It's time to update your brief for any expert reports in NCAT | New Code of Conduct from 11 September, 2024

Effective from 11 September 2024, the NCAT has introduced significant updates to the Expert Code of Conduct that all [illegible] to [illegible] expert reports.

On 11 September 2024, NCAT published an updated Expert Code of Conduct (Procedural Direction 3).
On 11 September 2024, NCAT published an updated Expert Code of Conduct (Procedural Direction 3).
These changes come after the previous Expert Code of Conduct had been in effect for more than 6 years, since 28 February 2018.

Key Changes

[1] An expert witness must abide in **a timely way** by any direction given by the Tribunal.

[2] An expert's report must, either in the body of the report or in an annexure, include the following:

a) reference to any private or business relationship between the expert and the party for whom the report is prepared, and an actual or perceived conflict of interest that may impact on his or her role of which the expert is aware;

b) the letter of instruction or details of the questions or issues the expert has been asked to address in the report, as well as documents or other materials the expert has been asked to consider;

c) the extent to which any opinion which the expert has expressed involves the acceptance of another person's opinion, the identification of that other person and the opinion expressed by that other person;

d) a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate (save for any matters identified explicitly in the report), and that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the Tribunal.

[3] Where the expert report relates to the completion or rectification of residential building work under the *Home Building Act 1989* (NSW) or the duty of the owners corporation to maintain and repair property under the *Strata Schemes Management Act 2015* (NSW), **as appropriate** the report of an expert witness must also include the following matters:

a) if rectification, demolition, repair or other alteration of property is recommended, the reasons for such recommendation, the scope of the recommended works, and the likely costs involved (including, where relevant, how those costs have been calculated);

b) whether any alternative remedy or remedies are a reasonable alternative.

In Tribunal matters where a Work Order is sought rather than a Money Order, it may not always be appropriate for the author of an expert report to include the estimated rectification costs – an owner should therefore consult

BANNERMANS LAWYERS
T: (02) 9929 0226 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA
Liability limited by a scheme approved under Professional Standards Legislation

with their expert in advance as to whether they have the necessary expertise to provide such an opinion and if they have adequate insurance coverage to cover such an opinion.

If you are in a dispute and need an expert witness, please reach out to enquiries@bannermans.com.au for expert advice.

Key takeaways

- The updated Expert Code of Conduct requires timely compliance with Tribunal directions.
- Expert reports must disclose any conflicts of interest and the basis for opinions expressed.
- Reports related to building work must include recommended actions and associated costs.
- Consultation with experts is crucial when seeking Work Orders versus Money Orders.
- Bannermans Lawyers can provide expert advice for disputes requiring expert witnesses.

****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

Related Articles

Building Defects: Who Pays
Claims by Owners for Damages caused by Water Ingress under S106(5)
Building Defect Case Note: The importance of being… armed with timely legal and expert advice
A history of the cases exploring the duty of care under the Design & Building Practitioners Act 2020
Should new owners corporations obtain Building Defects Report?