**April 2019**

## Introduction

An expert witness has specialised knowledge from training, study or experience. A Panel may rely on that specialised knowledge to form an opinion about an issue that is relevant to the Hearing. Generally more weight will be given to expert evidence that is independent.

This Guide applies to:

instructing an expert witness preparing expert evidence

the preparation of the expert’s evidence

the presentation of the evidence at the Hearing

questioning (‘cross examination’) of an expert witness.

The Guide explains what happens when an expert witness is to be called at a Hearing. A Panel may make specific Directions that vary this Guide.

Parties calling an expert witness must make sure that the expert is made aware of this guide when they are retained.

## Expert witness' duty to the Panel

An expert witness:

has a paramount duty to the Panel

has an overriding duty to assist the Panel on matters relevant to the expert's expertise

is not an advocate for a party

must not withhold material matters known to the witness even if it may be unfavourable to a particular party.

## The expert witness statement

An expert witness preparing a written statement for a Hearing must do so in accordance with this Guide. The statement must include:

the expert’s name and address

the expert’s qualifications, experience and area of expertise

details of any other significant contributors to the statement (if there are any), and their expertise

all instructions that define the scope of the statement (original and supplementary and whether in writing or verbal)

details and qualifications of any person who carried out any tests or experiments upon which the expert has relied in preparing the statement.

All experts must declare in their statements:

*‘I have made all the inquiries that I believe are desirable and appropriate and no matters of significance which I regard as relevant have to my knowledge been withheld from the Panel.’*

Sometimes, an expert witness may have prepared an earlier report or advice that informed the Planning Scheme Amendment or proposal under consideration by the Panel. In these circumstances, the expert should not provide a revised version of that report. Instead, the expert’s witness statement should include:

a clear reference to the earlier report(s)

details of the expert’s role in preparing or overseeing the earlier report(s)

confirmation that the expert adopts the earlier report(s) and identifying:

* + - any key assumptions made in preparing the earlier report(s)
    - any departure from findings or opinion expressed in the earlier report(s), and why
    - any questions falling outside the expert's expertise
    - whether the earlier report is incomplete or inaccurate in any respect

details of any changed circumstances or assumptions since the earlier report(s) were prepared, and whether these affect the opinions expressed in the earlier report(s).

Where the expert was not involved in the preparation of earlier reports or advice that informed the Planning Scheme Amendment or proposal, the expert’s statement should include:

the facts, matters and assumptions on which the expert relies in preparing the statement

reference to documents and materials the expert has used in preparing the statement

a summary of the expert’s opinion(s), including provisional opinions.

## Where the expert materially changes their opinion

An expert witness who changes their opinion on a material matter after the circulation of evidence must communicate that change in writing to the Panel and all parties to the Hearing and explain why their opinion has changed.

## Privacy

Expert witness reports are usually published on a website. They are also available to all parties to a proceeding. An expert witness statement should not refer to submitters by name. Where necessary, submitters should be referenced by submission number.

Expert witnesses should inform themselves of their obligations under the *Privacy and Data Protection Act 2014.*  Personal information contained in submissions should be used in accordance with the principles in the Act.

For more information on Privacy refer to the separate **Guide to Privacy at Planning Panels Victoria.**

## Form of statement

Expert witness statements must be provided in the following form.

**All copies**

Witness statements and any supporting information must:

be prepared at A4 page size, unless otherwise directed

use a black, 12 point font (Arial or Calibri preferred)

have numbered paragraphs and pages.

Maps, images or plans must be at a high-definition resolution of at least 600 pixels per inch.

**Electronic copies**

An electronic version of a document must be less than 10MB in size and provided to:

parties on the distribution list in accordance with the Panel’s Direction

the Panel in unlocked ‘pdf’ or Microsoft Word format

the Planning Authority in a format suitable for uploading to its website.

**Paper copies**

Paper copies of evidence are generally not required. Where the Panel directs a paper copy, each document must be:

two-hole punched

stapled, not bound

printed on both sides of each page.

Maps, images or plans may be printed at A3 and be folded within the report so they can be read without being removed.

## Circulation of expert reports

Parties must confirm at the Directions Hearing any evidence they will be calling at the Public Hearing.

Expert reports must be circulated five working days before the Hearing starts or as directed by the Panel.

People not on the evidence circulation list can obtain electronic copies by contacting the Panel Co-ordinator on 8392 5115.

## Directions relating to expert witnesses

The Panel may direct that expert witnesses address certain matters in their evidence, to enable all parties to gain a clear understanding of the basis of evidence to be presented. Examples include a response to specific questions asked by the Panel, or to explain the methodology, assumptions and inputs that contributed to the expert’s assessment.

## Expert meeting prior to the Hearing

The Panel may direct that expert witnesses in the same technical area meet before the Hearing and prepare a statement of agreed opinions and facts.

The expert meeting is for technical experts to discuss the issues without instructors, to identify (and if possible reduce) areas of disagreement in the Hearing. This ensures a more efficient and effective process. The Panel will provide specific directions for an expert meeting where required.

## Evidence at the Hearing

Experts should identify any errors in their statement at the Hearing at the start of giving evidence. Witnesses should summarise key opinions in their evidence in no more than 30 minutes.

Experts can prepare a summary statement or presentation for the Hearing, but this must be drawn from the circulated evidence. Responses to other expert reports that constitute new material must be clearly identified.

## Cross examination

An expert witness may be questioned by parties, advocates and the Panel. Questions put to expert witnesses must be relevant, directed to matters of fact or professional opinion, and must genuinely assist the Panel in understanding the issues. To ask questions of a witness, a party must be present for the whole of the evidence summary and questioning of the witness.

The Panel may regulate cross-examination to ensure an efficient hearing and that the cross examination remains relevant to the issues. The Panel may limit cross-examination that is not of benefit to the Panel.

## Consequences of not complying with a Direction

The Panel has a broad range of powers to control Hearings under Division 2, Part 8 of the *Planning and Environment Act 1987.*

It is important to comply with Directions. The consequences of a failure to comply may be significant. For example, a Panel may refuse to allow an expert to present evidence at the Hearing.

## Other witnesses

A range of other people with specialist expertise appear at Panels including:

technical staff from agencies or Councils, who might make submissions in place of giving evidence

lay witnesses who may have specialist knowledge. Past examples have included business owners, farmers and boat skippers.

These witnesses are generally not subject to cross examination but may be asked questions by the Panel or by other parties through the Chair.

## Further information

Further information about Planning Panels Victoria can be found at:

<https://www.planning.vic.gov.au/panels-and-committees/panels-and-committees>