

THE RULES FOR EXPERT EVIDENCE IN AUSTRALIA

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INTRODUCTION

In a previous paper, the author reviewed various current issues involved in briefing experts, including the cases on expert evidence arising from the class action litigation on the Victorian bushfires.¹ That paper discussed the rules relating to expert evidence in the Supreme Court of Victoria and the Federal Court.

As with many other aspects of the law in Australia, there are significant differences in the law and the rules for expert evidence between the different State, Territory and Commonwealth jurisdictions. Some jurisdictions now have Uniform Evidence Acts, whilst the common law of evidence still applies in three jurisdictions. A number of jurisdictions have explicit codes of conduct for expert witnesses, whilst the others do not. All jurisdictions have civil procedure rules that regulate expert evidence. The differences may mean that expert evidence that is complying in one jurisdiction may not necessarily comply with the rules in another jurisdiction.

This paper provides a comparison of the rules relating to expert evidence in the nine jurisdictions of the state and territory Supreme Courts and the Federal Court. A table in the Annexure cites for each jurisdiction the specific clause references to the requirements for expert evidence in the civil procedure rules and expert witness codes of conduct. This table provides details of the requirements for expert evidence under nine categories, including procedural requirements for expert reports, the required content of an expert report, procedural rules for expert conclaves, and giving expert evidence in court.

The final section of the paper contains suggestions for the contents of an expert report that the author considers would

satisfy the formal requirements in any jurisdiction, irrespective of the specific rules. Whilst this may seem to be an unnecessary counsel of perfection, this author believes there is merit in adopting a uniform approach to expert evidence that incorporates the current best practice in Australia.

EXPERT EVIDENCE RULES IN AUSTRALIAN JURISDICTIONS

There are differences in the applicable evidence law between Australian jurisdictions. The Commonwealth, Australian Capital Territory, New South Wales, Northern Territory, Norfolk Island, Tasmania and Victoria are Uniform Evidence Act jurisdictions, whereas the common law still applies in Queensland, South Australia and Western Australia.

Such differences in evidence law may be significant in the extent to which case law in one Australian jurisdiction may not be applicable in another jurisdiction. For example, there are differences between the common law and the Uniform Evidence Act in the extent to which an expert's draft reports can be called for or disclosed.²

Each Australian jurisdiction has rules that govern the content of, and the manner of giving expert evidence. The provisions of Reg 31.17 of the Uniform Civil Procedure Rules 2005 (NSW) are typical of the rationale for these rules:³

- (a) to ensure that the court has control over the giving of expert evidence;
- (b) to restrict expert evidence in proceedings to that which is reasonably required to resolve the proceedings;
- (c) to avoid unnecessary costs associated with parties to proceedings retaining different experts;

(d) if it is practicable to do so without compromising the interests of justice, to enable expert evidence to be given on an issue in proceedings by a single expert engaged by the parties or appointed by the court;

(e) if it is necessary to do so to ensure a fair trial of proceedings, to allow for more than one expert (but no more than are necessary) to give evidence on an issue in the proceedings; and

(f) to declare the duty of an expert witness in relation to the court and the parties to proceedings.

The specific scope and content of the rules applicable to expert evidence differ significantly

between Australian jurisdictions. A number of jurisdictions also have codes of conduct that experts are required to adhere to. One common feature of the different rules and codes of conduct is that the court exercises considerable control over the form of expert evidence. This is reflective of the importance of, and the need for the court to rely on expert opinion in many cases. Such reliance is only possible if expert reports comply with appropriate procedures for the preparation and articulation of expert evidence.

The exact content of the individual rules and codes of conduct relating to the superior courts in the various Australian jurisdictions

is beyond the scope of this paper. Clearly, a legal practitioner or expert involved in the preparation and presentation of expert evidence in a particular jurisdiction must be familiar with and comply with the relevant rules.

The Expert Subcommittee of the Society of Construction Law Australia is currently preparing a detailed comparison of the rules and codes of conduct applying to expert evidence in the various courts of the different Australian jurisdictions.

