

Victorian Civil & Administrative Tribunal

Practice Note

PNVCAT 2 - Expert Evidence

The Rules Committee issues the following Practice Note under s158 of the *Victorian Civil and Administrative Tribunal Act 1998*:

1. Operation

1.1 This practice note will apply from 1 September 1999 in respect of:

- (a) any evidence given to the Tribunal by an expert witness;
- (b) the retainer by parties to a proceeding, of any expert witness to provide a report for use in evidence before the Tribunal.

2. Expert's duty to the Tribunal

2.1 An expert witness has a paramount duty to the Tribunal and not to the party retaining the expert.

2.2 An expert witness has an overriding duty to assist the Tribunal on matters relevant to the expert's expertise.

2.3 An expert witness is not an advocate for a party to a proceeding.

3. Content and form of expert's report

3.1 The report of an expert must include the following matters-

- 1) the name and address of the expert;
- 2) the expert's qualifications and experience;
- 3) a statement identifying the expert's area of expertise;
- 4) a statement setting out the expert's expertise to make the report;
- 5) all instructions that define the scope of the report (original and supplementary and whether in writing or oral);
- 6) the facts, matters and all assumptions upon which the report proceeds;

- 7) reference to those documents and other materials the expert has been instructed to consider or take into account in preparing his or her report and the literature or other material used in making the report;
- 8) the identity of the person who carried out any tests or experiments upon which the expert relied in making the report and the qualifications of that person;
- 9) a summary of the opinion or opinions of the expert;
- 10) a statement identifying any provisional opinions that are not fully researched for any reason (identifying the reason why such opinions have not been or cannot be fully researched);
- 11) a statement setting out any questions falling outside the expert's expertise and also a statement indicating whether the report is incomplete or inaccurate in any respect;

and in Domestic Building List cases only

- 12)
 - i) if rectification or demolition or other alteration of premises is recommended, the reason(s) for such recommendation and the likely cost(s) involved;
 - ii) whether any alternative remedy or remedies are a reasonable alternative.

3.2 The expert must declare at the end of the report, "I have made all the inquiries that I believe are desirable and appropriate and that no matters of significance which I regard as relevant have to my knowledge been withheld from the Tribunal."

3.3 This paragraph does not apply to reports obtained from treating doctors and hospitals.

4. Where the expert changes his or her opinion on a material matter

4.1 An expert witness who changes an opinion on a material matter on the basis of another expert's report or for any other reason must, after the exchange of reports or at any other stage, communicate that change of opinion in writing to the party retaining the expert and such party shall forthwith file with the Tribunal, notice of such change of opinion.

4.2 Such a document must specify reasons why his or her opinion has changed.

5. Where the Tribunal directs expert witnesses to meet

5.1 If expert witnesses retained by the parties meet at the direction of the Tribunal to narrow any points of difference between them and to identify any remaining points

of difference they must each set out in writing by a document filed with the Tribunal any agreed points and all remaining points of difference.

5.2 If any expert witness directed by the Tribunal to meet with any other expert is instructed by a party not to reach agreement in respect of points of difference, the fact of such instructions must be reported in writing to the Tribunal by the expert witness concerned.

6. Generally

6.1 Parties to a proceeding must ensure that any expert retained by them to provide a report for use in the proceeding is aware of the contents of this practice note, at the time of such retainer.

Dated: 1 September 1999. (As amended 2 February 2000)

The Hon Justice Kellam
President