# SUPREME COURT OF QUEENSLAND

# AMENDED PRACTICE DIRECTION NUMBER 14 OF 2024

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# EXPERT EVIDENCE IN CRIMINAL PROCEEDINGS (OTHER THAN SENTENCES)

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## Introduction

1. The purposes of this Practice Direction are to:

   (a) enhance the quality and reliability of expert evidence relied on by the prosecution and the accused in criminal trials and pre-trial hearings in the Supreme Court of Queensland;

   (b) encourage the early identification of issues in dispute that will be the subject of expert evidence;

   (c) improve the utility of expert evidence by ensuring that it is focused on the issues genuinely in dispute; and

   (d) make use of existing pre-trial and trial processes at the earliest practicable opportunity to advance these purposes.

2. This Practice Direction was developed by the Forensic Evidence Working Group, comprising the Chief Forensic Pathologist, representatives of Forensic Science Queensland, Forensic Medicine Queensland and the Queensland Police Service, judges and legal practitioners (from the Office of the Director of Public Prosecutions, Legal Aid (Qld), Queensland Law Society and Bar Association of Queensland). It is closely modelled on *Supreme Court of Victoria Practice Note SC CR 3 – Expert Evidence in Criminal Trials* which was first introduced in Victoria on 1 July 2014 and revised over time in several respects.

3. To remove doubt, nothing in this Practice Direction affects the validity or admissibility of certificates issued in accordance with statutory requirements.

## Commencement

4. This Practice Direction commences on 15 July 2024. It applies to all criminal proceedings in the Supreme Court commenced by an indictment presented on or after that date (other than sentences).

**Definitions**

5. In this Practice Direction:

***Expert*** means a person who is required to give or prepare expert evidence for the purposes of a criminal trial.

***Expert report*** means a report prepared by an expert.

***Commissioning party*** means the party who gives instructions to the expert.

***Recipient party*** means any other party to whom the expert's report is provided.

***Forensic report*** means a report prepared in the course of an investigation into an alleged offence by a person with specialised knowledge or training, setting out the results of a forensic examination in the form of facts or opinions or a combination of both, for example, an autopsy report.

***Primary expert report*** means an expert report that does not respond to an expert report served by the other party.

***Responding expert report*** means an expert report that responds to an expert report served by the other party.

***Observed facts*** are matters that the expert has personally observed, for example, the reaction of a particular substance to being immersed in a solution or the demeanour of the victim of an alleged sexual assault.

***Reported facts*** are matters that have been reported to the expert by any other person, e.g. the admissions made by the accused, the results of tests performed by other scientists or an agreed statement of facts.

***Assumed or inferred facts*** are matters that the expert has neither seen nor been told but has either inferred from observed or reported facts or assumed to be so for the purpose of reaching a conclusion.

**Expert's duty to the Court**

6. An expert has an overriding duty to assist the Court impartially, by giving objective, unbiased opinion on matters within the expert's specialised knowledge.

7. This duty overrides any obligation to the commissioning party or to the person by whom the expert is paid or employed.

8. This duty includes an obligation to inform all parties and the Court promptly if, and whenever, the expert's opinion changes from that contained in a report served as evidence or given in a statement.

9. An expert is not an advocate for a party even when giving testimony that is necessarily evaluative rather than inferential.

**Expert reports and forensic reports**

10. This Practice Direction applies to any expert report:

    (a) upon which the prosecution or an accused intends to rely at the trial of the accused (including any pre-trial hearing); or

    (b) which the prosecution agrees to obtain in response to a request under paragraph 11 or is directed to obtain under paragraph 14.

11. Where a forensic report has been prepared and served on the accused, the accused may request the prosecution to obtain an expert report in relation to a matter (or matters) that will be contested at the trial of the accused.

12. If the prosecution rejects that request, or fails to respond to it within a reasonable time, the accused may apply to the Court under s 590AA of the *Criminal Code* for a direction that an expert report be obtained.

13. The accused must give the prosecution at least 14 days' notice of such an application.

14. On an application under paragraph 12, the Court may direct the prosecution to obtain an expert report in relation to a matter (or matters) that will be contested at the trial of the accused.

15. Nothing in this Practice Direction shall be taken to prevent an accused person from obtaining an expert report or from adducing evidence at their trial consistently with the contents of such a report, provided the requirements of this Practice Direction as well as s 590AB of the *Criminal Code* have been met.

