



**ASIC**

Australian Securities & Investments Commission

CONSULTATION PAPER 143

# Expert reports and independence of experts: Updates to RG 111 and RG 112

October 2010

## About this paper

This consultation paper sets out our proposed updates to our policies on the content of expert reports and the independence of experts. This paper attaches marked-up draft versions of Regulatory Guide 111 *Content of expert reports* (RG 111) and Regulatory Guide 112 *Independence of experts* (RG 112) that identify the proposed changes.

This consultation paper seeks the views of stakeholders, including experts, parties that commission expert reports, investors and their professional advisers.

We have also published Consultation Paper 142 *Related party transactions* (CP 142), setting out proposed updates to our policies on related party transactions. The versions of RG 111 and RG 112 that are attached to this paper incorporate changes that reflect these proposed updates.

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Document history

This paper was issued on 18 October 2010 and is based on the Corporations Act as at 18 October 2010.

### Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

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## The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information.

We are also keen to hear from you on any other issues you consider important.

Your comments will help us develop our policy on independent experts and expert reports. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation Impact Statement: see Section D Regulatory and financial impact, p. 22.

### Making a submission

We will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any financial information) as confidential.

Comments should be sent by 17 December 2010 to:

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## What will happen next?

<b>Stage 1</b>	18 October 2010	ASIC consultation paper released
<b>Stage 2</b>	17 December 2010	Comments due on the consultation paper
<b>Stage 3</b>	March 2011	Updated regulatory guides released

## A Background to the proposals

### Key points

This consultation paper sets out our proposals to update our guidance in RG 111 and RG 112, dealing with the content of expert reports and the requirement that experts be independent.

Many of the proposed changes have been driven by a recent review we have undertaken on valuations and independent expert reports.

### Introduction

- 1 Regulatory Guide 111 *Content of expert reports* (RG 111) and Regulatory Guide 112 *Independence of experts* (RG 112) set out ASIC's policy relating to independent expert reports. RG 111 provides guidance on the content of an expert report and how an expert can help security holders make informed decisions about transactions. RG 112 explains how ASIC interprets the requirement that an expert be independent of the party that commissions the expert report and other interested parties.
- 2 Over the past year, we have conducted a detailed review of the independent expert sector. As part of this review, we met with a number of experts to discuss issues relating to the content of expert reports, the independence of directors and the requirements of RG 111 and RG 112. We also reviewed the procedures experts had in place to enable them to comply with:
  - (a) RG 111 and RG 112;
  - (b) the requirements of the *Corporations Act 2001* (Corporations Act) relating to expert reports; and
  - (c) their obligations as Australian financial services (AFS) licensees.
- 3 The compliance issues we identified in our review included cases where experts:
  - (a) accepted an engagement despite serious concerns about their independence;
  - (b) adopted information provided by the commissioning company without conducting additional critical analysis;
  - (c) did not have a reasonable basis for their forecast financial information; and
  - (d) did not maintain sufficient working papers to demonstrate compliance with their obligations under RG 111 and RG 112.

4 We consider that there is a benefit in providing additional guidance on the obligations of experts and commissioning parties in relation to these matters. We are also proposing to make some other updates to RG 111 and RG 112 as a result of a more general review of those policies.

5 We have prepared draft regulatory guides for RG 111 and RG 112 that have been marked up to identify our proposed amendments: see Attachment 1 and Attachment 2 to this paper. Any final amendments that we make will take into account your comments. It is possible that we may make amendments that are not currently marked up, depending on your feedback (e.g. we may make amendments depending on your feedback to Proposals B5 and C5).

Note: To provide a focus on the substantive changes, we have not marked up changes to internal cross-references that are made as a consequence of renumbering paragraphs in the guides.

6 This consultation paper asks specific questions about the changes that we consider to be particularly noteworthy. However, we are also interested in any comments you may have on the other changes we are proposing.

7 In addition to the changes discussed in this consultation paper, we are also proposing to amend RG 111 and RG 112 to provide guidance on the role of experts in related party transactions. The changes we are proposing to make are discussed in Consultation Paper 142 *Related party transactions* (CP 142) and are marked up in the versions of the guides attached to this consultation paper.

8 We have recently consulted on disclosure requirements for agribusiness managed investment schemes and infrastructure entities: see Consultation Paper 133 *Agribusiness managed investment schemes: Improving disclosure for retail investors* (CP 133) and Consultation Paper 134 *Infrastructure entities: Improving disclosure for retail investors* (CP 134). The matters consulted on include the use of expert reports by such schemes and entities. Any final guidance resulting from that consultation process may also be relevant to the commissioning and preparation of expert reports in those industry sectors.

Note: As stated in our guidance, the general principles in RG 111 and RG 112 may also be relevant to expert reports such as geologist reports or traffic forecast reports: RG 111.1 and RG 112.1.

## B Proposed revisions to RG 111

### Key points

We are proposing to update our guidance in RG 111 dealing with the content of expert reports. The areas that we are proposing to update include:

- analysing whether a transaction is fair and reasonable;
- the valuation requirements for a demerger;
- an expert's choice of methodology;
- the requirement that an expert's opinion be based on reasonable grounds;
- the obligations of a commissioning party when there is a change in circumstances;
- our expectations for the preparation of expert reports; and
- our expectations for an expert's working papers.

### Analysing whether a transaction is fair and reasonable

#### Proposal

**B1** We propose clarifying that:

- (a) fairness should be determined assuming a knowledgeable and willing, but not anxious, buyer and a knowledgeable and willing, but not anxious, seller acting at arm's length: see draft RG 111.10(a);
- (b) synergies that are only available to a particular bidder should not be taken into account when determining fairness: see note to draft RG 111.10(a);
- (c) in the case of a transaction that is 'not fair', where reasonably practicable, an expert should value reasonableness factors (e.g. the size of a minority discount where the bidder already controls the target): see draft RG 111.15; and
- (d) an example of a situation where a bidder may offer a price that is 'not fair' is where the target is in financial distress. Such an offer may nonetheless be reasonable if the alternative methods of remedying the financial distress are likely to be less attractive to security holders than a successful offer: see draft RG 111.14.

#### *Your feedback*

B1Q1 Do you agree with these proposals? Please explain why.

B1Q2 Is there a risk that our proposal in B1(c) may overemphasise the importance of valuing reasonableness factors, many of which are qualitative in nature?



## Rationale

- 9 An offer is ‘fair’ if the value of the offer price or consideration is equal to or greater than the value of the securities that are the subject of the offer (assuming 100% ownership of the ‘target’): see current RG 111.10. An offer is ‘reasonable’ if it is fair. It might also be ‘reasonable’ if, despite being ‘not fair’, the expert believes that there are sufficient reasons for security holders to accept the offer in the absence of any higher bid before the close of the offer: see current RG 111.11.
- 10 Under our policy, ‘fair’ and ‘reasonable’ are separate concepts, and an expert is able to arrive at a ‘not fair, but reasonable’ opinion. We are not proposing to change our policy. It is an established feature of the Australian takeovers landscape.
- 11 We propose that the assessment of whether an offer is fair should be made assuming a knowledgeable and willing, but not anxious, buyer and a knowledgeable and willing, but not anxious, seller acting at arm’s length.
- 12 We consider that this test reflects the standard generally applied by experts. It is also consistent with case law that has considered how shares and other assets are to be valued. For example, in *Holt v Cox* (1994) 15 ACSR 313, Santow J stated at 334 that:
- It has been held in a number of decisions on probate and gift duty legislation, where shares or other assets have had to be valued, that the value of an asset is its fair equivalent in money ascertained by a supposed sale by voluntary bargaining between vendor and purchaser, each of whom is both willing and able, but not anxious, to trade and with a full knowledge of all circumstances which might affect value. This is the ‘willing buyer and willing seller test’.
- 13 We have received feedback that, while experts often exclude synergies from a fairness valuation, the treatment of synergies is not uniform and it would be useful for us to clarify whether synergies should be taken into account in a fairness valuation. We are proposing that synergies that are only available to a particular bidder should not be taken into account when determining whether an offer is ‘fair’. In our view, this follows from the fact that the proposed fairness test referred to in paragraph 11 is not intended to take into account circumstances that are particular to a specific bidder: see *Australian Leisure & Hospitality Group Ltd (No 2)* [2004] ATP 21 at [32] and [33], citing *Teh v Ramsay Centauri Pty Ltd* (2002) 42 ACSR 354 at [14] to [17].
- Note: This approach is also consistent with the weight of judicial authority concerning the determination of fair value for the purposes of compulsory acquisitions and buy-outs under Ch 6CA: see current RG 111.47.
- 14 We have seen several examples of transactions involving targets that are in financial distress and therefore more supportive of an offer than would normally be the case. Applying the ‘willing but not anxious buyer’ and

