceptance of another person's opinion, the identification of that other person and the opinion expressed by that other person;
 - (i) 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 Coroner;
 - (j) any qualifications on an opinion expressed in the report without which the report is or may be incomplete or inaccurate;

- (k) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason; and
- (l) where the report is lengthy or complex, a brief summary of the report at the beginning of the report.

Supplementary Report Following Change of Opinion

- 3. Where an expert witness has provided a report for use by the Coroner, and the expert thereafter changes his or her opinion on a material matter, the expert shall forthwith provide to the coroner (or counsel assisting) a supplementary report which shall state, specify or provide the information referred to in paragraphs (a), (d), (e), (g), (h), (i), (j), (k) and (l) of clause 2 of this code and, if applicable, paragraph (f) of that clause.
- 4. In any subsequent report (whether prepared in accordance with clause 3 or not) the expert may refer to material contained in the earlier report without repeating it.

Duty to Comply with the Coroner's Directions

- 5. If directed to do so by the Coroner, an expert witness shall:
 - (a) confer with any other expert witness;
 - (b) provide the Coroner 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 direction of the Coroner.

Conference of Experts

- 6. Each expert witness shall:
 - (d) exercise his or her independent judgement in relation to every conference in which the expert participates pursuant to a direction of the Coroner and in relation to each report thereafter provided, and shall not act on any instruction or request to withhold or avoid agreement; and
 - (e) endeavour to reach agreement with the other expert witness (or witnesses) 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.