



Queensland

Planning and Environment Court (Expert Evidence) Amendment Rule 2022

Subordinate Legislation 2022 No. 18

made under the

Planning and Environment Court Act 2016

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1 Short title

This rule may be cited as the *Planning and Environment Court (Expert Evidence) Amendment Rule 2022*.

2 Commencement

This rule commences immediately after the commencement of the *Uniform Civil Procedure (Expert Evidence) Amendment Rule 2022*.

3 Rules amended

This rule amends the *Planning and Environment Court Rules 2018*.

4 Amendment of r 3 (Definitions)

Rule 3, ‘schedule 1’—

omit, insert—

schedule 2

5 Amendment of r 20 (P&E Court may make orders and give directions)

(1) Rule 20(5)(c)(vii)(C)—

omit, insert—

(C) a report for the proceeding, including a joint report, under part 3; or

(2) Rule 20(5)(c)(xvi), ‘statement of evidence’—

omit, insert—

report for a proceeding under part 3

6 Amendment of r 23 (Definitions for part)

(1) Rule 23, definition *joint report*—

omit.

[r 7]

(2) Rule 23—

insert—

code of conduct means the code of conduct for experts set out in schedule 1.

joint report see rule 28(1).

report, for a P&E Court proceeding—

- (a) means a document giving an expert's opinion on an issue arising in the proceeding; and
- (b) includes, for example—
 - (i) a joint report; and
 - (ii) a separate report; and
 - (iii) a supplementary report.

separate report, for a P&E Court proceeding, means a report other than—

- (a) a joint report; or
- (b) a supplementary report.

supplementary report see rule 35B(3)(a).

(3) Rule 23, definition *meeting of experts*, paragraph (a)(i), 'in the absence of the active parties,'—

omit.

7 Insertion of new r 25A

After rule 25—

insert—

25A Expert evidence given other than by report

- (1) This rule applies if an expert in a P&E Court proceeding is called to give evidence, other than by report, in the proceeding.
- (2) The expert must give the evidence in person before the P&E Court.

-
- (3) However, the expert may give the evidence to the P&E Court by audio visual link or audio link if required to do so under—
- (a) an order or direction of the P&E Court; or
 - (b) a direction of general application made by the Chief Judge under section 14(2) of the Act.
- (4) In this rule—
- audio link* see the *Evidence Act 1977*, section 39C.
- audio visual link* see the *Evidence Act 1977*, schedule 3.

8 Amendment of r 27 (Active parties must ensure experts ready to take part in meeting of experts)

Rule 27(e)—

omit.

9 Replacement of r 28 (Experts attending meeting of experts must prepare joint report)

Rule 28—

omit, insert—

28 Attending meeting of experts and preparing joint report

- (1) The experts attending a meeting of experts must jointly prepare a report in relation to the meeting (*a joint report*) that states—
- (a) the matters, if any, on which the experts agree; and
 - (b) the matters, if any, on which the experts disagree and the reasons for any disagreement.
- (2) In holding the meeting of experts, and preparing

- the joint report, the experts—
- (a) must exercise independent judgement; and
 - (b) must endeavour to reach an agreement on any matter on which they disagree; and
 - (c) must not act on any instruction or request to withhold or avoid reaching an agreement.
- (3) Unless the P&E Court orders or directs otherwise, the experts must—
- (a) hold the meeting of experts in the absence of the active parties to the P&E Court proceeding; and
 - (b) prepare the joint report without reference to, or instructions from, the active parties to the P&E Court proceeding.
- (4) The joint report must confirm that—
- (a) each of the experts has read, and agrees to be bound by, the code of conduct; and
 - (b) the factual matters stated in the report are, as far as each of the experts knows, true; and
 - (c) each of the experts has made all inquiries considered appropriate; and
 - (d) the opinions stated in the report are genuinely held by each of the experts; and
 - (e) the report contains reference to all matters each of the experts considers significant; and
 - (f) each of the experts understands the expert's duty to the P&E Court and has complied with the duty.
- (5) The experts must give the joint report to the active parties to the P&E Court proceeding as soon as practicable after the meeting of experts has concluded and, in any case, as ordered or directed by the P&E Court.

- (6) This rule is subject to rule 28A.