‘willing but not anxious seller’ test, the offer may not be fair. In this situation, the offer may nonetheless be reasonable because of the adverse consequences for the target and its security holders if the offer is unsuccessful. For example, the target company may have ‘going concern’ issues if the offer is not accepted.

- 15 Another example of a situation where an expert may arrive at a ‘not fair, but reasonable’ conclusion involves a bidder who already controls the target. In determining whether the offer is fair, the offer is to be assessed assuming 100% ownership of the target and the expert should not consider the existing holding of the bidder: current RG 111.10. Such a bidder may offer a price that is not fair as it includes a ‘minority discount’. However, the expert may nonetheless determine that the offer is reasonable, taking into account factors such as the likely price of the target securities if the bid is unsuccessful: current RG 111.13.
- 16 In the case of a not fair, but reasonable, opinion, the judgement of an expert is that the reasonableness factors outweigh the fact that the offer is at a discount to fair value. In our view, valuing material reasonableness factors (where practicable) should assist security holders to assess how the expert arrived at its opinion and how much weight to place on the opinion. However, we recognise that it may not be practicable to value some reasonableness factors.

## Valuations and demergers

### Proposal

- B2** We propose that if an expert analyses a demerger on the basis of whether the advantages outweigh the disadvantages, where reasonably practicable, the expert should generally value the advantages and disadvantages that it considers to be material: see draft RG 111.34.

#### *Your feedback*

- B2Q1 Do you agree with this proposal? Please explain why.
- B2Q2 Are there any concerns raised by emphasising the importance of valuing advantages and disadvantages (where possible) in a demerger?
- B2Q3 Where an expert does not value the demerged businesses in a demerger, should the expert be required to:
- (a) explain why the demerger does not give rise to a material change to the overall value of the demerged businesses; or
  - (b) if there is a material change to the overall value following the demerger, quantify this change?

## Rationale

- 17 An expert will often analyse a demerger on the basis of whether the advantages outweigh the disadvantages. Where an expert undertakes such an analysis, we consider that, where reasonably practicable, the advantages and disadvantages that the expert considers to be material should be valued. This is consistent with our proposed approach for valuing reasonableness factors: see paragraph 16.
- 18 Our policy currently states that in some cases it might be appropriate for an expert to carry out a valuation for a demerger: see current RG 111.33. We are interested in receiving feedback on whether we should provide further guidance on when a valuation should be undertaken for a demerger. However, we recognise that some of the factors affecting future value under a demerger may be difficult to value (e.g. a market rerating of the demerged businesses due to their greater focus going forward or a rerating due to the smaller size of the demerged businesses).

## Choice of methodology

### Proposal

**B3** We propose that:

- (a) if an expert's valuation of a company differs materially from the company's share price in the period leading up to the announcement of the proposed transaction (plus a typical premium for control for such a transaction), the expert should comment on this difference and the factors underlying it: see draft RG 111.63; and
- (b) where an expert uses more than one valuation methodology, the expert should comment on the relative weight being placed on each methodology: see draft RG 111.66.

#### *Your feedback*

B3Q1 Do you agree with these proposals? Please explain why.

B3Q2 In relation to Proposal B3(a), should we be prescriptive about the percentage difference that will generally be material? If so, what is an appropriate percentage?

B3Q3 Should an expert generally be required to expressly comment on the company's share price in the period leading up to the announcement of a proposed transaction?

## Rationale

- 19 Although market price will not always be a useful indicator of value, where an expert's assessment of value differs materially from the market price (plus a premium for control), it will assist security holders if the expert

explains why this is the case. Being required to explain this difference may also assist experts in determining whether their selected methodology is appropriate or needs to be reconsidered.

- 20 Where an expert uses multiple methodologies to arrive at its valuation, it should comment on how much weight is being placed on each methodology compared with other methodologies. This will assist security holders to better understand how the expert arrived at its conclusions.

## Expert's opinion to be based on reasonable grounds

### Proposal

- B4** We propose to delete the last two sentences of the current RG 111.77 to clarify our expectations for information relied on by an expert.

#### Your feedback

- B4Q1 Do you agree with this proposal? Please explain why.

### Rationale

- 21 RG 111.77 currently states that:
- An expert should conduct such critical analysis of the information on which it relied to prepare the report as is reasonable in the circumstances and as the law requires: *Australian Co-operative Foods* at 77. The more material the information is to the conclusions reached by the expert, the greater the responsibility on the expert to be satisfied that the information is not materially inaccurate. If there are indications suggesting that the information in question may not be reasonably relied on, then the expert should make additional enquiries. We do not expect an expert to conduct an audit of the subject matter of the report. If an expert cannot satisfy itself that it is reasonable to rely on otherwise material information, it should say this in its report with an explanation. In some circumstances, an expert may need to consider not relying on such information.
- 22 Our policy requires that an expert's opinion is based on reasonable grounds. The more material information is to the conclusions reached by the expert, the greater the responsibility on the expert to be satisfied that the information is not materially inaccurate: see current RG 111.74 and RG 111.77.
- Note: An example of a situation where it is important that an expert's opinion is based on reasonable grounds involves the circumstances in which an expert can rely on a technical specialist's report: see Proposal C5.
- 23 Given the overarching requirement for an expert's opinion to be based on reasonable grounds, we think that the last two sentences of current RG 111.77 have the potential to cause uncertainty about an expert's obligation to be satisfied that material information relied on by the expert is

not materially inaccurate. We are therefore proposing to delete these sentences.

### Proposal

- B5** We propose that a start-up or potential development asset should only be valued using a discounted cash flow (DCF) methodology when there is a reasonable basis to conclude that the proposed development will proceed.

#### *Your feedback*

- B5Q1 Do you agree with this proposal? Please explain why.
- B5Q2 Where mineral and hydrocarbon potential development assets are classified lower than a reserve category (e.g. a mineral resource or contingent resource category under the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (JORC Code) or Petroleum Resources Management System (PRMS)):
- (a) does this classification usually indicate that the understanding of the asset's development potential is too immature and the likelihood of commercial development is too remote to reasonably apply the DCF methodology? and
  - (b) should an expert that wishes to apply the DCF methodology for such assets be required to state why, despite the classification of the assets, there are reasonable grounds for doing so?
- B5Q3 To what extent can the use of a warning statement reduce the risk that security holders will place undue weight on a DCF methodology that is used for such assets? What matters might such a warning statement deal with?
- Note: Regulatory Guide 170 *Prospective financial information* (RG 170) contains guidance on the use of warning statements when presenting prospective financial information: see RG 170.87–RG 170.89.
- B5Q4 Would it be useful to provide guidance on the use of the DCF methodology to start-up or potential development assets in other industry sectors (e.g. in valuing toll roads or biotech assets that are at the start-up stage)? If so, please provide details of what guidance would be useful.