The following table summarises the location of the applicable rules and codes of conduct in nine Australian superior court jurisdictions:⁴

Jurisdiction and evidence law	Evidence Act	Civil Procedure Rules relating to expert evidence	Expert Witness Code of Conduct
Supreme Court of the Australian Capital Territory [ACTSC]	Uniform Evidence Act <i>Evidence Act 2011</i> (ACT)	Court Procedures Rules 2006 (ACT) Part 2.12 Expert Evidence Rules 1200—1246	Schedule 1 Expert Witness Code of Conduct
Federal Court of Australia [FCA]	Uniform Evidence Act <i>Evidence Act 1995</i> (Cth)	Federal Court Rules 2011 (Cth) Rule 5.04 and Part 23 Experts RR 23.01—23.15	Practice Note CM7 Expert Witnesses in proceedings in the Federal Court of Australia
Supreme Court of New South Wales [NSWSC]	Uniform Evidence Act <i>Evidence Act 1995</i> (NSW)	Uniform Civil Procedure Rules 2005 (NSW) Rules 31.17—31.54	Schedule 7 Expert Witness Code of Conduct
Supreme Court of the Northern Territory [NTSC]	Uniform Evidence Act <i>Evidence Act 2011</i> (NT)	Supreme Court Rules (NT) Order 44 Expert Evidence	—
Supreme Court of Queensland [QSC]	Common law <i>Evidence Act 1977</i> (Qld)	Uniform Civil Procedure Rules 1999 (Qld) Ch 11, Part 5, Division 2 Rules 423—429S	—
Supreme Court of South Australia [SASC]	Common law <i>Evidence Act 1929</i> (SA)	Supreme Court Civil Rules 2006 (SA) Rules 160, 161	Part I Practice Direction 5.4 Expert Witnesses (Rule 160)
Supreme Court of Tasmania [TSC]	Uniform Evidence Act <i>Evidence Act 2001</i> (Tas)	Supreme Court Rules 2000 (Tas) Part 19 Division 5 Expert Opinion Evidence Rules 514—517	—
Supreme Court of Victoria [VSC]	Uniform Evidence Act <i>Evidence Act 2008</i> (Vic)	Supreme Court Rules 2005 (Vic) Order 44 Expert Evidence Rules 44.01—44.06	Form 44A Expert Witness Code of Conduct
Supreme Court of Western Australia [WASC]	Common law <i>Evidence Act 1906</i> (WA)	Rules of the Supreme Court 1971 (WA) Order 36A Expert Evidence Rules 1—9	—

Legal practitioners or experts are referred to the relevant provisions of the applicable rules in the table in the Annexure for the detailed requirements applying in a particular jurisdiction. The significant differences between the rules, as well as the applicable evidence law, should be borne in mind when looking at the applicability of case law.

A detailed comparison of the rules and codes of conduct referred to in the table in the Annexure reveals that, collectively, they cover the following issues (although no set of rules or code of conduct covers all of the issues):

- (1) General issues in relation to the rules for expert evidence
- (2) Overarching obligations of an expert witness
- (3) Procedural requirements for expert reports
- (4) Required content of an expert report
- (5) Procedural rules for expert conferences
- (6) Procedural rules for giving evidence in court
- (7) Procedures for court appointed expert or jointly appointed single expert
- (8) Shadow experts

DETAILS OF SPECIFIC PROVISIONS

GENERAL ISSUES IN RELATION TO THE RULES FOR EXPERT EVIDENCE

The general issues cover:

- Purposes
- Definitions
- Immunity of expert witness
- Expert report admissible as evidence of opinion
- Expert report to be tendered by rule or by leave of court

- Expert evidence in chief by experts' reports
- Expert witness bound by code of conduct
- Application of the rules to a party witness
- General court powers in relation to expert evidence

Most jurisdictions provide that expert evidence in chief is to be adduced by expert reports, in some jurisdictions only after the court has made appropriate directions.

