

CONSUMER, TRADER AND TENANCY TRIBUNAL CHAIRPERSON'S DIRECTIONS

EXPERT WITNESS CODE OF CONDUCT

In accordance with section 12(4) of the *Consumer, Trader & Tenancy Tribunal Act 2001*, I make the following directions with respect to the conduct before the Tribunal of expert witnesses.

Application of Code

1. This code of conduct applies to any expert engaged to:
 - (a) provide a report as to his or her opinion for use as evidence in proceedings or proposed proceedings, or
 - (b) give opinion evidence in proceedings or proposed proceedings.

Parties to a proceeding must supply a copy of this direction to the expert witness retained by them.

These directions apply in all Divisions of the Tribunal. These directions do not apply to an expert appointed by the Tribunal under s 48N(2A) of the *Home Building Act 1989*.

General Duty to the Tribunal

2. An expert witness has an overriding duty to assist the Tribunal impartially on matters relevant to the expert's area of expertise.

An expert witness's paramount duty is to the Tribunal and not to the parties.

An expert witness is not an advocate for any party.

The Form of Expert Reports

3. A report by an expert witness must (in the body of the report or in an annexure) specify:
 - (a) the person's qualifications as an expert;
 - (b) the field of expertise in which they are giving evidence;
 - (c) a statement of what the expert witness was asked to report about;
 - (d) the facts, matters and assumptions on which the opinions in the report are based (a letter of instructions may be annexed);

- (e) reasons for each opinion expressed;
- (f) if applicable—that a particular question or issue falls outside his or her field of expertise;
- (g) any literature or other materials utilised in support of the opinions; and
- (h) any examinations, tests or other investigations, on which he or she has relied and identify, and give details of the qualifications of, the person who, carried them out.

If an expert witness who prepares a report believes that it may be incomplete or inaccurate without some qualification, that qualification must be stated in the report.

If an expert witness considers that his or her opinion is not a concluded opinion because of insufficient research or insufficient data or for any other reason, this must be stated when the opinion is expressed.

In the Home Building Division only:

- (a) If rectification or demolition or other alteration of premises is recommended, the report should detail the work recommended and the reason(s) for such recommendation;
- (b) the likely cost(s) involved; and
- (c) whether any alternative remedy or remedies are reasonably available.

Conflict of Interest

4. With respect to conflicts of interest, expert witnesses should at the earliest opportunity advise the Tribunal of any actual or perceived conflict of interest that may undermine the reporting function of the independent expert and excuse themselves from further involvement with the assignment.

Conflicts of interest exist when it is likely that an expert could be influenced, or could be seen to be influenced, by a personal interest in carrying out the assigned work. Some situations that may give rise to a conflict of interest are:

- (i) the expert witness having a financial interest in or with a party in dispute or having friends or relatives with such an interest;
- (ii) where the expert witness use the influence of their position to obtain opportunities for future employment, either for themselves, friends, relatives or associates;
- (iii) accepting a gift or benefit that is intended to or may be seen as intending to cause the expert witness to act in a partial manner in the course of his or her duties;
- (iv) having a personal, philosophical, religious, moral or political belief or attitude that could influence, or be seen to influence, the impartiality of advice given; and
- (v) having or developing personal relationships with a party or a relative or associate of a party to the dispute that goes beyond the level of a professional working relationship.

Kay Ransome
Chairperson

30 June 2003