### Rationale

- 24 RG 111 currently requires that an expert should not include prospective financial information (including forecasts and projections) in its report unless there is a reasonable basis for that information. Although an expert does not need to commission an independent accountant report when using the DCF methodology, the expert should undertake a critical analysis of the prospective financial information used in applying the DCF methodology: see current RG 111.79 and RG 111.83.

- 25 If there is not a reasonable basis that a start-up or potential development asset will proceed, we consider that there will not be a sufficient basis to apply the DCF methodology.
- 26 This may be relevant to the circumstances in which the DCF methodology can be applied to the valuation of mineral and hydrocarbon potential development assets. It may also be relevant to the application of the DCF methodology to start-up or potential development assets in other industry sectors.
- 27 In the case of minerals and coal, the JORC Code categorises mineral resources based on the level of geological knowledge and confidence. The JORC Code also categorises ore reserves based on modifying factors that relate to the ability to extract and economic viability. Under the JORC Code, an ore reserve category for a mineral asset establishes that extraction can reasonably be justified: see paragraph 28 of the JORC Code.
- 28 For oil and gas, the PRMS is a widely used code for classifying estimates of oil and gas by incorporating a central framework that categorises reserves and resources according to the level of certainty associated with their recoverable volumes, and classifies them according to their potential for reaching commercial producing status. Under PRMS, ‘reserves’ are those quantities of petroleum anticipated to be commercially recoverable by application of development projects to known accumulations from a given date under defined conditions.
- 29 We consider that where mineral and coal and oil potential development assets are classified lower than a reserve category, this will usually indicate that the level of uncertainty involved with commercially developing the assets suggests that there is unlikely to be a reasonable basis for applying the DCF methodology. Other methodologies may be more appropriate in these circumstances, such as market value (comparative transactions) or cost-based methodologies: see note below. However, we recognise that there may be circumstances in which it is possible to apply the DCF methodology to such assets. If this is the case, it is important that the expert identifies why it considers the use of the DCF methodology to be appropriate. We are interested in your feedback on the type of warning statements that should be included in the expert report if the DCF methodology is used in this situation.

Note: A market value methodology values an asset based on either actual transactions in relation to the asset or recent transactions in the same general geological environment for properties at a similar level of exploration and prospectivity.

A cost-based methodology values an asset by reference to:

- (a) the amount of past exploration expenditure (or a base acquisition cost for the asset); and
- (b) the prospects of developing the asset (e.g. the multiple of exploration expenditure method, or the Kilburn geoscience rating method).

In contrast, a DCF methodology values an asset by discounting projected future cash flows from the asset. The accuracy of a DCF valuation depends on the reliability of the projected future cash flows and the estimate of an appropriate discount rate.

## Change in circumstances

### Proposal

**B6** We propose clarifying that a commissioning party should notify the expert if that party becomes aware of a significant change affecting the information in the expert report prior to a meeting being held or during the offer period: see draft RG 111.98.

#### *Your feedback*

B6Q1 Do you agree with this proposal? Please explain why.

### Rationale

30 Our policy currently provides that if a material change in circumstances has arisen since a report was prepared, a failure by the expert to provide a supplementary report to its client may constitute misleading or deceptive conduct. So that an expert can determine whether it should provide such a supplementary report, it is important that the commissioning party keeps the expert informed of any material developments prior to security holders making a decision about a transaction: see draft RG 111.98. We anticipate that this proposed change should merely clarify existing practice.

## Expectations for report preparation

### Proposal

**B7** We propose that:

- (a) security holders would generally expect that:
  - (i) an expert will have made all the inquiries that it believes are desirable and appropriate in order to prepare the expert report;
  - (ii) the report will not omit any matter that the expert regards as material to security holders' assessment of the expert's conclusions; and
  - (iii) the report will have been prepared in accordance with normally applicable standards and guidelines (including international valuation standards developed by the International Valuation Standards Committee for valuations involving property-based investments, and the Valmin Code for valuations involving mineral and hydrocarbon assets); and
- (b) if a report has not been prepared on this basis, the report should prominently explain why this is the case and the impact of this on the report. If the report is unable to be prepared on such a basis, the expert may need to consider refusing to give the report: see draft RG 111.110–RG 111.111.

**Your feedback**

- B7Q1 Do you agree with these proposals? Please explain why.
- B7Q2 Are there any other industry standards and guidelines that it would be useful for our policy to refer to in addition to those mentioned in Proposal B7(a)(iii)?
- B7Q3 Should there be a positive obligation on an expert to include a statement in the expert report:
- (a) confirming that the report has been prepared on the basis of Proposal B7(a); or
  - (b) identifying the reasons why it is not able to provide such a confirmation.

**Rationale**

- 31 When an expert provides an expert report, in our view, security holders would generally expect that the report has been prepared on the basis outlined in our proposal.
- 32 If this is not the case, a failure to identify this and explain the reasons why may mean that the report is misleading or deceptive. In such circumstances, it will be difficult for security holders to know how much weight to place on the report or to make an informed decision about the transaction.
- 33 In some circumstances, if a report is unable to be prepared on the basis described in our proposal, there is a risk that the report will not assist security holders, and the expert may need to consider refusing to give the report. The current RG 111.90 already requires that an expert should consider refusing to give a report when it has not been given sufficient information or had enough time to prepare the report.
- 34 If a report contains a positive statement confirming the manner in which the report has been prepared and the content of the report, this may provide security holders with additional confidence in the report and in the process undertaken by the expert. We note that a similar statement is required from an expert who provides evidence in a proceeding in the Federal Court: see guideline 2.6 of Federal Court of Australia Practice Note CM 7 *Expert witnesses in proceedings in the Federal Court of Australia*.

**Working papers****Proposal**

- B8 We propose to include a new section in RG 111 to explain our expectations in relation to an expert's working papers. In particular, we propose that:



- (a) an expert should document its work and maintain adequate working papers that record the basis of the expert report: see draft RG 111.119–RG 111.123; and
- (b) where an expert has relied on a financial model as part of its valuation, the expert should be required to review the operation of this model and record the results of this review in its working papers: see draft RG 111.122(d).

#### *Your feedback*

- B8Q1 Do you agree with our proposals? Please explain why.
- B8Q2 Is there any other guidance on the production and retention of working papers that it would be useful to include in the updated guide?
- B8Q3 Should we provide further guidance on the extent to which a financial model should be reviewed, or does the wide range of potential financial models mean that it is not practical to provide more detailed guidance?

### **Rationale**

- 35 It is paramount that experts document their work and maintain adequate working papers. In our view, the duties imposed by the Corporations Act on AFS licensees require licensees to keep adequate records about their financial services business: see Regulatory Guide 175 *Licensing: Financial product advisers—Conduct and disclosure* (RG 175) at RG 175.97 and RG 175.141. Applicable professional standards may also require an expert to maintain working papers. For example, paragraph 6.1 of APES 225 *Valuation services* (issued July 2008) requires that:
- A Member shall appropriately document the work performed, including aspects of the Valuation Service that have been provided in writing in accordance with this Standard, and the basis on which, and the method by which, calculations or estimates used in the Valuation Service have been made.
- 36 Maintaining adequate working papers will also assist experts in demonstrating that they have acted independently and have reasonable grounds for their opinion. This might be necessary if ASIC undertakes a review of an expert’s work, or if an expert’s report is the subject of action in the Takeovers Panel or the court.
- 37 As part of our review of experts, we came across examples of experts not maintaining adequate working papers. Our guidance on the importance of maintaining adequate working papers in our update of RG 111 should help to improve practices in this area.

