



Queensland

Uniform Civil Procedure (Expert Evidence) Amendment Rule 2022

Subordinate Legislation 2022 No. 23

made under the

Supreme Court of Queensland Act 1991

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1 Short title

This rule may be cited as the *Uniform Civil Procedure (Expert Evidence) Amendment Rule 2022*.

2 Rules amended

This rule amends the *Uniform Civil Procedure Rules 1999*.

3 Replacement of ch 11, pt 5 (Expert evidence)

Chapter 11, part 5—

omit, insert—

Part 5 Expert evidence

Division 1 Preliminary

423 Purposes of part

The main purposes of this part are to—

- (a) provide for the giving of appropriate directions in relation to expert evidence; and
- (b) declare the duty of an expert in relation to the court and the parties to a proceeding; and
- (c) provide for the giving of expert evidence by reports; and
- (d) provide for the appointment of experts jointly by the parties to a proceeding and by the court.

424 Application of part

- (1) This part does not apply in relation to a witness giving evidence, whether orally or in writing, in a proceeding who is—

- (a) a party to the proceeding; or
 - (b) a person whose conduct is in issue in the proceeding; or
 - (c) a doctor or another person who has given, or is giving, treatment or advice in relation to an injured person, if the evidence is limited to 1 or more of the following matters in relation to the injured person—
 - (i) the results of any examination made;
 - (ii) a description of the treatment or advice;
 - (iii) the reason the treatment or advice was, or is being, given;
 - (iv) the results of giving the treatment or advice.
- (2) Also, this part does not apply in relation to a proceeding for a minor claim in a Magistrates Court.

425 Definitions for part

In this part—

appointing parties see rule 429L.

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

court-appointed expert see rule 429R(1).

expert, in relation to an issue arising in a proceeding, means a person who would, if called as a witness in the proceeding, be qualified to give opinion evidence as an expert witness in relation to the issue.

joint report see rule 428(1)(b).

report, for a proceeding, means a document giving an expert's opinion on an issue arising in the proceeding.

Division 2 Directions

426 Application for directions

- (1) This rule applies if a party to a proceeding—
 - (a) intends to call expert evidence in the proceeding; or
 - (b) becomes aware that another party to the proceeding intends to call expert evidence in the proceeding.
- (2) The party may, at any time, apply to the court for directions about the use of expert evidence in the proceeding.
- (3) The application may be made—
 - (a) on an application for that purpose; or
 - (b) on an application for other relief.

427 Directions generally

- (1) The court may, at any time, give the directions it considers appropriate about the use of expert evidence in a proceeding.
- (2) Without limiting subrule (1), 1 or more of the following directions may be given under this rule—
 - (a) a direction that reports be served within a particular period;
 - (b) a direction that expert evidence on a particular issue may not be adduced, or may be adduced only with the leave of the court;
 - (c) a direction that expert evidence may be adduced on particular issues only;
 - (d) a direction limiting the number of experts who may be called to give evidence on a

particular issue or for a particular area of expertise;

- (e) a direction providing for the appointment and instruction of an expert under division 5, subdivision 1 or 2 in relation to a particular issue;
- (f) a direction requiring experts in relation to the same issue to confer before preparing their reports in relation to the issue;

Note—

See also rule 428.

- (g) a direction requiring an expert who has prepared more than 1 report for a proceeding to prepare a single report that reflects the expert's evidence-in-chief in the proceeding;
 - (h) a direction about how and when expert evidence is to be adduced in the proceeding;
 - (i) any other direction that may assist an expert in the exercise of the expert's functions.
- (3) This rule does not limit any other power of the court to make orders or give directions.

428 Directions about experts' conferences and joint reports

- (1) The court may, at any time, direct that 2 or more experts who are to give evidence in a proceeding—
 - (a) hold a conference in which they identify, and attempt to resolve, any disagreement between them; and
 - (b) jointly prepare a report about the conference (*a joint report*) that states—
 - (i) the matters, if any, on which the experts agree; and

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- (ii) the matters, if any, on which the experts disagree and the reasons for any disagreement.
- (2) The court may, for the conference, do 1 or more of the following—
 - (a) set the date and time at which, or the period within which, the conference is to be held;
 - (b) set the agenda for the conference;
 - (c) direct the matters the experts are to discuss at the conference;
 - (d) direct that the conference be held with the assistance of a facilitator;
 - (e) give directions about the form in which, and the period within which, the joint report is to be prepared by the experts;
 - (f) give any other direction the court considers appropriate.
- (3) This rule does not limit any other power of the court to make orders or give directions.
- (4) In this rule—

facilitator, in relation to a conference directed under subrule (1) to be held for a proceeding, means a person who is independent of the parties to the proceeding, whether or not the person is also an expert in relation to an issue being considered at the conference.

