



## **Guideline on persons giving expert and opinion evidence**

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## About this Guideline

1. The Administrative Review Tribunal (Tribunal) has jurisdiction to review a broad range of administrative decisions and must determine issues in a wide variety of subject areas. In many applications, evidence given by persons with special knowledge or experience in an area assists the Tribunal to reach the correct or preferable decision.
2. The Tribunal is not bound by the rules of evidence and may take into account any matter that is relevant to the issues to be determined. In particular, the Tribunal is not bound by the rules relating to opinion evidence and may have regard to material that would not be admissible in a court applying the rules of evidence. The Tribunal must determine the weight that should be given to any evidence that is before it.
3. This Guideline is designed to inform parties, their representatives and persons giving evidence about the Tribunal's expectations in relation to this kind of evidence.
4. Subject to any legislative requirements,<sup>1</sup> this Guideline applies to any evidence before the Tribunal that has been obtained from a person because he or she has special knowledge or experience in a subject area.
5. This Guideline applies to written reports and oral evidence. It applies to evidence which consists of factual information only as well as evidence which consists of factual information and the expression of an opinion.<sup>2</sup>
6. Evidence that does not comply with this Guideline will not be excluded from consideration solely for that reason. The Tribunal must always determine the weight to be given to any evidence.
7. Parties or their representatives must ensure that any person who is engaged to prepare a report or to give evidence in proceedings before the Tribunal:
  - (a) is given a copy of this Guideline at the time the person is engaged; or
  - (b) already has a copy of this Guideline.

## Application to documents given to the Tribunal under s 23 of the Act

8. Documents given to the Tribunal pursuant to section 23 of the *Administrative Review Tribunal Act 2024* may include reports that fall within the scope of this Guideline. If a party wishes to place particular reliance on such a report but the report does not include information of the kind referred to in paragraphs 10 and 11 of this Guideline, the party should consider whether any additional information should be sought from the person and given to the Tribunal.

## Duty to the Tribunal

9. A person giving evidence based on his or her special knowledge or experience in an area:
  - (a) has an overriding duty to provide impartial assistance to the Tribunal on matters relevant to the person's area of knowledge or experience;
  - (b) is not an advocate for a party to a proceeding.

<sup>1</sup> For example, see *Migration (Specification of evidentiary requirements—family violence) Instrument (LIN 23/026) 2023*.

<sup>2</sup> Treating doctors, for example, may wish to confine a report and any oral evidence to factual matters relating to a patient's condition.

## Reports

10. A written report prepared for the purpose of proceedings in the Tribunal must include the following information either in the body of the report or as an annexure:
- (a) details of the person's area of knowledge and his or her qualifications and/or experience;
  - (b) the letter of instruction or details of the questions or issues the person was asked to address in the report as well as a reference to any documents or other materials the person was given to consider;
  - (c) details of any facts and assumptions that inform the report and the sources for the factual information in the report;
  - (d) reasons for any opinion that is expressed.
11. Where relevant, the written report must also include the following information either in the body of the report or as an annexure:
- (a) details of any examinations, tests or other investigations upon which the person has relied in preparing the report as well as the identity, qualifications and experience of the person who conducted any examinations, tests or investigations;
  - (b) details of any literature or other material relied on particularly in preparing the report.
12. If the person preparing the report believes that his or her opinion is not a concluded opinion or the person is unable to reach a concluded opinion for any reason, this must be stated in the report. Where the person believes the report may be incomplete or inaccurate without some qualification, that qualification must also be stated in the report.
13. A person preparing a report must make it clear when a particular question or issue falls outside his or her field of knowledge.
14. Any report prepared for the purpose of proceedings before the Tribunal, whether it consists of factual information only or factual information and opinion, must include the following declaration:
- I acknowledge that I have an overriding duty to provide impartial assistance to the Tribunal. No matters of significance have been withheld from the Tribunal.*
15. If a person who has prepared a report:
- (a) becomes aware of a material error or omission relating to a factual matter in a report;  
or
  - (b) changes his or her opinion on a material matter for any reason;

the party who engaged the person must be notified of this in writing. If the report has been, or is subsequently, lodged with the Tribunal then the party must notify the Tribunal and the other party or parties of the material error or omission or the change in opinion without delay.

## Conflict of interest

16. If a person is, or becomes, aware of an actual or perceived conflict of interest that may impact on his or her role, the person must disclose this to the party who engaged the person. If the person has prepared a report that has been, or is subsequently, lodged with the Tribunal then

the party must notify the Tribunal and the other party or parties of the actual or perceived conflict of interest without delay.

17. If a person:

- (a) has a pre-existing relationship with the party who has engaged the person; or
- (b) is party to any unusual remuneration arrangements, including whether the person's remuneration is dependent on the outcome of the matter;

this must be disclosed in any report or disclosed to the Tribunal before the person gives oral evidence.

## Report cover sheet (optional)

### Report prepared for the purpose of a proceeding in the Administrative Review Tribunal

Review number(s)	
Applicant	
Respondent	
Report prepared by	

- I have attached my CV or included in the report details of my qualifications and/or experience.
- I have attached the letter of instruction or included in the report details of the questions or issues that I was asked to address and a reference to any documents or other materials that I was given to consider.
- I have included in the report details of the facts and any assumptions that inform the report and the sources for the factual information in the report.
- I have included any other relevant matters such as details of examinations, tests and other investigations that I have relied upon or details of literature and other secondary sources that I have relied upon.

#### Declaration

I acknowledge that I have an overriding duty to provide impartial assistance to the Tribunal. No matters of significance have been withheld from the Tribunal.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date