## C Proposed revisions to RG 112

### Key points

We have proposed some additional guidance to assist experts and commissioning parties in relation to the independence of experts. Our additional guidance deals with:

- the disclosure of relationships and interests;
- commissioning an expert;
- the release of an expert's conclusions ahead of the final report; and
- using a specialist report.

### Disclosure of relationships and interests

#### Proposal

- c1 We propose that if, within the previous two years, an expert has valued an asset representing at least 30% (by value) of the assets that it is valuing for the commissioning party, this should be prominently disclosed in its report: see draft RG 112.32.

#### *Your feedback*

- C1Q1 Do you agree with this proposal? Please explain why.  
 C1Q2 Should a percentage other than 30% be applied for the purposes of this disclosure?

#### Rationale

- 38 Experts are required to provide security holders with sufficiently detailed disclosure about relationships or interests that could reasonably be regarded as capable of affecting the expert's ability to give an unbiased opinion: see current RG 112.31.
- 39 It will be relevant for security holders to know if the commissioning party has appointed an expert who has previously provided a valuation for assets that represent a material proportion of the assets that the expert has been engaged to value. There is a risk that the expert could be perceived as being constrained by its previous valuation of the relevant assets.

## Commissioning an expert

### Proposal

c2 We propose:

- (a) that, before engaging an expert, a commissioning party should consider whether the expert is independent and whether the expert has sufficient expertise and resources to give a thorough opinion on the proposed transaction; and
- (b) to include in our guidance a number of factors that we consider to be relevant to the selection of an appropriate expert by a commissioning party: see draft RG 112.39–112.41.

#### *Your feedback*

C2Q1 Do you agree with the proposed factors for assessing whether an expert has the requisite expertise and resources for assessing a transaction? Please explain why.

C2Q2 Are there any other factors that should be considered?

c3 We propose that a commissioning party should ensure that the method by which an expert is appointed is consistent with the concepts of independence and perceived independence of the expert. For example, it may be appropriate to have a non-executive director oversee the appointment process if management is likely to be perceived to have a strong interest in the outcome of the expert report: see draft RG 112.44.

#### *Your feedback*

C3Q1 Do you agree with this proposal? Please explain why.

### Rationale

40 Some of the feedback from our review of the independent expert sector has identified that commissioning parties are unclear about the factors they should consider when commissioning an expert.

41 While we acknowledge that cost is an important commercial consideration in finding and retaining an expert, commissioning parties should also take other factors into account. At a minimum, a commissioning party will need to consider whether an expert is independent and whether it has the necessary expertise and resources to give a thorough opinion on the transaction. Draft RG 112.40 sets out some factors that we consider to be relevant. These include:

- (a) whether the expert has adequate resources to perform the necessary work;
- (b) the qualifications of the expert and whether the expert has the requisite level of technical expertise;

- (c) the experience of the expert. For example, a commissioning party may ask what comparable transactions the expert has given an opinion on and whether that experience is relevant to the current transaction;
- (d) whether the expert can meet the timeframe required for the report to be produced; and
- (e) whether there are any independence issues.

## Release of an expert's conclusions ahead of the final report

### Proposal

- c4** We propose that a commissioning party should generally not release an expert's conclusions in advance of the final report: see draft RG 112.62–RG 112.65.

#### *Your feedback*

- C4Q1 Do you agree with this proposal? Please explain why.

### Rationale

- 42 We consider that it will usually be inappropriate to release the conclusions of an expert report in advance of the final report. Releasing conclusions without providing relevant supporting information may be confusing or misleading because security holders and the market will not be able to determine whether those conclusions are reasonable.

*Note:* In *Re Origin Energy Limited* 02 [2008] ATP 23, the Takeovers Panel considered that it was potentially misleading to quote the conclusions of a technical expert's report in a target's statement without giving shareholders a copy of the report or the underlying assumptions and qualifications.

- 43 We recognise that there may be limited situations in which continuous disclosure obligations require disclosure of an expert's conclusions in advance of the final report (e.g. if confidentiality has been lost before the final report is ready for release to the market). Market participants and experts should put in place processes that minimise the risk of this occurring. If preliminary disclosure is required, market participants must ensure that this is done in a way that is not misleading or confusing: see draft RG 112.65.

## Use of a specialist report

### Proposal

- c5 RG 112.64 currently provides that if a specialist does not take responsibility for, or authorise the use of, its report and the expert considers that the material the subject of the report needs to be included in the expert report, the expert must accept entire responsibility for the statements as the expert's own and, as such, must have reasonable grounds for believing the statements not to be misleading or deceptive.

We are considering whether we should provide guidance on the factors that may be relevant to whether an expert has reasonable grounds for believing such statements not to be misleading or deceptive.

#### *Your feedback*

- C5Q1 Would there be a benefit if we provided such guidance? Please explain why.
- C5Q2 How common is it for an expert to rely on a specialist report in circumstances where the specialist does not take responsibility for, or authorise the use of, its report?
- C5Q3 What factors are relevant to whether an expert has reasonable grounds for believing such statements not to be misleading or deceptive?

- 44 An expert's level of experience in the area of specialist expertise is likely to be one factor that is relevant to determining whether there is a reasonable basis for the expert to make use of the specialist's report. We are interested in whether there are other factors that may also be relevant.
- 45 The situation discussed above can be avoided if the expert ensures that the specialist signs the specialist report and consents to its use in the form and context in which it will be published. The expert would still need to critically review the specialist report and have reasonable grounds for believing it is not false or misleading: see current RG 111.62.

## D Regulatory and financial impact

- 46 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us we think they will strike an appropriate balance between promoting better expert reports and imposing additional regulatory requirements on experts and commissioning parties.
- 47 Before settling on a final policy, we will comply with the Australian Government's regulatory impact analysis (RIA) requirements by:
- (a) considering all feasible options, including examining the likely impacts of the range of alternative options which could meet our policy objectives;
  - (b) if regulatory options are under consideration, notifying the Office of Best Practice Regulation (OBPR);
  - (c) if our proposed option has more than minor or machinery impact on business or the not-for-profit sector, preparing a Regulation Impact Statement (RIS).
- 48 All RISs are submitted to the OBPR for approval before we make any final decision. Without an approved RIS, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.
- 49 To ensure that we are in a position to properly complete any required RIS, we ask you to provide us with as much information as you can about:
- (a) the likely compliance costs;
  - (b) the likely effect on competition; and
  - (c) other impacts, costs and benefits,
- of our proposals or any alternative approaches: see 'The consultation process' p. 4.

## Key terms

Term	Meaning in this document
AFS licence	An Australian financial services licence under s913B that authorises a person who carries out a financial services business to provide financial services Note: This is a definition contained in s761A of the Corporations Act.
AFS licensee	The holder of an Australian financial services licence
ASIC	Australian Securities and Investments Commission
bidder	The meaning given to that term in s9
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
DCF	Discounted cash flow
expert	The meaning given to that term in s9
JORC Code	The Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves
PRMS	Petroleum Resources Management System
RG 111 (for example)	An ASIC regulatory guide (in this example, numbered 111)
s648A (for example)	A section of the Corporations Act (in this example, numbered 648A)
securities	The meaning given to that term in s9
security holder	The holder of interests or securities
target	The meaning given to that term in s9
Valmin Code	Code for the Technical Assessment and Valuation of Mineral and Petroleum Assets and Securities for Independent Expert Reports



**ASIC**

Australian Securities & Investments Commission

## REGULATORY GUIDE 111

# Content of expert reports

October 2010

### **About this guide**

This is a guide for any person who commissions, issues or uses an expert report.