Division 3 Experts' conferences and joint reports

429 Application of division

This division applies if the court gives a direction under rule 428 requiring 2 or more experts to hold

a conference and prepare a joint report.

429A Experts' conference and joint report

- (1) In holding the conference 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.
- (2) Unless the court directs otherwise, the experts must—
 - (a) hold the conference in the absence of the parties or their agents; and
 - (b) prepare the joint report without reference to, or instructions from, the parties or their agents.
- (3) The experts must give the joint report to the parties—
 - (a) if the court has given a direction about the period within which the report is to be given—as directed by the court; or
 - (b) otherwise—as soon as practicable after the conference has concluded.
- (4) This rule is subject to rule 429B.

429B Permitted communications between experts and parties

- (1) Any of the experts may, in writing—
 - (a) ask the parties for information that may assist the proper and timely conduct or conclusion of the conference or preparation of the joint report; or

- (b) inform the parties of any matter adversely affecting the proper and timely conduct or conclusion of the conference or preparation of the joint report.
- (2) A communication mentioned in subrule (1) must—
 - (a) be made jointly to all of the parties; and
 - (b) state—
 - (i) whether or not all of the experts agree on the terms of the communication; and
 - (ii) if all of the experts do not agree on the terms of the communication—the matters on which the experts disagree.
- (3) Any response by a party to a communication mentioned in subrule (1) must—
 - (a) be in writing; and
 - (b) be addressed to the experts jointly; and
 - (c) be in terms agreed to by the parties or directed by the court.
- (4) If the conference has not concluded, or the joint report has not been given to the parties as required under this division, a party may, in writing, request the experts to give a written report (a ***progress report***) about the progress of the conference or the joint report.
- (5) The experts must, within 2 business days after a request is made under subrule (4), give a progress report to all of the parties.
- (6) The progress report must state—
 - (a) whether or not all of the experts agree on the terms of the report; and

- (b) if all of the experts do not agree on the terms of the report—the matters on which the experts disagree.

429C Restriction on admissibility of particular matters

- (1) Evidence of anything done or said at a conference held under the direction is admissible in the proceeding only if all of the parties to the proceeding agree.
- (2) However, subrule (1) does not apply in relation to the joint report prepared by the experts about the conference.

Division 4 Giving of evidence by experts and related matters

429D Application of division

This division applies if an expert is appointed in relation to a proceeding, whether under division 5 or otherwise.

429E Duty of 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) if the expert is appointed by 1 or more parties to the proceeding—the parties, or 1 of them as they may agree; or
 - (b) if the expert is a court-appointed expert—1 or more of the parties to the proceeding, as directed by the court.
- (2) A party to the proceeding must not give

instructions, or allow instructions to be given, to the expert to adopt or reject a particular opinion.

429F Duty of expert

- (1) The expert has a duty to assist the court.
- (2) The expert—
 - (a) is not an advocate for a party to the 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 party to the proceeding; or
 - (b) any person who is liable for the expert's fees or expenses.

429G Expert evidence

- (1) Subject to subrule (5), the expert may give evidence-in-chief in the proceeding only by a report.
- (2) The report may be tendered as evidence in the proceeding only if—
 - (a) the report has been disclosed under this part; or
 - (b) the court gives leave.
- (3) Subject to a direction given under division 2, any party to the proceeding may tender the report as evidence in the proceeding, but only if the party

produces the expert for cross-examination, if required.

- (4) Unless the court orders otherwise, the report may be admitted in evidence in the proceeding only if the report confirms the expert has read, and agrees to be bound by, the code of conduct.
- (5) The expert may give oral evidence-in-chief in the proceeding only if the court gives leave.
- (6) Also, unless the court orders otherwise, the expert may give oral evidence in the proceeding only if the court is satisfied the expert has acknowledged, whether in a report prepared in relation to the proceeding or otherwise in relation to the proceeding, that the expert has read, and agrees to be bound by, the code of conduct.

429H Requirements for report

- (1) A report prepared by the expert must be addressed to the court and signed by the expert.
- (2) The 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

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- (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) If the expert believes an opinion expressed in the 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
- (4) The expert must confirm in the 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 court and has complied with the duty.

429I Disclosure of report

A party intending to rely on a report prepared by the expert must, unless the court orders otherwise, disclose the report as soon as practicable and, in any case—

- (a) if the party is a plaintiff—within 90 days after the close of pleadings; or
- (b) if the party is a defendant—within 120 days after the close of pleadings; or
- (c) if the party is neither a plaintiff nor a defendant—within 90 days after the close of pleadings for the party.