In those jurisdictions that have an explicit expert code of conduct, an expert is bound by its provisions, and usually has to acknowledge in their report that s/he has read, understood and complied with the code. The importance of this formal acknowledgement is highlighted by the provision in the ACTSC rules:

If an expert report does not contain an acknowledgement by the expert witness who prepared the report that the expert witness has read the code of conduct and agrees to be bound by it, service of the expert report by the party who engaged the expert is not valid service.⁵

The rules in three jurisdictions specify whether the expert evidence code/rules apply to a party who is also qualified to act as an expert witness. The expert witness code of conduct does not apply in Victoria⁶ nor do the Rules apply in Queensland,⁷ however the Practice Direction applies to a party witness in South Australia.⁸

OVERARCHING OBLIGATIONS OF AN EXPERT WITNESS

Expert witnesses have some or all of the following explicit obligations in the majority of jurisdictions:

- Overriding duty to assist the court
- Paramount duty is to the court

- An expert witness is not an advocate for a party
- A duty to comply with court directions or cooperate with another expert witness

PROCEDURAL REQUIREMENTS FOR EXPERT REPORTS

All jurisdictions define in the Rules and/or Codes of Conduct, some of the following procedural requirements:

- A party is required to give an expert witness a copy of the code of conduct.
- Service of expert reports.
- Expert is to issue a supplementary report when they have changed their opinion for any reason.
- Notice to the court where an expert has changed their opinion.
- Draft of expert report communicated to a party is to be retained by an expert.

In respect of the service of expert reports, the wording in the rules is significantly different between jurisdictions.

The following reports are to be served:

- ACTSC: 'each expert report obtained by the party in accordance with any direction made by the court';⁹
- FCA: 'an expert report that complies with rule 23.13';¹⁰
- NSWSC: 'experts' reports';¹¹
- NTSC: 'a statement in accordance with subrule (2)';¹²
- QSC: a report that a party is intending to rely on;¹³
- SASC: 'a copy of each expert report in the party's possession relevant to the subject matter of an action (whether the party intends to rely on it at the trial or not)';¹⁴
- TSC: 'a statement signed by the witness' where a party intends to

adduce oral evidence from the expert witness at trial;¹⁵

- VSC: 'a report by the expert', where 'a party who intends at trial to adduce the evidence of a person as an expert';¹⁶

- WASC: 'a report of an expert witness the substance of which a party intends to rely on at the trial or hearing'.¹⁷

South Australia is thus the only jurisdiction that requires that all expert reports in a party's possession to be served on every other party, whether or not the party intends to rely on them at trial or not.

South Australia is also the only jurisdiction that explicitly requires an expert to retain a copy of any draft report s/he has communicated to a party.¹⁸

REQUIRED CONTENT OF AN EXPERT REPORT

Western Australia is the only jurisdiction that does not specify some or all of the following requirements for the content of an expert report:

- Contents of expert report.
- Statement that expert has understood and complied with their duty.
- Statement that expert has made all inquiries that they believe appropriate.
- Summary of expert's qualifications and experience.
- Statement that opinion is provisional when available information is insufficient.
- Statement that opinion is qualified when available information is incomplete or inaccurate.
- Statement that a particular question or issue is outside the expert's expertise.
- Statement that opinion is genuinely held by the expert.

- Acknowledgement that opinions are based on the expert's specialised knowledge.

- Report to be signed by the expert.

- Details of the expert's fees or communications with the expert.

New South Wales and South Australia have explicit provisions that require an expert to reveal certain details about their fees. In New South Wales, an expert must include information on any contingency fees or deferred payment schemes.¹⁹ In South Australia, an expert must provide on request, details of his/her fees, and details of any communications relevant to the preparation of their report with their instructing party/legal representative, or any other expert.²⁰

PROCEDURAL RULES FOR EXPERT CONFERENCES

With the exception of Western Australia, all jurisdictions have procedural rules and/or provisions in codes of conduct in respect of pre-trial conferences between experts, covering some or all of the following issues:

- Court may direct a conference with another expert.
- Court direction to produce a joint report setting out the opinions where experts agree and disagree and the reasons why they disagree.
- Experts must endeavour to reach agreement.
- Expert is not to act on any instruction to withhold or avoid agreement with other expert witnesses.

The clear aim of these provisions is to minimize the differences between expert opinions, by a structured process that addresses the facts on which expert opinions are based, as well as ensuring that experts address the same questions.

The procedures generally aim to minimize the influence of lawyers on the outcome of an experts' conference, perhaps by excluding lawyers from attending, and ensuring that the conference proceedings themselves are 'without prejudice'.