It provides guidance on the content of an expert report and how an expert can help security holders make informed decisions about transactions.

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### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Document history

This version was issued on 18 October 2010 and is based on legislation and regulations as at 18 October 2010.

Previous versions:

- Superseded Regulatory Guide 111, issued 30 October 2007

### Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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## A Overview

### Key points

This guide gives ASIC's views on how an expert can help security holders make informed decisions about transactions.

It gives guidance to experts on how to draft an expert report that satisfies the requirements of the *Corporations Act 2001* (Corporations Act).

This guide outlines our views on:

- how experts should analyse a proposed transaction (see Section B);
- the different valuation methodologies used by experts and the treatment of assumptions (see Section C);
- general requirements for all expert reports (see Section D); and
- the regulatory action we might take against an expert (see Section E).

### Reports covered by this guide

- RG 111.1 This guide focuses on reports prepared for transactions under Chs [2E](#), 5, 6 and 6A of the Corporations Act, whether the reports are required by the Corporations Act or are commissioned voluntarily. The principles in this guide may also be relevant to independent expert reports commissioned for other purposes—for example, specialist reports like geologist reports [or traffic forecast reports](#) for inclusion in Ch 6D disclosure documents and Ch 7 product disclosure statements.

Note: Other ASIC guidance may be relevant to the commissioning and preparation of expert reports in particular industry sectors. For example, we have recently consulted on disclosure requirements for agribusiness managed investment schemes and infrastructure entities (including the use of specialist reports by such schemes and entities): see Consultation Paper 133 *Agribusiness managed investment schemes: Improving disclosure for retail investors* (CP 133) and Consultation Paper 134 *Infrastructure entities: Improving disclosure for retail investors* (CP 134).

- RG 111.2 This guide does not apply to independent or investigating accountant reports.
- RG 111.3 Examples of transactions for which entities are required to commission an independent expert report or may do so voluntarily to assist security holders to make an informed choice are takeover bids, compulsory acquisitions and buy-outs, schemes of arrangement, [related party transactions](#) and capital reorganisations; see Table 1.

**Table 1: Examples of transactions for which entities commission an independent expert report**

Transaction	Circumstances
Takeover bids	<ul style="list-style-type: none"> <li>The target must commission an expert report when the bidder's voting power in the target is at least 30% of the target or when the bidder and the target have common directors: s640.</li> <li>The bidder must commission an expert report when the consideration paid by the bidder for acquiring a pre-bid stake includes unquoted securities: s636(1)(h)(iii) and 636(2).</li> <li>Targets often commission expert reports to assist security holders, even if there is no requirement to do so.</li> <li>In joint bids the bidders must use their best endeavours to have the target engage an independent expert to prepare a report on whether the joint bid is fair and reasonable to target shareholders who are not associates of the bidders: see Regulatory Guide 159 <i>Takeovers, compulsory acquisitions and substantial holding notices</i> at RG 159.288 and RG 159.298.</li> </ul>
Schemes of arrangement	<ul style="list-style-type: none"> <li>The scheme company must commission an expert report when the other party to the scheme holds at least 30% of the voting shares of the scheme company or when they have common directors: reg 5.1.01 and sch 8, cls 8303, 8306 of the Corporations Regulations 2001 (Corporations Regulations).</li> <li>Scheme companies often commission an expert report when transactions are complex or effect a takeover.</li> </ul>
Compulsory acquisitions or buy-outs	The bidder in a compulsory acquisition must commission an expert report under s663B, 664C, 665B and 667A.
Acquisitions approved by security holders under item 7 of s611	The company commissions an expert report (or, if it has the expertise, a director's report to the same standard) to discharge the requirement to disclose all material information on how to vote on the resolution: item 7(b) of s611.
Selective capital reductions	An expert report should usually accompany the explanatory memorandum to satisfy the information requirements of fairness under s256C(4).
Related party transactions	An expert report may be supplied to members as part of the material to accompany the notice of meeting: s218, 219, 220 and 221.
Transactions with persons in a position of influence	Notices of meeting for approvals under ASX Listing Rule 10.10 must be accompanied by an expert report: ASX Listing Rule 10.10.2.
Demutualisations of financial institutions	An expert report must accompany a notice of meeting for a demutualisation of a financial institution or friendly society: sch 4, cl 29(4).
Buy-backs	If a company proposes to buy-back a significant percentage of securities or the holdings of a major shareholder, it should consider providing an independent expert report with a valuation of the shares: Regulatory Guide 110 <i>Share buy-backs</i> at RG 110.18 and RG 110.20.

## B Analysing a transaction

### Key points

An expert should focus on the issues facing the security holders for whom the report is being prepared: see RG 111.4–RG 111.6.

An expert should focus on the substance of the transaction rather than the legal mechanism used to achieve that purpose: see RG 111.7–RG 111.32.

Some transactions will require a different form of analysis, particularly:

- demergers and demutualisations (see RG 111.33–RG 111.38);
- approval of a sale of securities under item 7 of s611 (see RG 111.39–RG 111.44); and
- compulsory acquisitions and buyouts (see RG 111.45–RG 111.49).

[When assessing whether a related party transaction is ‘fair and reasonable’, an expert should consider the overall effect of the transaction: see RG 111.50–RG 111.61.](#)

### A recommended approach

- RG 111.4 In deciding on the appropriate form of analysis for a report, an expert should bear in mind that the main purpose of the report is to adequately deal with the concerns that could reasonably be anticipated of those persons affected by the proposed transaction. An expert should focus on the purpose and outcome of the transaction, that is, the substance of the transaction, rather than the legal mechanism used to effect the transaction.
- RG 111.5 The Corporations Act requires an expert to express the opinion using particular language depending on the type of transaction. For example:
- (a) whether a takeover bid is ‘fair and reasonable’ under s640;
  - (b) whether a scheme of arrangement is in ‘the best interests of the members of the company’ under sch 8, cl 8303 of the Corporations Regulations; and
  - (c) whether the proposed terms in the buy-out or acquisition notice give a ‘fair value’ for the securities under s667A(1).
- RG 111.6 Nevertheless, the form of analysis an expert uses to evaluate a transaction should address the issues faced by security holders. The rest of this section sets out our guidance on the form of analysis an expert should use for particular types of transactions.

## Control transactions

RG 111.7 A control transaction, when a person acquires, or increases, a controlling stake in a company, can be achieved by way of a number of different legal mechanisms, including, for example:

- (a) a takeover bid under Ch 6;
- (b) a scheme of arrangement under Pt 5.1;
- (c) approval of an issue of shares using item 7 of s611; and
- (d) a selective capital reduction or selective buy-back under Ch 2J.

Note 1: Ch 6 extends to listed managed investment schemes and listed bodies that are not companies. For the purposes of this regulatory guide, references to a ‘company’ in the context of Ch 6 takeovers can be read as references to these bodies or schemes, when appropriate.

Note 2: Not all item 7 of s611 transactions involve the issue of shares. For those item 7 transactions that do not, see RG 111.39–RG 111.44.

RG 111.8 It is important for an expert to focus on the substance of a control transaction, rather than the legal mechanism used to effect it.

### Takeover bids

RG 111.9 It has long been accepted in Australian mergers and acquisitions practice that the words ‘fair and reasonable’ in s640 establish two distinct criteria for an expert analysing a control transaction:

- (a) is the offer ‘fair’; and
- (b) is it ‘reasonable’?

That is, ‘fair and reasonable’ is not regarded as a compound phrase.