429J Immunity

The expert has the same protection and immunity for the contents of a report disclosed under this part as the expert could claim if the contents of the report were given orally in the proceeding.

Note—

See also rules 429O and 429T in relation to when particular reports are taken to be disclosed under this part.

429K 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 by the expert under this part (an *earlier*

report).

- (2) Unless the expert knows the 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—
 - (a) if the expert is a court-appointed expert—the registrar; or
 - (b) otherwise—the party who appointed the expert.
- (3) If a notice under subrule (2) is given to the registrar, the registrar must refer the matter to the court for directions.
- (4) If a notice under subrule (2) is given to the party who appointed the expert, the party must apply to the court for directions.

Division 5 Appointment of experts by parties jointly and by court

Subdivision 1 Experts appointed by parties jointly

429L Appointment of expert

Two or more parties to a proceeding (the *appointing parties*) may, in writing, jointly appoint an expert under this subdivision to prepare a report on an issue arising in the proceeding.

429M Requirements for appointment

- (1) An appointment may be made under rule 429L only if—

- (a) the appointing parties agree in writing on the following matters—
 - (i) the issue arising in the proceeding the expert evidence may help resolve;
 - (ii) the identity of the expert;
 - (iii) when the report must be prepared by the expert and given to the appointing parties;
 - (iv) liability for the fees and expenses payable to the expert; and
 - (b) the expert has been made aware of the content of this part and consents to the appointment.
- (2) A copy of the agreement must—
- (a) be signed by each of the appointing parties; and
 - (b) as soon as practicable after being signed by the appointing parties, be served on any other party to the proceeding who is not an appointing party in relation to the expert.

429N Provision of statement of facts

- (1) The appointing parties must give the expert a statement of facts, agreed to by the appointing parties, on which to base the report.
- (2) However, if the appointing parties do not agree on a statement of facts, then—
 - (a) unless the court directs otherwise, each of the appointing parties must give the expert a statement of facts on which to base the report; and
 - (b) the court may give directions about the form and content of the statement of facts to be given to the expert.

429O Disclosure of report

The report prepared by the expert is taken to be disclosed under this part if—

- (a) a copy of the report has been given to each of the appointing parties; and
- (b) within 14 days after the day the last of the appointing parties is given a copy of the report, the appointing parties give a copy of the report to each party to the proceeding who is not an appointing party in relation to the expert.

429P Restriction on other expert evidence

Unless the court orders otherwise, the expert is the only expert who, in relation to the appointing parties, may give evidence on the issue in the proceeding.

429Q Cross-examination of expert

Unless the court orders otherwise, each party to the proceeding has the right to cross-examine the expert.

Subdivision 2 Experts appointed by court

429R Appointment of expert

- (1) The court may, at any time, whether on its own initiative or on the application of a party to a proceeding, appoint an expert (a *court-appointed expert*) to prepare a report on an issue arising in the proceeding.
- (2) However, an appointment may be made under subrule (1) only if the expert has been made aware

of the content of this part and consents to the appointment.

429S Requirements in relation to report

Unless the court orders otherwise—

- (a) a court-appointed expert appointed in relation to an issue arising in a proceeding must—
 - (i) prepare a report on the issue; and
 - (ii) give the report to the registrar, together with sufficient copies of the report for all parties to the proceeding; and
- (b) the registrar must—
 - (i) file the report in a sealed envelope; and
 - (ii) within 7 days after receiving the report, forward a copy of it to each party to the proceeding.

429T Disclosure of report

A report prepared for a proceeding by a court-appointed expert is taken to be disclosed under this part if the registrar forwards copies of the report to the parties to the proceeding—

- (a) as required under rule 429S(b)(ii); or
- (b) as otherwise directed by the court.

429U Orders and directions for court-appointed experts

- (1) The court may make an order, or give a direction, it considers appropriate in relation to a court-appointed expert, including, for example, a direction about liability for the fees and expenses payable to the expert.

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- (2) If the court directs that a report from another expert may be obtained by a court-appointed expert, the other expert's report must be attached to the court-appointed expert's report when it is given to the registrar.
- (3) The court may receive in evidence the report of a court-appointed expert on terms the court considers appropriate.