PROCEDURAL RULES FOR GIVING EVIDENCE IN COURT

Whilst the modern focus on expert evidence is on the preparation of expert reports as evidence-in-chief, oral testimony may still be important to supplement or test expert evidence. Procedural rules cover some or all of the following issues:

- Complying expert report is a precondition to giving oral evidence.
- Experts to consider factual evidence adduced at trial.
- Cross-examination of experts can be separate or concurrent.
- Expert permitted to question other experts.
- Expert can give an exposition of his/her own opinion or their opinion about other experts' opinions.
- How lay or expert evidence in the hearing may be given.
- The scope of evidence-in-chief is restricted.
- Expert must be available for cross-examination if required.

In most jurisdictions, the preparation of a complying expert report is a precondition for giving oral evidence, and an expert must be available for cross-examination if required.

Courts generally have wide discretion to adopt procedures for giving expert evidence appropriate to the circumstances, such as their location in the hearing room, the order in which factual and expert evidence is given, the order of cross-examination, the ability for

experts to give an exposition of their own opinion, or question the opinion of other experts.

Five jurisdictions have a provision that experts can be required to confirm their opinions or otherwise after the factual evidence has been adduced.²¹

PROCEDURES FOR COURT APPOINTED EXPERT OR JOINTLY APPOINTED SINGLE EXPERT

Three jurisdictions have specific provisions in respect of the appointment of a single expert by the court or the parties:²²

- Court procedure for appointment of its own expert witness or special referee.
- Cross-examination of court appointed expert.
- Other expert's reports on question addressed by the court appointed expert.
- Joint engagement of a single expert.

Appointment of a single expert, either by the court or the parties, may result in significant cost savings over the appointment of separate experts by each party. However, it may result in genuine concerns as to its reliability in the absence of confirming opinion, and may need to be tested by cross-examination.²³ New South Wales specifically prohibits adducing other expert evidence on an issue if a court appointed expert has been appointed in respect of that issue.²⁴

SHADOW EXPERTS

South Australia is unique in having provisions to regulate the involvement of shadow experts.²⁵

A shadow expert is an expert who:

- is engaged to assist with the preparation or presentation of a party's case but not on the basis that the expert will, or may, give evidence at the trial; and

- has not previously been engaged in some other capacity to give advice or an opinion in relation to the party's case or any aspect of it.²⁶

A shadow expert in South Australia is required to provide a certificate acknowledging:

- that their role is not to provide evidence in the trial; and
- they have not previously been engaged in any other capacity to give advice or an opinion in relation to any party's case or any aspect of it.²⁷

The consequences of not complying with the requirements of the applicable rules/code of conduct are well illustrated in the English case of *SPE International Ltd v Professional Preparation Contractors (UK) Ltd* [2002] EWHC 881 (Ch). In that case pretty well everything that could possibly go wrong with expert evidence did go wrong. The judge rejected the evidence as inadmissible because the 'expert' had breached all of his obligations to the court and had not complied with the fundamental requirements of giving independent expert evidence based on relevant qualifications, training and experience.

RECOMMENDATIONS ON CONTENTS OF AN EXPERT REPORT

As outlined above, there are differences in the requirements of the rules and expert codes of conduct between jurisdictions, and those specific rules and codes should be consulted to ensure that an expert report complies with the applicable procedural requirements and content of expert reports to be used in court proceedings.

Although not mandatory in arbitral proceedings, these codes of conduct/rules (or their equivalent) are often also applied in arbitrations because they are perceived to define the norms

that experts should comply with for their evidence to be relevant, persuasive and of assistance to the tribunal. Experts would be well advised to comply with such requirements in arbitral proceedings in any event, as such compliance should negate any grounds for rejection of the evidence on the grounds of admissibility.

The following are recommendations on the substantive contents of an expert report to be used in litigation or arbitration in Australia. Whilst not all of these matters are specifically required by the rules/code of conduct in any one jurisdiction, the author believes that they represent best practice in the preparation of an expert report, and should satisfy the specific requirements of any jurisdiction, the requirements of section 79 of the Uniform Evidence Acts or the common law requirements for expert evidence.