RG 111.10 Under this convention, an offer is ‘fair’ if the value of the offer price or consideration is equal to or greater than the value of the securities the subject of the offer. This comparison should be made:

- (a) assuming a knowledgeable and willing, but not anxious, buyer and a knowledgeable and willing, but not anxious, seller acting at arm’s length; and

Note: Any special value of the ‘target’ to a particular ‘bidder’ (e.g. synergies that are not available to other bidders) should not be taken into account under this comparison. However, any special value to the bidder may be relevant in determining whether an offer is ‘reasonable’: see RG 111.12(e).

RG 111.10(b) assuming 100% ownership of the ‘target’ and irrespective of whether the consideration is scrip or cash. The expert should not consider the percentage holding of the ‘bidder’ or its associates in the target when making this comparison. For example, in valuing securities in the target entity, it is inappropriate to apply a discount on the basis

that the shares being acquired represent a minority or ‘portfolio’ parcel of shares.

- RG 111.11 An offer is ‘reasonable’ if it is fair. It might also be ‘reasonable’ if, despite being ‘not fair’, the expert believes that there are sufficient reasons for security holders to accept the offer in the absence of any higher bid before the close of the offer.
- RG 111.12 When deciding whether an offer is reasonable, an expert might consider:
- (a) the bidder’s pre-existing voting power in securities in the target;
  - (b) other significant security holding blocks in the target;
  - (c) the liquidity of the market in the target’s securities;
  - (d) taxation losses, cash flow or other benefits through achieving 100% ownership of the target;
  - (e) any special value of the target to the bidder, such as particular technology, the potential to write off outstanding loans from the target, etc;
  - (f) the likely market price if the offer is unsuccessful; and
  - (g) the value to an alternative bidder and likelihood of an alternative offer being made
- RG 111.13 For example, a bidder who controls a target and makes a takeover bid may offer a price which is ‘not fair’ as it includes a minority discount. The offer price may, however, be greater than the price at which the securities were trading before the takeover bid was made. In such circumstances, it is appropriate for the expert to consider whether the market price may fall if the offer is unsuccessful: see RG 111.12(f). It would also be appropriate for the expert to consider the matters set out in RG 111.12(d) and RG 111.12(e) in assessing the likelihood that the bidder would increase its offer price, including to a price that an expert would assess as ‘fair’.
- [RG 111.14](#) A bidder may also offer a price which is ‘not fair’ where the target is in financial distress. Such an offer may nonetheless be reasonable if the alternative methods of remedying the financial distress are likely to be less attractive to security holders than a successful offer.
- ~~RG 111.14~~ [RG 111.15](#) An expert concluding that an offer is not fair, but reasonable, should clearly explain the meaning of this opinion, why the expert has reached this conclusion and the significance of the conclusion to the decision to be made by security holders (e.g. what it might mean for the security holder’s decision making). Otherwise, depending on the circumstances, the report might be misleading or deceptive. In describing the factors that are relevant to a conclusion that an offer is reasonable, an expert should generally only include the factors that are material to this conclusion. To the extent

reasonably practicable, the expert should generally value the reasonableness factors it considers to be material.

Note: We recognise that it may not be practicable to value some reasonableness factors.

### **Control transactions by way of a scheme of arrangement**

RG 111.15RG 111.16 Schemes of arrangement can be used as an alternative to a Ch 6 takeover bid to achieve substantially the same outcome. In these circumstances, we expect the form of analysis to be substantially the same as for a takeover bid, even though the wording of the opinion will also be whether the proposed scheme is ‘in the best interests of the members of the company’. This reflects that the legislative test for schemes of arrangement differs from that applicable to a Ch 6 takeover bid.

RG 111.16RG 111.17 When an expert report is required in a scheme of arrangement involving a change of control, the expert is expected to apply the analysis and provide an opinion as to whether the proposal is ‘fair and reasonable’ as set out in RG 111.9–RG 111.15 as if:

- (a) the ‘bidder’ was the ‘other party’; and
- (b) the ‘target’ was the company that is the subject of the proposed scheme.

RG 111.17RG 111.18 If an expert would conclude that a proposal was ‘fair and reasonable’ if it was in the form of a takeover bid, it will also be able to conclude that the scheme is in the best interests of the members of the company.

RG 111.18RG 111.19 If an expert would conclude that the proposal was ‘not fair but reasonable’ if it was in the form of a takeover bid using the analysis described in RG 111.9–RG 111.15, it is still open to the expert to also conclude that the scheme is ‘in the best interests of the members of the company’. The expert should clearly say that the consideration is not equal to or greater than the value of the securities the subject of the scheme, but there are sufficient reasons for security holders to vote in favour of the scheme in the absence of a higher offer.

RG 111.19RG 111.20 If an expert concludes that a scheme proposal is ‘not fair and not reasonable’, then the expert would conclude that the scheme is not in the best interests of the members of the company.

RG 111.20RG 111.21 When a scheme of arrangement is used to acquire or increase a party’s control, the report should address the interests of members who are bound to give up rights under the scheme. The expert should separately consider the interests of each class of those members under the scheme.

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## Other control transactions

~~RG 111.21~~ RG 111.22 An issue of shares by a company otherwise prohibited under s606 may be approved under item 7 of s611 and the effect on the company's shareholding is comparable to a takeover bid. Examples of such issues approved under item 7 of s611 that are comparable to takeover bids under Ch 6 include:

- (a) a company issues securities to the vendor of another entity or to the vendor of a business and, as a consequence, the vendor acquires over 20% of the company incorporating the merged businesses. The vendor could have achieved the same or a similar outcome by launching a scrip takeover for the company; and
- (b) a company issues securities in exchange for cash and, as a consequence, the allottee acquires over 20% of the company. The allottee could have achieved the same or a similar outcome by using a cash-rich entity to make a scrip takeover bid for the company.

~~RG 111.22~~ RG 111.23 If this is the case, an expert should apply the analysis outlined in RG 111.9–RG 111.15, that is, the transaction should be analysed as if it was a takeover bid under Ch 6. However, references to, for example, the 'bidder' and the 'target' should be taken to mean the 'allottee' and 'company' respectively.

~~RG 111.23~~ RG 111.24 An issue of shares for cash may have other benefits that should be considered in deciding whether the transaction is reasonable. These benefits may include:

- (a) the provision of new capital to exploit business opportunities;
- (b) a reduction in debt and interest payments; or
- (c) a needed injection of working capital.

~~RG 111.24~~ RG 111.25 There may be circumstances in which the allottee will acquire 20% or more of the voting power of the securities in the company following the allotment or increase an existing holding of 20% or more, but does not obtain a practical measure of control or increase its practical control over that company. If the expert believes that the allottee has not obtained or increased its control over the company as a practical matter, then the expert could take this outcome into account in assessing whether the issue price is 'reasonable' if it has assessed the issue price as being 'not fair' applying the test in RG 111.10.

~~RG 111.25~~ RG 111.26 A transaction otherwise prohibited under s606 in respect of which approval is sought under item 7 of s611 will not always involve the issue of shares. For the analysis of other item 7 of s611 transactions, see RG 111.39–RG 111.44.

[RG 111.26](#)[RG 111.27](#) Similar considerations apply in relation to control transactions by way of a selective capital reduction or selective buy-back under Ch 2J.

### Assessing non-cash consideration in control transactions

[RG 111.27](#)[RG 111.28](#) If the bidder is offering non-cash consideration in a control transaction, the expert should examine the value of that consideration and compare it with the valuation of the target's securities, whether the transaction is effected by a takeover bid, a scheme of arrangement or an issue of shares.

[RG 111.28](#)[RG 111.29](#) The comparison should be made between the value of the securities being offered (allowing for a minority discount) and the value of the target entity's securities, assuming 100% of the securities are available for sale. This comparison reflects the fact that:

- (a) the acquirer is obtaining or increasing control of the target; and
- (b) the security holders in the target will be receiving scrip constituting minority interests in the combined entity.

