

Planning Panels Victoria | Practice Note 1

This Practice Note advises on practices which an expert witness must meet when participating in a hearing at Planning Panels Victoria (PPV).

Duty of an expert witness to PPV

1. An expert witness:
 - a. has a paramount duty to PPV and not to the party retaining the expert
 - b. has an overriding duty to assist PPV on matters relevant to the expert's expertise
 - c. is not an advocate for a party to a proceeding.

Report form and content

2. The expert witness report must be provided electronically unless specified otherwise and include:
 - a. the expert's name and business address
 - b. the expert's qualifications and experience
 - c. a statement identifying the expert's area of expertise to make the report
 - d. a statement identifying any other significant contributors to the report and where necessary outlining their expertise
 - e. all instructions that define the scope of the report (original and supplementary and whether in writing or oral)
 - f. the identity of the person who carried out any tests or experiments upon which the expert has relied on and the qualifications of that person.
3. The expert witness must be in an unlocked form (content can be searched and copied).

Where an expert has prepared a report that has been used to inform the preparation of an amendment or proposal

4. The expert should not provide a revised version of that report.
5. The expert should provide a brief report that includes:
 - a. an unambiguous reference to the report, or reports that the expert relies upon
 - b. a statement identifying the role that the expert had in preparing or overseeing the exhibited
 - c. report(s) a statement to the effect that the expert adopts the exhibited report and identifying:
 - any departure of the expert from the finding or opinions expressed in the exhibited report
 - any questions falling outside the expert's expertise
 - any key assumptions made in preparing the report
 - whether the exhibited report is incomplete or inaccurate in any respect.

Where a report has not been used to prepare an amendment or proposal

6. The report should include:
 - a. the facts, matters and all assumptions upon which the report proceeds
 - b. 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
 - c. a summary of the expert's opinion or opinions
 - d. 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)
 - e. a statement setting out:
 - any questions falling outside the expert's expertise
 - whether the report is incomplete or inaccurate in any respect.

Expert declaration

7. The expert must declare at the end of the report:

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.

8. If the expert will be presenting evidence from a different location by video conference, they must append:

I confirm I:

- *will be alone in the room from which I am giving evidence and will not make or receive any communication with another person while giving my evidence except with the express leave of the Panel*
- *I will inform the Panel immediately should another person enter the room from which I am giving evidence*
- *during breaks in evidence, when under cross-examination, I will not discuss my evidence with any other person, except with the leave of the Panel*
- *I will not have before me any document, other than my expert witness statement and documents referred to therein, or any other document which the Panel expressly permits me to view.*

Report circulation and timing

9. Expert witness reports must be submitted five working before the Hearing commences, or another date directed by PPV. An earlier date will be specified for more complex reports.
10. Parties must identify at the Directions Hearing, the evidence (if any) they will be calling at the Public Hearing.

Privacy

11. Expert witnesses need to be aware of their obligations under the *Information Privacy Act 2000*, particularly when using personal information in submissions they have received as a third party.
12. Copies of witness reports are usually posted on the planning authority's website. Where possible, the report of an expert should not refer to any individual submitter by name and if necessary, submitters should be referred to by submission number.

13. For more information on privacy, refer to the separate PPV Guide to Privacy at Planning Panels Victoria.

Where the expert changes their opinion on a material matter

14. 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 communicate that change of opinion in writing to the party retaining the expert and that party must file with the Panel, notice of such change of opinion as soon as practicable.
15. Such a document must specify reasons why the opinion has changed.

Where the Panel directs expert witnesses to meet

16. Expert witnesses retained by parties are encouraged to meet to narrow any points of difference between them and to identify any remaining points of difference. Experts may be directed to meet.
17. If expert witnesses meet, they must each set out in writing by a document filed with the Panel any agreed points and all remaining points of difference.
18. If any expert witness directed by the Panel to meet with any other expert is instructed not to reach agreement in respect of points of difference, the fact of such instructions must be reported in writing to the Panel by the expert witness.