**Content of all expert reports**

16. All expert reports to which this Practice Direction applies (including primary expert reports and responding expert reports) shall *state* the opinion or opinions of the expert and shall state, specify or provide:

    (a) the expert's name and place of employment;

    (b) an acknowledgement that the expert has read this Practice Direction and agrees to be bound by it;

    (c) whether and to what extent the opinion(s) in the report are based on the expert's specialised knowledge, and the training, study experience on which that specialised knowledge is based;

    (d) the material, observed facts, reported facts, assumed facts and other assumptions on which each opinion expressed in the report is based (a letter of instructions may be annexed);

    (e) in relation to each such opinion:

        (i) the reasons for the opinion; and

(ii) any literature, research or other materials or processes relied on in support of the opinion;

(f) (if applicable) that a particular question, issue or matter falls outside the expert's specialised knowledge;

(g) any examinations, tests or other investigations on which the expert has relied, identifying the responsible laboratory by which, and the relevant accreditation standard under which, the examination, test or other investigation was performed;

(h) a declaration that the expert has made all the inquiries and considered all the issues which the expert believes are desirable and appropriate, and that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld;

(i) any qualification of an opinion expressed in the report, without which the report would or might be incomplete or misleading;

(j) any limitation or uncertainty affecting the reliability of:

(i) the methods or techniques used; or

(ii) the data/evidence relied on,

to arrive at the opinion(s) in the report; and

(k) any limitation or uncertainty affecting the reliability of the opinion(s) in the report as a result of:

(i) insufficient research; or

(ii) insufficient data/evidence;

(l) where the expert used generative artificial intelligence (Gen AI) to assist in the formulation or expression of the opinion(s) contained in his or her report, the report must:

(i) specify the name of the Gen AI program used, and how;

(ii) disclose (as an annexure to the report) a complete record of the inputs (prompts) used for the Gen AI program to formulate or express the relevant opinion(s), including any source material, default values and/or variable sets;

(ii) disclose (as an annexure to the report) a complete record of the outputs delivered by the Gen AI program in the formulation or expression of the relevant opinion(s);

(iii) specify if the way in which the Gen AI program was used is regulated or addressed by any relevant code of practice that binds the expert and, if so, how that code of practice was adhered to by the expert in the formulation

or expression of the relevant opinion(s); and

(iv) identify any possible biases or other known limitations that might affect the accuracy or reliability of the opinion(s) formulated or expressed through use of the Gen AI program.

17. Where an expert is aware of any significant and recognised disagreement or controversy within the relevant field of specialised knowledge, which is directly relevant to the expert's ability, technique or opinion, the expert must disclose the existence of that disagreement or controversy.

18. Where the expert's opinion is of a scientific, medical or technical nature, the report shall additionally state, specify or provide:

(a) whether, and if so how, the method relied on by the expert in forming the opinion has been validated in conditions consistent with the intended use of the report in the proceeding;

(b) if the method is not amenable to validation through testing or other means, the reasons why that is the case;

(c) whether the method has been reviewed by others with relevant expertise and, if so, the result of any such review;

(d) whether the method followed established practice in the field and, if not, the reason for the divergence;

(e) whether, and if so when and where, the expert has demonstrated proficiency in the application of the method;

(f) details of any test, measurement, diagnosis or survey the results of which were relied on in the formation of the opinion, and (where practicable) any matters such as precision, margin of uncertainty or reproducibility that may affect the accuracy or reliability of those results;

(g) what steps, if any, were taken to limit the impact on the opinion of any extraneous information provided to the expert regarding the background or circumstances of the case;

(h) where the opinion is expressed quantitatively (for example, as a number or a likelihood ratio), the error band or range of uncertainty that applies to that opinion and the way in which that has been derived or calculated; and

(i) whether the opinion has been peer-reviewed and, if so, details of any disagreement between expert and reviewer.

**Scientific validity of expert evidence**

19. Paragraphs 20 to 22 apply where a party intends to lead expert evidence of a scientific, medical or technical nature.

20. Before adducing expert evidence at trial, the party intending to rely on the evidence

should make appropriate enquiries of the expert with respect to the matters set out in paragraph 18, so that the party is in a position if necessary to inform the trial judge whether the evidence is scientifically valid and/or whether the expert has demonstrated the requisite proficiency.

21. For this purpose, expert evidence is scientifically valid if the scientific method relied on by the expert in forming the expert opinion has been shown to be capable of producing repeatable, reproducible and accurate results in practice, in conditions which are consistent with the intended use of the evidence in the proceeding. In addition, the expert needs to have demonstrated proficiency in the application of the scientific method in such conditions.

22. In a case of uncertainty or dispute about the validity of a particular scientific method, the Court would ordinarily expect reference to be made to validation tests which establish the capacity of the method to produce scientifically reliable and accurate results and/or which identify the conditions under which the method can be relied on.

**Service of expert evidence**

23. A party intending to adduce expert evidence at a pre-trial hearing or trial must:

    (a) where the report is a primary expert report, serve it on each other party as early as reasonably practicable and, in any event:

        (i) for a pre-trial hearing, no less than 28 days before the pre-trial hearing is to commence; or

        (ii) for a trial, no less than 60 days before the trial is to commence.

    (b) where the report is a responding expert report, serve it on each other party as early as reasonably practicable and, in any event, no less than 14 days before the hearing or trial is listed to commence; and

    (c) at the time of service of the expert report, provide a copy of any photograph, plan or other document referred to in the report.

24. A party may not adduce expert evidence at a pre-trial hearing or trial if that party has not complied with paragraph 23, unless:

    (a) every other party agrees; or

    (b) the Court gives leave.