For clarity and logic, the following substantive matters should be addressed in separate and clearly labeled sections of the expert's report:

- (a) a brief summary of a lengthy or complex report;
- (b) the name and address of the expert and details of their qualifications, training and experience by which the expert has acquired specialized knowledge relevant to their opinions expressed in the report;
- (c) the instructions the expert's report is responding to, including the questions they have been asked to address and the material they have been asked to consider (this may be by annexing the letter of instructions);
- (d) each of the material facts, matters and assumptions of fact (written or oral) on which the opinions are based (some of which may be detailed in the letter of instructions annexed),

distinguishing facts identified by the expert and their source from assumed facts, and distinguishing objectively verifiable facts from matters of opinion;

(e) details of any examinations, tests or other investigations on which the opinion is based, the name and qualifications of the persons who carried them out and supervised them;

(f) details of any literature or other materials referred to such as photographs, plans, calculations, analyses, measurements, survey reports or other extrinsic matters relied on by the expert to support his/her opinions—these will need to be made available to the opposite party when the expert report is served;

(g) the expert's opinions on each of the questions addressed to him/her;

(h) the expert's reasons for each opinion expressed, and 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; and

(i) the expert's signature.

In addition to the above substantive content, the following 'ethical' obligations should be acknowledged in an expert's report:

(a) whether any particular question, issue or matter falls outside the expert's field of expertise (if applicable);

(b) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason;

(c) whether access to any readily ascertainable additional facts would assist the expert in reaching a more reliable conclusion; and

(d) a declaration that:

(i) the expert has made all the enquiries which the expert believes are appropriate and necessary or desirable;

(ii) the report contains reference to all matters the expert considers significant, and no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the report;

(iii) any qualification of an opinion expressed in the report without which the report is or may be incomplete or inaccurate;

(iv) the expert's opinions are genuinely held and are based wholly or substantially on his/her specialized knowledge;

(v) the factual matters stated in the report are, as far as the expert knows, true; and

(vi) the expert has been provided with copies of and has read the relevant rules and experts' code of conduct (if applicable), understands and will comply with his/her duty in accordance with those rules/code, and the expert's report complies with the rules and experts' code of conduct (if applicable).

If an expert has altered his/her opinion as expressed in an expert report, the expert should prepare a supplementary report as soon as possible, expressing the change of opinion, supported by a statement of the relevant substantive matters as outlined above. Such a supplementary report should be communicated to the opposing party without delay.

TABLE OF RULES OF EXPERT EVIDENCE

The following table lists the specific clauses for expert evidence in the Rules and Codes of Conduct (where applicable) in each Australian jurisdiction, under the headings as noted above.

There are differences in the applicable evidence law between Australian jurisdictions ...

... Such differences in evidence law may be significant in the extent to which case law in one Australian jurisdiction may not be applicable in another jurisdiction.

