



## NZIAC GUIDELINES FOR EXPERT EVIDENCE

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These Guidelines are intended to assist experts, Parties, and their Representatives, to understand experts' obligations and NZIAC's requirements in relation to the preparation of reports, Mediation, joint conferences of experts, and the hearing of concurrent evidence in Arb-Med under these Rules.

### 1.0 THE EXPERT REPORT

- 1.1 NZIAC wishes to ensure that experts understand their responsibilities and obligations, and that a common approach to the preparation of reports is adopted and followed.
- 1.2 An expert report should clearly state:
  - (a) the expert's qualifications and the expert's expertise and experience in relation to the issues the subject of the report;
  - (b) the issues that the evidence of the expert addresses;
  - (c) that the evidence is within the expert's area of expertise and, if applicable, the issues that fall outside of the expert's expertise;
  - (d) all instructions that define the scope of the report or evidence, both original and supplementary, and whether in writing or oral;
  - (e) the facts and assumptions on which the opinions of the expert are based; and
  - (f) the expert's opinion on the issues referred to him or her, based on paragraphs (a) to (e) above, and the reasons for the opinions given by the expert.
- 1.3 The report should specify any literature, general body of scientific knowledge, or other material used or relied on in support of the opinions expressed by the expert.
- 1.4 The report should describe any examinations, tests, or other investigations on which the expert has relied, and give the details and qualifications of any person who carried them out.
- 1.5 Technical experts should not comment or report on legal questions of liability.
- 1.6 An expert who changes his or her opinion on a material matter on the basis of another expert's report, or for any other reason, must communicate the change of opinion to the Party retaining the expert, and such Party must immediately file with the Arbitral Tribunal and every other Party to the proceeding, notice of such change of opinion, and the notice must specify the reason or reasons why the expert's opinion has changed.

## **2.0 JOINT CONFERENCE OF EXPERTS**

- 2.1 To minimise the length and complexity of hearings, experts will generally be ordered to meet and confer with other experts for the purpose of trying to reach agreement on matters within the field of expertise of the experts and for preparing a joint statement stating the matters on which the experts agree, the matters on which they do not agree, and the reasons for their disagreement.
- 2.2 The joint conference of experts may be conducted at any venue that the Parties may agree, or in the absence of agreement, at any venue directed by the Arbitral Tribunal.
- 2.3 The matters discussed between the experts at the conference must remain confidential to those experts and must not be referred to at the hearing unless the Parties who have engaged the experts all agree. However, the joint statement will be open.
- 2.4 The joint statement must be signed by the experts at the end of the conference.
- 2.5 The Claimant must file the joint statement with the Arbitral Tribunal and every other Party within two days of the conference.
- 2.6 The Parties and/or their Representatives may not attend the joint conference of experts and they must not review a copy of the joint statement before it is completed and signed by the experts.

## **3.0 THE JOINT STATEMENT**

- 3.1 It is expected that in preparing the joint statement, the experts will confer and genuinely endeavour to reach agreement on any matters at issue within their field of expertise, narrow any points in difference between them, and identify any remaining points of difference. As part of that process, the experts may agree a scope of works for further testing and monitoring, and a timetable for the carrying out of such testing and monitoring.
- 3.2 While experts are free to disagree, such disagreement must come from the free exercise of their own independent, professional judgment. Experts must not be influenced by, or act upon, any instruction or request to withhold or avoid agreement.
- 3.3 In the context of a joint conference of experts, it is likely that there will be a fuller revelation of the relevant facts. The preparation of the joint statement is intended to allow experts to reconsider and revise their opinions where appropriate in a professional and non-adversarial environment if new evidence and relevant material becomes available.
- 3.4 A joint statement must:
  - (a) identify the areas of agreement and disagreement with reasons for any disagreement;
  - (b) include any alternative recommendations; and
  - (c) be signed by all experts who participated in the joint meeting of experts before it is filed with the Arbitral Tribunal and the Parties.

## **4.0 CONCURRENT EXPERT EVIDENCE**

- 4.1 It should be expected that all expert evidence will be heard concurrently unless there is a single expert appointed or the Arbitral Tribunal directs that expert evidence is to be

given in an alternate manner. The process enables experts to express opinions they have on a particular subject in their own words, and to answer questions from the Arbitral Tribunal, the Parties' Representatives, and from their professional colleagues.

4.2 Subject to the discretion of the Arbitral Tribunal, the hearing of concurrent evidence will generally proceed on the following basis:

- (a) the experts will be sworn in at the same time;
- (b) the joint statement will form the basis of the concurrent evidence;
- (c) the Arbitral Tribunal will identify with the help of the Parties' Representatives, and in the presence of the experts, the topics that require discussion in order to resolve the outstanding issues;
- (d) the Arbitral Tribunal will then ask each expert to briefly summarise the expert's position on the first issue;
- (e) general discussion on the issue will follow during which the experts can ask each other questions and discuss issues;
- (f) the Arbitral Tribunal may ask questions of any of the experts and the Parties' Representatives will be invited to ask any questions of their own or any other witness; and
- (g) each topic or issue will be dealt with in turn.