**Access to materials**

25. If a recipient party so requests, the commissioning party must, subject to paragraph 26, give that party a copy of, or ensure that the party has a reasonable opportunity to inspect:

    (a) the instructions and material given to the expert by the commissioning party;

    (b) any notes made by or on behalf of the expert in connection with the preparation of the expert report or (where applicable) the forensic report;

(c) a record of any examination, measurement, test or experiment on which the expert's findings and opinion are based or that were carried out in the course of reaching those findings and opinion; and

(d) a thing on which any such examination, measurement, test or experiment was carried out.

26. A commissioning party or the expert may withhold anything referred to in paragraph 25 on any basis upon which objection could be taken if the material had been required to be produced under subpoena.

27. Where anything is withheld in reliance on paragraph 26, the commissioning party must ensure that the recipient party is aware of the withholding and the reason for it.

28. A party may not adduce expert evidence at a trial if that party has not complied with paragraph 25, unless:

(a) paragraph 26 applies;

(b) every other party agrees; or

(c) the Court gives leave.

29. The Court may, on application by either party, determine any dispute in relation to the withholding of anything under paragraph 26 and grant appropriate relief, including the making of an order requiring the production of any material of the kind referred to in paragraph 25.

**Availability of expert to other parties**

30. A party who serves an expert report on another party must:

(a) promptly inform the expert of that fact; and

(b) if so requested by a recipient party, provide contact details for the expert to help facilitate an interview of the expert by that party and/or that party's representatives.

31. Unless the Court otherwise orders, the expert is not obliged to consent to be interviewed.

32. The parties may settle the conditions upon which the interview of an expert is to be conducted (including as to whether the commissioning party is entitled to be represented at the interview or whether the content of statements made during the course of the interview may be referred to in Court). The Court may resolve any dispute about this.

33. Unless otherwise agreed, the recipient party bears the cost of the interview of the expert.

**Provision to expert of statement of facts**

34. After service of an expert report:

    (a) the parties shall confer in order to determine whether agreement can be reached on a statement of facts (which may include facts which are agreed and facts which are in dispute) to be provided to the expert;

    (b) the expert may be invited by any party to review the expert's findings and opinion(s) in the light of those facts which are agreed and/or facts which are in dispute; and

    (c) any party may at any time formulate specific questions for the expert to address, and the expert may be invited by that party to respond to those questions.

35. Nothing in paragraph 34 requires the parties to settle an agreed statement of facts or requires an accused to reveal any aspect of their defence.

36. Nothing in paragraph 34 prevents the parties from conferring and providing an agreed statement of facts before an expert report is filed.

37. After service of an expert report, the Court may convene a hearing to enable the Court or any party to seek clarification of the expert evidence.

**Pre-hearing discussion of expert evidence**

38. Where:

    (a) more than one party intends to rely on expert evidence on the same issue or on related issues; and

    (b) the accused consents,

    the Court may direct the experts to discuss the expert issues in the proceedings and prepare a statement for the Court that identifies the matters on which they agree and any matters of dispute, together with their individual reasons for any such dispute.

39. Except for that statement, the content of that discussion must not be referred to at the trial of the accused (including any pre-trial hearing) without the Court's leave.

40. The Court may also convene a hearing at which:

    (a) the Court or any party may seek clarification of any aspect of the expert evidence; and

    (b) the Court may direct the experts to narrow the areas of disagreement.

**Consecutive or concurrent evidence**

41. Where:

    (a) two or more parties have served expert evidence relating to the same issue or relating to two or more closely related issues;

(b) the accused consents; and

(c) the Court so orders,

evidence may be given by the experts consecutively ( that is, one after the other) or concurrently (that is, with all of the experts present in court, sworn or affirmed at the same time).

42. The procedure to be followed for consecutive or concurrent evidence is to be determined by the Court, with the expectation that the parties will have conferred in advance and attempted to agree on the procedure.

**Court's power to vary requirements under this Practice Direction**

43. The Court may:

(a) extend (even after it has expired) a time limit under this Practice Direction;

(b) allow the introduction of expert evidence which omits a detail required by this Practice Direction.

44. A party who wants an extension of time must:

(a) apply when serving the expert evidence for which it is required; and

(b) explain the delay.

**Review of operation of Practice Direction**

45. The operation of this Practice Direction will be monitored by the Forensic Evidence Working Group and revised as necessary.

**Application of amendments to Practice Direction**

46. This Practice Direction was amended on 10 September 2025 by the addition of subparagraph 16(l). Where Gen AI was used in the formulation or expression of an opinion contained in a report which was finalised prior to that date, the expert should furnish a supplementary report addressing the requirements of subparagraph 16(l) to the extent the expert is able to do so.



**H Bowskill**
Chief Justice
10 September 2025

**Version History:**
15 April 2024 – Practice Direction 14 of 2024 issued.
10 September 2025 – Practice Direction amended and reissued.