	ACTSC	FCA	NSWSC	NTSC	QSC	SASC	TSC	VSC	WASC
<i>Applicable law in relation to expert evidence</i>	<i>Uniform Evidence Act</i>	<i>Uniform Evidence Act</i>	<i>Uniform Evidence Act</i>	<i>Uniform Evidence Act</i>	<i>Common law</i>	<i>Common law</i>	<i>Uniform Evidence Act</i>	<i>Uniform Evidence Act</i>	<i>Common law</i>
<i>Expert witness code of conduct</i>	<i>Code</i>	<i>Practice Note</i>	<i>Code</i>			<i>Practice Direction</i>		<i>Code</i>	
General issues in relation to rules for expert evidence									
Purposes	R1200		R31.17		R423				
Definitions	RR1201, 1202		R31.18	R44.01	R425			R44.01	R36A.1
Immunity of expert witness	R1204				R429C				
Expert report admissible as evidence of opinion	R1244		R31.29(1)						
Expert report to be tendered by rule or by leave of court			R31.19	R44.03	R427(2)		R516	R44.03	R36A.3
Expert evidence in chief by experts' reports	R1243		R31.21	R44.03(3)	R427(1)		R515	R44.05	
Expert witness is bound by code of conduct	R1203	R23.13	R31.23			C5.4.2		C3	
Rules apply to a party witness?					NO R424	YES C5.4.8		NO R44.02(2)	
General court powers in relation to expert evidence	R1205	RR5.04(3), 23.14, 23.15	R31.20			C5.4.6			R36A.9
Overarching obligations applying to an expert witness									
Overriding duty to assist the court	C1.2	C1.1	C2(1)		R426(1)	C5.4.3.1		C1	
Expert witness's paramount duty to the court	C1.2	C1.3	C2(2)		R426(1)	C5.4.3.3			
An expert witness is not an advocate for a party.	C1.2	C1.2	C2(3)			C5.4.3.2		C1	
Duty to comply with court direction or cooperate with another expert witness			CC3, 4						
Procedural requirements for expert reports									
Party required to give expert witness a copy of the code of conduct	R1203	R23.12	R31.23(2)					R44.03(1)	
Service of expert reports	RR1240, 1241	R23.11	R31.28	R44.03	R429	R160	R516(3)	R44.03(1)	R36A.3(4)
Expert to issue a supplementary report when they have changed their opinion for any reason.	R1242, C1.3(4), C1.3(5)	C2.4	RR31.27(4) 31.34, C5(4)		R429A	C5.4.5.1	R516(4), (5)	R44.03(3), C4	
Notice to court where expert has changed their opinion		C2.4				C5.4.5.1			
Draft of expert report communicated to a party to be retained by expert						C5.4.5.2			
Required content of an expert report									
Contents of expert report	C1.3(1)	R23.13(1), C2.1, C2.3, C2.7	R31.27(1), C5(1)	R44.03(2)	R428(2), R428(3)	R160(3), C5.4.4	R516(2)	R44.03	
Statement that expert has understood and complied with their duty		R23.13(1), C2.1			R428(3)	C5.4.4.7	R516(2)	R44.03(2), C3	
Statement that expert has made all inquiries that they believe appropriate		C2.2			R428(3)	C5.4.4.8		R44.03(2), C3	
Summary of expert's qualifications and experience	C1.3(1)	R23.13(1)	C5(1)	R44.03(2)	R428(2)	R160(3)	R516(2)	R44.03(2), C3	
Statement that opinion is provisional when available information is insufficient	C1.3(3)	C2.5	R31.27(3), C5(3)			C5.4.4.5	R516(2)	R44.03(2), C3	
Statement that opinion is qualified when available information is incomplete or inaccurate	C1.3(2)	C2.5	R31.27(2), C5(2)			C5.4.4.5	R516(2)	R44.03(2), C3	
Statement that particular question or issue outside expert's expertise		C2.6	R31.27(1)			C5.4.4.6		R44.03(2)	
Statement that opinion is genuinely held.					R428(3)				
Acknowledgement that opinions are based on specialised knowledge		R23.13(1), C2.1							
Report to be signed		R23.13(1), C2.1			R428(1)		R516(2)	R44.03(4)	
Details of expert's fees or communications with expert			R31.22			R160(5)			

	ACTSC	FCA	NSWSC	NTSC	QSC	SASC	TSC	VSC	WASC
<i>Applicable law in relation to expert evidence</i>	<i>Uniform Evidence Act</i>	<i>Uniform Evidence Act</i>	<i>Uniform Evidence Act</i>	<i>Uniform Evidence Act</i>	<i>Common law</i>	<i>Common law</i>	<i>Uniform Evidence Act</i>	<i>Uniform Evidence Act</i>	<i>Common law</i>
<i>Expert witness code of conduct</i>	<i>Code</i>	<i>Practice Note</i>	<i>Code</i>			<i>Practice Direction</i>		<i>Code</i>	
Procedural rules for pre-trial expert conferences									
Court may direct conference with another expert	RR1210, 1211	R23.15	RR31.24, 31.25, 31.26, C6(1)	R44.05(2)	R429B(1)	C5.4.7	R516(6)	R44.06, C5	
Court direction to produce a joint report setting out the opinions where experts agree and disagree and the reasons why they disagree	C1.4(1)	R23.15	R31.24(1), C6(1)	R44.05(2)	R429B	C5.4.7	R516(6)	R44.06(1), C5	
Experts must endeavour to reach agreement			R31.24(1), CC4, 6(1)		R429B				
Expert is not to act on any instruction to withhold or avoid agreement with other expert witness.	C1.4(2)	C3.1	CC4, 6(2)			C5.4.7		C6	
Procedural rules for giving expert evidence in court									
Complying expert report is a precondition to giving oral evidence	R1203	R23.11	R31.23(4)	R44.03(3)	R427		R515	RR44.03(1) 44.05	R36A.3
Experts to consider factual evidence adduced at trial	R1211	R23.15	R31.35	R44.05(2)			R516(6)		
Cross-examination of experts can be separate or concurrent	R1211	R23.15	R31.35	R44.05(2)			R516(6)		
Expert permitted to question other experts	R1211		R31.35						
Expert can give an exposition of own opinion or opinion about other experts' opinions		R23.15	R31.35	R44.05(2)			R516(6)		
How lay or expert evidence in hearing may be given	R1211		R31.35	R44.05(2)		R169	R516(6)		
Scope of evidence-in-chief restricted	R1243	R23.15	R31.21	R44.03(3)	R427(4)				
Expert must be available for cross-examination if required	RR1245, 1246		R31.29		R427(3)	R170	R516(2)		
Procedures for court appointed expert or jointly appointed single expert									
Court procedure for appointment of its own expert witness or special referee.		RR5.04(3), 23.01, 23.02, 23.03(1)	RR31.46 31.54		RR429I, 429P, R429S				
Cross-examination of court appointed expert		R23.02(2)	R31.51		R429M(1)				
Other expert's reports on question addressed by court appointed expert		R23.04)	NO R31.52		R429N				
Joint engagement of a single expert			RR31.37 31.45		RR429G, 429H, 429R				
Shadow experts									
Rules applying to the engagement of a shadow expert						R161			
Certificate by shadow expert						C5.5			