However, the expert may need to assess whether a scrip takeover is in effect a merger of entities of equivalent value when control of the merged entity will be shared equally between the 'bidder' and the 'target'. In this case, the expert may be justified in using an equivalent approach to valuing the securities of the 'bidder' and the 'target'.

[RG 111.29](#)[RG 111.30](#) If the expert uses the market price of securities as a measure of the value of the offered consideration, the expert should consider and comment on:

- (a) the depth of the market for those securities;
- (b) the volatility of the market price; and
- (c) whether or not the market value is likely to represent the value if the takeover bid is successful;

[RG 111.30](#)[RG 111.31](#) For example, trading after a bid is announced may reflect some of the benefits of the combined entity, depending on whether the market has confidence that the transaction will proceed.

[RG 111.31](#)[RG 111.32](#) If, in a scrip bid, the target is likely to become a controlled entity of the bidder, the bidder's securities can also be valued assuming a notionally combined entity. However, the expert should still allow for the fact that accepting holders are likely to hold minority interests in that combined entity. The comparison should include the assets and liabilities of the target and the dilution effect of the acquisition on the target's earnings, asset backing and dividends. The expert should also discuss the bases for calculating the dilutions.

Note: Reverse takeovers (either by takeover bid or scheme of arrangement) can raise special issues: see [Regulatory Guide 60 Schemes of arrangement \(RG 60\) at RG 60.35–RG 60.37](#) ~~Regulatory Guide 142 Schemes of arrangement and ASIC review (RG 142) at RG 142.9.~~

## Demergers and demutualisations

~~RG 111.32~~ [RG 111.33](#) Demergers and demutualisations might not involve:

- (a) a change in the underlying economic interests of security holders;
- (b) a change of control; or
- (c) selective treatment of different security holders.

[RG 111.34](#) In the absence of these factors, the issue of ‘value’ may be of secondary importance (particularly in demutualisations). The expert should provide an opinion as to whether the advantages of the transaction outweigh the disadvantages. In some cases, it might still be appropriate to carry out a valuation. In a demerger, the expert may still choose to value the demerged businesses to test whether the value of the sum of the parts (the demerged entities) is greater or less than the whole (the existing entity). [If the expert does not undertake such a valuation, to the extent reasonably practicable it should generally value the advantages and disadvantages that it considers to be material.](#)

~~RG 111.33~~ [Note: We recognise that it may not be practicable to value some advantages and disadvantages.](#)

~~RG 111.34~~ [RG 111.35](#) If the demerger or demutualisation involves a scheme of arrangement and the expert concludes that the advantages of the transaction outweigh the disadvantages, the expert should say that the scheme is in the best interests of the members.

~~RG 111.35~~ [RG 111.36](#) In a demerger, security holders will typically have to balance issues such as the benefits of a greater focus afforded to the demerged entities against increased costs and reduction in diversified earnings streams.

~~RG 111.36~~ [RG 111.37](#) In a demutualisation, the advantages and disadvantages to be considered might include questions of unlocking value for members and greater management accountability as reasons to demutualise, as compared to the loss of the benefits of being a mutual organisation.

~~RG 111.37~~ [RG 111.38](#) An expert might need to consider whether using the form of analysis described at RG 111.9–RG 111.15 is appropriate when demergers and demutualisations involve one or more of:

- (a) a change in the underlying economic interests of security holders;
- (b) a change of control; or
- (c) selective treatment of different security holders.

## Approval of a sale of securities under item 7 of s611

[RG 111.38](#)[RG 111.39](#) Approval for a sale of securities that would otherwise contravene s606 may be sought under item 7 of s611. Item 7 of s611 envisages that security holders not associated with such a transaction may approve it. In doing so, these security holders may be forgoing:

- (a) the opportunity of receiving a takeover bid; and
- (b) sharing in any premium for control.

[RG 111.39](#)[RG 111.40](#) The expert should identify the advantages and disadvantages of the proposal to security holders not associated with the transaction. In contrast with the analysis for an issue of shares approved under item 7 of s611, the expert should provide an opinion either:

- (a) that the advantages of the proposal outweigh the disadvantages; or
- (b) that the disadvantages of the proposal outweigh the advantages.

[RG 111.40](#)[RG 111.41](#) A specific issue the expert should determine is whether the vendor is to receive a premium for control.

[RG 111.41](#)[RG 111.42](#) The greater the control premium, the greater the advantages of the transaction to the non-associated holders would need to be to support a finding that the advantages of the proposal outweighed the disadvantages. These other advantages may come, for example, from a better long-term profit outlook as the incoming security holder offers superior management skills.

[RG 111.42](#)[RG 111.43](#) The expert should also inquire whether further transactions are planned between the entity, the vendor or any of their associates. If any are contemplated, the expert should determine whether those transactions would be on an arm's length basis. If not, an implication arises that they may compensate a vendor for a price that is too low.

[RG 111.43](#)[RG 111.44](#) An expert should also consider whether any proposed acquisition by way of sale, if approved, might deter the making of a takeover bid for the entity.

## Compulsory acquisitions and buy-outs

[RG 111.44](#)[RG 111.45](#) Chapter 6A prescribes the steps an expert must take in reaching an opinion for compulsory acquisitions and buy-outs. Section 667A(1) requires an expert to:

- (a) provide an opinion on whether the proposed terms in the buy-out or acquisition notice give a 'fair value' for the securities; and
- (b) set out the reasons for its opinion.

[RG 111.45](#)[RG 111.46](#) To determine what is 'fair value', s667C requires that an expert:

- (a) first assess the value of the entity as a whole;
- (b) then allocate that value among the classes of issued securities in the company (taking into account the relative financial risk and the voting and distribution rights of the classes); and
- (c) then allocate the value of each class pro rata among the securities in that class (without allowing any premium or applying a discount for particular securities or interest in that class).

[RG 111.46](#)[RG 111.47](#) In determining the fair value for securities, an expert must also take into account the prices paid for securities in that class in the previous six months: s667C(2).

[RG 111.47](#)[RG 111.48](#) The weight of judicial authority is that an expert should not reflect ‘special value’ that might accrue to the acquirer (e.g. *Capricorn Diamonds Investments Pty Ltd v Catto* (2002) 41 ACSR 376 at 431; *Winpar Holdings Ltd v Austrim Nylex Ltd* [2005] VSCA 211 at [11]–[37]; *Teh v Ramsay Centauri* (2002) 42 ACSR 354 at 359). In practice, the issue of ‘special value’ might not be a critical issue. Special value might not be material once it has been allocated pro rata to each security in the class, including the securities of the party seeking to make the compulsory acquisition. An expert should not add any premium for forcible divestment: see *Capricorn* at 432.

Note: Similar considerations apply as to whether consideration under a capital reduction ‘is fair and reasonable to the company’s shareholders as a whole’: see s256B(1)(a) and *Re Goldfields Kalgoorlie; Winpar Holdings Ltd v Goldfields Kalgoorlie Ltd* (2000) 34 ACSR 737 at [69].

[RG 111.48](#)[RG 111.49](#) Our approach to nominating experts to provide valuations under Ch 6A is set out in RG 159 at RG 159.107–RG 159.118.

## **Related party transactions**

[RG 111.50](#) When analysing related party transactions, it is important that an expert focuses on the substance of the related party transaction, rather than the legal mechanism.

[RG 111.51](#) For example, where a related party transaction is made up of a number of separate components, the expert should consider the overall effect of the related party transaction.

[RG 111.52](#) The expert should also inquire whether further transactions are planned between the entity, the related party or any of their associates. If any are contemplated, the expert should consider whether those transactions may compensate the related party for a low price in the related party transaction.