Subdivision 3 Application for directions by experts appointed under subdivision 1 or 2

429V Expert may apply for directions

- (1) An expert appointed under subdivision 1 or 2 in relation to a proceeding may apply to the court for directions to facilitate the preparation of a report for the proceeding.
- (2) The application must be served on the parties to the proceeding and on any other person as directed by the court.
- (3) The court may give the directions the court considers appropriate to facilitate the preparation of the report, including, for example, a direction about an inspection, examination or experiment for the report.

4 Insertion of new sch 1C

After schedule 1B—

insert—

Schedule 1C Code of conduct for experts

rule 425, 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 chapter 11, part 5—
 - (i) rule 429A;
 - (ii) rule 429B(1), (2), (5) and (6);
 - (iii) rule 429F;
 - (iv) rule 429H;
 - (v) rule 429K(1) and (2); and
 - (b) otherwise to state an expert's obligations in relation to an order made, or a direction given, by the 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 chapter 11, part 5.
- (3) The brackets and information do not form part of these rules.

2 Application of code

- (1) This code of conduct applies to an expert who is appointed to give opinion evidence, whether orally or in a report, in a proceeding.

Note—

Rule 429F requires the expert to comply with the requirements under this code of conduct.

- (2) In a provision of this code of conduct that refers to a direction given under rule 428 requiring 2 or

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more experts to hold a conference and prepare a joint report, a reference to a joint report is a reference to a report about the conference 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.

Part 2 Duty to comply with orders and directions

3 Duty to comply with court's orders and directions

- (1) An expert must comply with an order made, or a direction given, by the court.
- (2) Without limiting subrule (1), if the court gives a direction under rule 428 requiring 2 or more experts to hold a conference and prepare a joint report, the experts must hold the conference, and prepare the joint report, in compliance with the direction.

Part 3 Experts' conferences and joint reports

4 Application of part

This part applies if the court gives a direction under rule 428 requiring 2 or more experts to hold a conference and prepare a joint report.

5 Experts' conference and joint report [r 429A]

- (1) In holding the conference 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.
- (2) Unless the court directs otherwise, the experts must—
 - (a) hold the conference in the absence of the parties or their agents; and
 - (b) prepare the joint report without reference to, or instructions from, the parties or their agents.
- (3) The experts must give the joint report to the parties—
 - (a) if the court has given a direction about the period within which the report is to be given—as directed by the court; or
 - (b) otherwise—as soon as practicable after the conference has concluded.
- (4) This rule is subject to rule 6.

6 Permitted communications between experts and parties [r 429B(1), (2), (5) and (6)]

- (1) Any of the experts may, in writing—
 - (a) ask the parties for information that may assist the proper and timely conduct or conclusion of the conference or preparation of the joint report; or
 - (b) inform the parties of any matter adversely affecting the proper and timely conduct or

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conclusion of the conference or preparation of the joint report.

- (2) A communication mentioned in subrule (1) must—
 - (a) be made jointly to all of the parties; and
 - (b) state—
 - (i) whether or not all of the experts agree on the terms of the communication; and
 - (ii) if all of the experts do not agree on the terms of the communication—the matters on which the experts disagree.
- (3) The experts must, within 2 business days after a request is made under rule 429B(4), give a progress report about the progress of the conference or the joint report.
- (4) The progress report must state—
 - (a) whether or not all of the experts agree on the terms of the report; and
 - (b) if all of the experts do not agree on the terms of the report—the matters on which the experts disagree.

Part 4 Giving of evidence by experts and related matters

7 Duty of expert [r 429F]

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

- (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 party to the proceeding; or
 - (b) any person who is liable for the expert's fees or expenses.

8 Requirements for report [r 429H]

- (1) A report prepared by the expert must be addressed to the court and signed by the expert.
- (2) The 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

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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) If the expert believes an opinion expressed in the 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

- (4) The expert must confirm in the 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 court and has complied with the duty.

9 Supplementary report following change of opinion [r 429K(1) and (2)]

- (1) Subrule (2) applies if the expert changes, in a material way, an opinion in a report prepared by the expert under chapter 11, part 5 (an *earlier report*).
- (2) Unless the expert knows the 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—
 - (a) if the expert is a court-appointed expert—the registrar; or
 - (b) otherwise—the party who appointed the expert.

5 Amendment of sch 3 (Dictionary)

Schedule 3—

insert—

appointing parties, for chapter 11, part 5, see rule 429L.

code of conduct, for chapter 11, part 5, see rule 425.

court-appointed expert, for chapter 11, part 5, see rule 429R(1).

expert, for chapter 11, part 5, see rule 425.

joint report, for chapter 11, part 5, see rule 428(1)(b).

report, for chapter 11, part 5, see rule 425.

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 Justice and Attorney-General.

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