28A Permitted communications between experts and active parties

- (1) Any of the experts may, at any time, participate in a without prejudice conference or mediation under part 5 involving the active parties to the P&E Court proceeding.
- (2) Also, any of the experts may, at any time before the joint report is completed, give 1 or more of the active parties to the P&E Court proceeding (each a *recipient*) a written notice—
 - (a) asking the recipient to respond to a request for information or other inquiry that may assist the proper and timely conduct or conclusion of the meeting of experts or preparation of the joint report; or
 - (b) informing the recipient of any matter affecting the proper and timely conduct or conclusion of the meeting of experts or preparation of the joint report.

Example for paragraph (b)—

informing the active parties of a delay in gathering data for use in the joint report

- (3) However, a notice under subrule (2) may be given to an active party to the P&E Court proceeding only if—
 - (a) all of the experts agree to the giving of the notice or, if the experts do not agree, the notice states the basis of the disagreement between the experts; and
 - (b) a copy of the notice is given to all the experts and the other active parties at the same time as the notice is given to the active party.
- (4) The recipient of a notice given by an expert under

subrule (2) may respond to the notice only if—

- (a) the response is in writing; and
 - (b) before the response is made, a copy of the response is given to all the other active parties at the same time; and
 - (c) the response is made—
 - (i) not more than 10 business days after the notice is given to the recipient; and
 - (ii) not less than 5 business days, or the shorter period agreed to by the active parties, after the copy of the response is given to the other active parties; and
 - (d) a copy of the response is given to all the other experts at the same time as the response is made.
- (5) An active party to the P&E Court proceeding (the ***requesting party***) may request the experts prepare a report (the ***conduct report***) about the proper and timely conduct or conclusion of the meeting of experts, or preparation of the joint report, if a copy of the request is given to all the other active parties at the same time the request is made.

Example—

An active party may request an update on when the joint report will be completed.

- (6) The conduct report may be given to the requesting party only if—
- (a) the conduct report is given not more than 2 business days after the request is received by the experts; and
 - (b) all of the experts agree to the giving of the conduct report or, if the experts do not agree, the conduct report states the basis of the disagreement between the experts; and
 - (c) the conduct report is in writing; and

- (d) a copy of the conduct report is given to all the other active parties at the same time as the conduct report is given to the requesting party.

10 Replacement of pt 3, div 4, hdg and rr 31–35

Part 3, division 4, heading and rules 31 to 35—

omit, insert—

Division 4 Giving of evidence by experts and related matters

31 Application of division

This division applies if an expert is appointed in relation to a P&E Court proceeding.

32 Duty of active parties

- (1) As soon as practicable after the expert is appointed, a copy of the code of conduct must be given to the expert by—
 - (a) the active party who appointed the expert in relation to the P&E Court proceeding; or
 - (b) if the expert was appointed in relation to the P&E Court proceeding by 2 or more active parties—the active parties or 1 of them as they may agree.
- (2) An active party to the P&E Court proceeding must not give instructions, or allow instructions to be given, to the expert to adopt or reject a particular opinion.

33 Duty of expert

- (1) The expert has a duty to assist the P&E Court.

- (2) The expert—
 - (a) is not an advocate for an active party to the P&E Court proceeding; and
 - (b) must not accept instructions from any person to adopt or reject a particular opinion.
- (3) The expert must comply with the requirements under the code of conduct.
- (4) However, subrule (3) does not limit any provision of this part.
- (5) The expert's duties under this rule override any obligation the expert may have to—
 - (a) any active party to the P&E Court proceeding; or
 - (b) any person who is liable for the expert's fees or expenses.

34 Expert must prepare report

- (1) The expert must prepare a report for the hearing of the P&E Court proceeding.
- (2) If the expert has taken part in a meeting of experts for the P&E Court proceeding—
 - (a) a joint report prepared in relation to the meeting is taken to be the expert's report for the hearing of the proceeding; but
 - (b) the expert may prepare a separate report in relation to any issue of disagreement recorded in the joint report.
- (3) However, the separate report must not, without the P&E Court's leave, raise a new matter not already mentioned in the joint report.

