



New South Wales

Supreme Court Rules (Amendment No 363) 2002

under the

Supreme Court Act 1970

The Supreme Court Rule Committee made the following rules of court under the *Supreme Court Act 1970* on the 19 August 2002.

Steven Jupp

Secretary to the Rule Committee

Explanatory note

The object of these Rules is to extend to criminal trials, with some modification, the Rules relating to conferences between expert witnesses that presently apply in civil trials. In particular these Rules:

- (a) require an expert witness to read and be bound by the expert witness code of conduct found in Schedule K of the Rules, and
- (b) require a party that engages an expert witness to serve any supplementary report by the expert on any other party, if that party has been served an earlier report by the expert and the expert has changed his or her opinion on a material matter contained in that report, and
- (c) permit the Court, with the consent of the parties, to:
 - (i) direct expert witnesses to confer before or during the trial, and
 - (ii) specify the matters on which they are to confer, and
 - (iii) require them to provide the Court with a joint report specifying matters agreed, matters not agreed and the reasons for non agreement, and

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- (iv) make directions as to whether the legal representatives of the parties are to be permitted at a conference between expert witnesses, and
- (v) give any additional directions as may be considered necessary, and
- (d) prohibit a party from adducing expert evidence inconsistent with a matter that has been agreed on pursuant to these new Rules unless that party is granted leave by the Court.

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1 Name of Rules

These Rules are the *Supreme Court Rules (Amendment No 363) 2002*.

2 Amendment of Supreme Court Rules 1970

The *Supreme Court Rules 1970* are amended as set out in Schedule 1.

Schedule 1 Amendment

(Rule 2)

Part 75—Criminal Proceedings

Insert after rule 3I:

3J Expert witnesses

- (1) This rule and rule 3K apply to all criminal proceedings in the Court (including those specified in the Third Schedule to the Act).

- (2) For the purposes of this rule and rule 3K:

expert witness means an expert engaged for the purpose of:

- (a) providing a report as to his or her opinion for use as evidence in proceedings or proposed proceedings, or
- (b) giving opinion evidence in proceedings or proposed proceedings,

the code means the expert witness code of conduct in Schedule K.

- (3) Unless the Court otherwise orders:

- (a) at or as soon as practicable after the engagement of an expert as a witness, whether to give oral evidence or to provide a report for use as evidence, the person engaging the expert must provide the expert with a copy of the code, and
- (b) unless an expert witness's report contains an acknowledgment by the expert witness that he or she has read the code and agrees to be bound by it:
 - (i) service of the report by the party who engaged the expert witness is not valid service for the purposes of the rules or of any order or practice note, and
 - (ii) the report is not to be admitted into evidence, and

- (c) oral evidence is not to be received from an expert witness unless:
 - (i) he or she has acknowledged in writing, whether in a report relating to the proposed evidence or otherwise in relation to the proceedings, that he or she has read the code and agrees to be bound by it, and
 - (ii) a copy of the acknowledgment has been served on all parties affected by the evidence.
- (4) If an expert witness furnishes to the engaging party a supplementary report, including any report indicating that the expert witness has changed his or her opinion on a material matter expressed in an earlier report by the expert witness:
 - (a) the engaging party must forthwith serve the supplementary report on all parties on whom the engaging party has served the earlier report, and
 - (b) the earlier report must not be used in the proceedings by the engaging party, or by any party in the same interest as the engaging party on the question to which the earlier report relates, unless paragraph (a) is complied with.
- (5) This rule does not apply to an expert engaged before this rule commences.

3K Conference between experts

- (1) The Court may do any or all of the following, with the consent of the parties:
 - (a) direct expert witnesses to confer (whether before or during a trial or other proceedings),
 - (b) specify the matters on which they are to confer,
 - (c) direct that they provide the Court with a joint report specifying matters agreed and matters not agreed and the reasons for any non agreement,
 - (d) direct that such conference be held with or without the attendance of the legal representatives of the parties affected, or with or without the attendance of legal representatives at the option of the parties respectively,

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Schedule 1 Amendment

- (e) give any additional directions as may be considered necessary.
- (2) An expert who is the subject of an order made under subrule (1) may apply to the Court for further directions.
- (3) The content of the conference between the expert witnesses is not to be referred to at the hearing or trial unless the parties affected agree.
- (4) The parties may agree, at any time, to be bound by agreement on any specified matter. In that event, the joint report may be tendered at the trial as evidence of the matter agreed. Otherwise, the joint report may be used or tendered at the trial only in accordance with the rules of evidence and the practices of the Court.
- (5) Where, pursuant to this rule, expert witnesses have conferred and have provided a joint report agreeing on any matter, a party affected may not, without leave of the Court, adduce expert evidence inconsistent with the matter agreed.

BY AUTHORITY