Some jurisdictions now have Uniform Evidence Acts, whilst the common law of evidence still applies in three jurisdictions. A number of jurisdictions have explicit codes of conduct for expert witnesses, whilst the others do not. All jurisdictions have civil procedure rules that regulate expert evidence. The differences may mean that expert evidence that is complying in one jurisdiction may not necessarily comply with the rules in another jurisdiction.

REFERENCES

1. Donald Charrett 'Getting the Most Out of Expert Witnesses—Lessons from the Victorian Bushfires' (2015) 181 *Australian Construction Law Newsletter* 6
2. Dodds–Streeton J set out these distinctions in *Shea v TruEnergy Services Pty Ltd (No 5)* [2013] FCA 937
3. There is a similar statement of purposes in section 1200 of Court Procedures Rules 2006 (ACT).
4. I am indebted to the Expert Subcommittee of SoCLA for a preview of their draft report and permission to use some of their content in this table, and the table in the Annexure.
5. Court Procedures Rules 2006 (ACT) R1203(3)
6. Supreme Court Rules 2005 (Vic) R44.02(2)
7. Uniform Civil Procedure Rules 1999 (Qld) R424
8. Practice Direction 5.4 Expert Witnesses 5.4.8
9. Court Procedures Rules 2006 (ACT) R1240
10. Federal Court Rules 2011 (Cth) R23.11
11. Uniform Civil Procedure Rules 2005 (NSW) R31.28
12. Supreme Court Rules (NT) R44.03
13. Uniform Civil Procedure Rules 1999 (Qld) R429
14. Supreme Court Civil Rules 2006 (SA) R160
15. Supreme Court Rules 2000 (Tas) R516(2)
16. Supreme Court (General Civil Procedure) Rules 2005 (Vic) R44.03(1)
17. Rules of the Supreme Court 1971 (WA) R36A.3(4)
18. Practice Direction 5.4 Expert Witnesses 5.4.5.2
19. Uniform Civil Procedure Rules 2005 (NSW) Rule 31.22
20. Supreme Court Civil Rules 2006 (SA) Rule 160(5)
21. Court Procedures Rules 2006 (ACT) Rule 1211; Federal Court Rules 2011 (Cth) Rule 23.15; Uniform Civil Procedure Rules 2005 (NSW) Rule 31.35; Supreme Court Rules (NT) Order 44.05(2); Supreme Court Rules 2000 (Tas) Rule 516(6)
22. Federal Court Rules 2011 (Cth); Uniform Civil Procedure Rules 2005 (NSW); Uniform Civil Procedure Rules 1999 (Qld)
23. Federal Court Rules 2011 (Cth) Rule 23.02(2); Uniform Civil Procedure Rules 2005 (NSW) Rule 31.51; Uniform Civil Procedure Rules 1999 (Qld) Rule 429M(1)
24. Uniform Civil Procedure Rules 2005 (NSW) Rule 31.52
25. Supreme Court Civil Rules 2006 (SA) Rule 161
26. *Ibid*
27. Supreme Court Civil Rules 2006 (SA) Form 32