35 Requirements for separate report

- (1) A separate report prepared by the expert must be addressed to the P&E Court and signed by the expert.
- (2) The separate report must include the following information—
 - (a) the expert’s qualifications;
 - (b) all material facts, whether written or oral, on which the report is based;
 - (c) the expert’s reasons for each opinion expressed in the report;
 - (d) references to any literature or other material relied on by the expert to prepare the report;
 - (e) for any inspection, examination or experiment conducted, initiated, or relied on by the expert to prepare the report—
 - (i) a description of what was done; and
 - (ii) whether the inspection, examination or experiment was done by the expert or under the expert’s supervision; and
 - (iii) the name and qualifications of any other person involved; and
 - (iv) the result;
 - (f) 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;
 - (g) if the expert believes the report may be incomplete or inaccurate without a qualification—the qualification;
 - (h) a summary of the conclusions reached by the expert;
 - (i) a statement about whether access to any readily ascertainable additional facts would

assist the expert in reaching a more reliable conclusion.

- (3) However, subrule (2) does not apply to the extent the information is already included in a joint report prepared for the P&E Court proceeding.
- (4) If the expert believes an opinion expressed in the separate report is not a concluded opinion, the report must state, where the opinion is expressed, the reason for the expert's belief.

Examples of reasons why an expert may believe an opinion is not a concluded opinion—

- insufficient research
 - insufficient data
- (5) The expert must confirm in the separate report that—
 - (a) the expert has read, and agrees to be bound by, the code of conduct; and
 - (b) the factual matters stated in the report are, as far as the expert knows, true; and
 - (c) the expert has made all inquiries considered appropriate; and
 - (d) the opinions stated in the report are genuinely held by the expert; and
 - (e) the report contains reference to all matters the expert considers significant; and
 - (f) the expert understands the expert's duty to the P&E Court and has complied with the duty.

35A Serving separate report

An active party to the P&E Court proceeding intending to call evidence by the expert must, as ordered or directed by the P&E Court, serve on each other active party to the proceeding a copy of any separate report prepared by the expert for the

proceeding.

35B Supplementary report following change of opinion

- (1) Subrule (2) applies if the expert changes, in a material way, an opinion included in a report prepared for the P&E Court proceeding (an *earlier report*).
- (2) Unless the expert knows the P&E Court proceeding has ended, the expert must, as soon as practicable after the change of opinion, give written notice of the change of opinion, and the reason for the change, to the active party who appointed the expert.
- (3) If the earlier report has been given under rule 28 or served under this division, the active party who appointed the expert must, as soon as practicable after receiving the notice—
 - (a) obtain a further report from the expert (a *supplementary report*) that—
 - (i) states the change of opinion and the reason for the change; and
 - (ii) otherwise complies with rule 35; and
 - (b) serve a copy of the supplementary report on each other active party to the P&E Court proceeding; and
 - (c) apply to the P&E Court for an order or directions about the supplementary report.
- (4) For subrule (3)(a)(ii), the supplementary report may, to the extent necessary, comply with rule 35 by incorporating by reference parts of the earlier report.
- (5) The expert may be called to give evidence only with the P&E Court’s leave.

[r 11]

35C Matters contained in report not to be repeated

The expert must not do either of the following in examination-in-chief without the P&E Court's leave—

- (a) repeat or expand on matters contained in a report prepared by the expert;
- (b) introduce new material.

11 Insertion of new pt 3, div 5, hdg

After rule 36—

insert—

Division 5 Payment of witnesses

12 Insertion of new pt 5A

After part 5—

insert—

Part 5A Costs

46A Costs of P&E Court proceedings

The *Uniform Civil Procedure Rules 1999*, rules 681, 692, 695 and 698 do not apply in relation to a P&E Court proceeding.

13 Insertion of new sch 1AA

Before schedule 1—

insert—

Schedule 1AA Code of conduct for experts

rule 23, definition *code of conduct*

Part 1 Preliminary

1 Purpose of code

- (1) The purpose of this code of conduct is—
 - (a) to state an expert’s obligations under the following provisions of part 3 of these rules—
 - (i) rule 28;
 - (ii) rule 28A(1) to (3) and (6);
 - (iii) rule 33(1), (2) and (5);
 - (iv) rule 34;
 - (v) rule 35;
 - (vi) rule 35B(1) to (4); and
 - (b) otherwise to state an expert’s obligations in relation to an order made, or a direction given, by the P&E Court.
- (2) In this code of conduct, the information included in square brackets after a rule heading is a reference to the comparable rule under part 3 of these rules.
- (3) The brackets and information do not form part of these rules.

2 Application of code

This code of conduct applies to an expert who is appointed to give opinion evidence, whether orally or in a report, in a P&E Court proceeding.

Note—

Rule 33(3) of these rules requires the expert to comply with the requirements under this code of conduct.

3 Interpretation

Words and expressions used in part 3 of these rules have the same meaning in this code of conduct as they have in that part.

Part 2 Duty to comply with orders and directions

4 Duty to comply with P&E Court's orders and directions

- (1) The expert must comply with an order made, or a direction given, by the P&E Court.
- (2) Without limiting subrule (1), if the P&E Court makes an order, or gives a direction, requiring 2 or more experts to hold a meeting of experts, the experts must hold the meeting of experts, and prepare a joint report, in compliance with the order or direction.

Part 3 Meetings of experts and joint reports

5 Application of part

This part applies if the P&E Court makes an order, or gives a direction, requiring 2 or more experts to hold a meeting of experts.

6 Meeting of experts and joint report [r 28]

- (1) The experts attending a meeting of experts must jointly prepare a report in relation to the meeting (*a joint report*) that states—
 - (a) the matters, if any, on which the experts agree; and

- (b) the matters, if any, on which the experts disagree and the reasons for any disagreement.
- (2) In holding the meeting of experts, and preparing the joint report, the experts—
 - (a) must exercise independent judgement; and
 - (b) must endeavour to reach an agreement on any matter on which they disagree; and
 - (c) must not act on any instruction or request to withhold or avoid reaching an agreement.
 - (3) Unless the P&E Court orders or directs otherwise, the experts must—
 - (a) hold the meeting of experts in the absence of the active parties to the P&E Court proceeding; and
 - (b) prepare the joint report without reference to, or instructions from, the active parties to the P&E Court proceeding.

Note—

Rule 24 of these rules provides that, in part 3 of these rules, a reference to an active party to a P&E Court proceeding includes a reference to the active party's lawyer or agent.

- (4) The joint report must confirm that—
 - (a) each of the experts has read, and agrees to be bound by, the code of conduct; and
 - (b) the factual matters stated in the report are, as far as each of the experts knows, true; and
 - (c) each of the experts has made all inquiries considered appropriate; and
 - (d) the opinions stated in the report are genuinely held by each of the experts; and
 - (e) the report contains reference to all matters each of the experts considers significant; and

[r 13]

- (f) each of the experts understands the expert's duty to the P&E Court and has complied with the duty.
- (5) The experts must give the joint report to the active parties to the P&E Court proceeding as soon as practicable after the meeting of experts has concluded and, in any case, as ordered or directed by the P&E Court.
- (6) This rule is subject to rule 7.

7 Permitted communications between experts and active parties [r 28A(1) to (3) and (6)]

- (1) Any of the experts may, at any time, participate in a without prejudice conference or mediation under part 5 of these rules involving the active parties to the P&E Court proceeding.
- (2) Also, any of the experts may, at any time before the joint report is completed, give 1 or more of the active parties to the P&E Court proceeding (each a *recipient*) a written notice—
 - (a) asking the recipient to respond to a request for information or other inquiry that may assist the proper and timely conduct or conclusion of the meeting of experts or preparation of the joint report; or
 - (b) informing the recipient of any matter affecting the proper and timely conduct or conclusion of the meeting of experts or preparation of the joint report.

Example for paragraph (b)—

informing the active parties of a delay in gathering data for use in the joint report
- (3) However, a notice under subrule (2) may be given to an active party to the P&E Court proceeding only if—

- (a) all of the experts agree to the giving of the notice or, if the experts do not agree, the notice states the basis of the disagreement between the experts; and
 - (b) a copy of the notice is given to all the experts and the other active parties at the same time as the notice is given to the active party.
- (4) If an active party to the P&E Court proceeding (the *requesting party*) requests a conduct report under rule 28A of these rules, the conduct report may be given to the requesting party only if—
- (a) the conduct report is given not more than 2 business days after the request is received by the experts; and
 - (b) all of the experts agree to the giving of the conduct report or, if the experts do not agree, the conduct report states the basis of the disagreement between the experts; and
 - (c) the conduct report is in writing; and
 - (d) a copy of the conduct report is given to all the other active parties at the same time as the conduct report is given to the requesting party.

Part 4 Giving of evidence by experts and related matters

8 Duty of expert [r 33(1), (2) and (5)]

- (1) The expert has a duty to assist the P&E Court.
- (2) The expert—
 - (a) is not an advocate for an active party to the P&E Court proceeding; and

[r 13]

- (b) must not accept instructions from any person to adopt or reject a particular opinion.
- (3) The expert's duties under this rule override any obligation the expert may have to—
 - (a) any active party to the P&E Court proceeding; or
 - (b) any person who is liable for the expert's fees or expenses.

9 Expert must prepare report [r 34]

- (1) The expert must prepare a report for the hearing of the P&E Court proceeding.
- (2) If the expert has taken part in a meeting of experts for the P&E Court proceeding—
 - (a) a joint report prepared in relation to the meeting is taken to be the expert's report for the hearing of the proceeding; but
 - (b) the expert may prepare a separate report in relation to any issue of disagreement recorded in the joint report.
- (3) However, the separate report must not, without the P&E Court's leave, raise a new matter not already mentioned in the joint report.

10 Requirements for separate report [r 35]

- (1) A separate report prepared by the expert must be addressed to the P&E Court and signed by the expert.
- (2) The separate report must include the following information—
 - (a) the expert's qualifications;
 - (b) all material facts, whether written or oral, on which the report is based;

- (c) the expert's reasons for each opinion expressed in the report;
 - (d) references to any literature or other material relied on by the expert to prepare the report;
 - (e) for any inspection, examination or experiment conducted, initiated, or relied on by the expert to prepare the report—
 - (i) a description of what was done; and
 - (ii) whether the inspection, examination or experiment was done by the expert or under the expert's supervision; and
 - (iii) the name and qualifications of any other person involved; and
 - (iv) the result;
 - (f) 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;
 - (g) if the expert believes the report may be incomplete or inaccurate without a qualification—the qualification;
 - (h) a summary of the conclusions reached by the expert;
 - (i) a statement about whether access to any readily ascertainable additional facts would assist the expert in reaching a more reliable conclusion.
- (3) However, subrule (2) does not apply to the extent the information is already included in a joint report prepared for the P&E Court proceeding.
- (4) If the expert believes an opinion expressed in the separate report is not a concluded opinion, the report must state, where the opinion is expressed, the reason for the expert's belief.

[r 13]

Examples of reasons why an expert may believe an opinion is not a concluded opinion—

- insufficient research
 - insufficient data
- (5) The expert must confirm in the separate report that—
- (a) the expert has read, and agrees to be bound by, the code of conduct; and
 - (b) the factual matters stated in the report are, as far as the expert knows, true; and
 - (c) the expert has made all inquiries considered appropriate; and
 - (d) the opinions stated in the report are genuinely held by the expert; and
 - (e) the report contains reference to all matters the expert considers significant; and
 - (f) the expert understands the expert's duty to the P&E Court and has complied with the duty.

11 Supplementary report following change of opinion [r 35B(1) to (4)]

- (1) Subrule (2) applies if the expert changes, in a material way, an opinion included in a report prepared for the P&E Court proceeding (an *earlier report*).
- (2) Unless the expert knows the P&E Court proceeding has ended, the expert must, as soon as practicable after the change of opinion, give written notice of the change of opinion, and the reason for the change, to the active party who appointed the expert.
- (3) If the earlier report has been given under rule 28 of these rules or served under part 3, division 4 of these rules, the active party who appointed the

expert must, as soon as practicable after receiving the notice—

- (a) obtain a further report from the expert (a ***supplementary report***) that—
 - (i) states the change of opinion and the reason for the change; and
 - (ii) otherwise complies with rule 10; and
 - (b) serve a copy of the supplementary report on each other active party to the P&E Court proceeding; and
 - (c) apply to the P&E Court for an order or directions about the supplementary report.
- (4) For subrule (3)(a)(ii), the supplementary report may, to the extent necessary, comply with rule 10 by incorporating by reference parts of the earlier report.

14 Amendment of sch 1 (Dictionary)

- (1) Schedule 1, definitions *joint report* and *statement of evidence*—
omit.
- (2) Schedule 1—
insert—

code of conduct, for part 3, see rule 23.

joint report, for part 3, see rule 28(1).

report, for part 3, see rule 23.

separate report, for part 3, see rule 23.

supplementary report, for part 3, see rule 35B(3)(a).

15 Renumbering of schs 1AA and 1

Schedules 1AA and 1—

[r 15]

renumber as schedules 1 and 2.

ENDNOTES

- 1 Made by the Governor in Council on 17 March 2022.
- 2 Notified on the Queensland legislation website on 18 March 2022.
- 3 The administering agency is the Department of State Development, Infrastructure, Local Government and Planning.

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