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RG 111.53 Where the related party transaction is a component of a broader transaction or a series of transactions involving non-related parties (such as a control transaction), the expert should generally undertake a separate analysis of the related party aspect, in addition to an analysis of the overall transaction.

RG 111.54 In some cases, an expert is simply asked to value the financial benefit provided to the related party. However, when analysing a related party transaction that involves an asset acquisition or disposal, an expert usually expresses an opinion on whether the transaction is ‘fair and reasonable’ from the perspective of non-associated members. This is specifically required where the report is also intended to accompany meeting materials for member approval under ASX Listing Rule 10.1.

RG 111.55 Where an expert assesses whether a related party transaction is ‘fair and reasonable’ (whether for the purposes of Ch 2E or ASX Listing Rule 10.1), this should not be applied as a composite test—that is, there should be a separate assessment of whether the transaction is ‘fair’ and ‘reasonable’, as in a control transaction. An expert should not assess whether the transaction is ‘fair and reasonable’ based simply on a consideration of the advantages and disadvantages of the proposal.

RG 111.56 A proposed related party transaction is ‘fair’ if the value of the financial benefit to be provided by the entity to the related party is equal to or less than the value of the consideration being provided to the entity. This comparison should be made:

- (a) assuming a knowledgeable and willing, but not anxious, buyer and a knowledgeable and willing, but not anxious, seller acting at arm’s length; and

Note 1: Any special value of the ‘target’ to a particular ‘bidder’ (e.g. synergies that are not available to other bidders) should not be taken into account under this comparison. However, any special value to the bidder may be relevant in determining whether an offer is reasonable.

Note 2: This is a separate test to the consideration of relevant factors and circumstances when determining whether the ‘arm’s length’ exception in s210 applies: see Section B of Consultation Paper 142 *Related party transactions* (CP 142).

- (b) for control transactions, on the basis referred to in RG 111.10(b).

RG 111.57 Where the proposed transaction consists of an asset acquisition by the entity, it is ‘fair’ if the value of the financial benefit being offered by the entity to the related party is equal to or less than the value of the assets being acquired. Where the financial benefit is securities in the entity and the entity is acquiring securities held by a related party, the value of the entity’s securities should be compared to the value of the securities it is purchasing. If the expert uses the market price of either of the securities as a measure of their value, it should consider, among other things, the factors set out in RG 111.30(a) and RG 111.30(b).

RG 111.58 In valuing the financial benefit given and the consideration received by the entity, an expert should take into account all material terms of the proposed transactions. Some onerous terms may explain why the financial benefit appears to be worth more than the consideration paid by the related party.

RG 111.59 A proposed related party transaction is 'reasonable' if it is 'fair'. It might also be 'reasonable' if, despite being 'not fair', the expert believes there are sufficient reasons for members to vote for the proposal.

RG 111.60 If an expert concludes that a related party transaction is not fair, but reasonable, it should clearly explain the meaning of this opinion, why the expert has reached this conclusion, and the significance of the conclusion to the decision to be made by security holders (e.g. what it might mean for the security holder's decision-making).

RG 111.61 When deciding whether a proposed transaction is 'reasonable', factors that an expert might consider include:

- (a) the financial situation and solvency of the entity, including the factors set out in RG 111.24, if the consideration for the financial benefit is cash;
- (b) opportunity costs;
- (c) the alternative options available to the entity and the likelihood of those options occurring;
- (d) the entity's bargaining position;
- (e) whether there is selective treatment of any security holder, particularly the related party;
- (f) the related party's pre-existing voting power in securities in the entity;
- (g) any special value of the transaction to the purchaser, such as particular technology or the potential to write off outstanding loans from the target; and
- (h) the liquidity of the market in the entity's securities.

Note: The guidance in RG 111.15 is relevant to a conclusion that a related party transaction is not fair, but reasonable.

## C Methodologies and assumptions

### Key points

An expert should:

- if possible use more than one valuation methodology and compare the values derived from using different methodologies to minimise the risk that the opinion is unreliable; and
- justify its choice of methodologies and describe the methods used: see RG 111.62–RG 111.71.

An expert's opinion should be based on reasonable assumptions and all material assumptions should be disclosed: see RG 111.72–RG 111.75.

An expert should usually give a range of values and that range should be as narrow as possible: see RG 111.76–RG 111.77.

An expert might need to value individual assets in certain circumstances: see RG 111.78–RG 111.81.

### Choice of methodology

[RG 111.49](#)[RG 111.62](#) An expert should use its skill and judgment to select the most appropriate methodology or methodologies in its report. The expert must have a reasonable (or tenable) basis for choosing its valuation methodologies: *Re Matine* (1998) 28 ACSR 268 at 290–291. An inappropriate choice might be misleading: *Re EPHS Ltd* [2002] ATP 12. It might also lead to liability because the expert did not take sufficient care and skill in the preparation of the report: *Duke Group Ltd v Pilmer* (1999) 31 ACSR 213.

[RG 111.50](#)[RG 111.63](#) We consider that an expert should, when possible, use more than one valuation methodology. We consider that this reduces the risk that the expert's opinion is distorted by its choice of methodology. We also consider that an expert should compare the figures derived from using the different methodologies and comment on any differences. [Further, if the expert's valuation of a company differs materially from the company's share price in the period leading up to the announcement of the proposed transaction \(plus a typical premium for control for such a transaction\), the expert should comment on this difference and the factors underlying it.](#)

[RG 111.51](#)[RG 111.64](#) However, we will not prescribe the valuation methodologies that an expert should use in preparing its report since an expert should exercise its own skill and judgment to choose methodologies that are appropriate in the circumstances of the entity or the asset being valued.



~~RG 111.52~~ RG 111.65 An expert should justify its choice of methodology or methodologies (including when the expert has used only one methodology, the basis for doing so) and describe the method or methods used in the report. We consider that an expert report that does this allows security holders to better understand the expert report and determine the weight to be attached to the report. It also allows another expert, professional adviser or institutional investor to replicate the expert's work and assess the valuation.

RG 111.66 An expert should discuss how much weight is being placed on each methodology used in the valuation. For instance, one methodology may be identified as the primary methodology whereas another is used to provide a cross-check to the valuation.

~~RG 111.53~~ RG 111.67 It is generally appropriate for an expert to consider using the following methodologies:

- (a) the discounted cash flow method (see also RG 111.97) and the estimated realisable value of any surplus assets;
- (b) the application of earnings multiples (appropriate to the business or industry in which the entity operates) to the estimated future maintainable earnings or cash flows of the entity, added to the estimated realisable value of any surplus assets;
- (c) the amount that would be available for distribution to security holders on an orderly realisation of assets;
- (d) the quoted price for listed securities, when there is a liquid and active market and allowing for the fact that the quoted price may not reflect their value, should 100% of the securities be available for sale; and
- (e) any recent genuine offers received by the target for the entire business, or any business units or assets as a basis for valuation of those business units or assets.

Note: Some valuation methodologies include a premium for control while others do not. An expert needs to ensure that the choice of methodology or methodologies is appropriate for the circumstances of the transaction.

~~RG 111.54~~ RG 111.68 ~~In applying the above methodologies, it would be open to an expert to have regard to the~~ The amount an alternative bidder might be willing to offer if all the securities in the target were available for purchase may provide a useful framework for the application of methodologies (e.g., for example, in selecting earnings multiples) and in underpinning any overall judgment as to value.

~~RG 111.55~~ RG 111.69 An expert should not take into account highly speculative alternative proposals which are so unformulated that no sensible value could be placed on them.

~~RG 111.56~~RG 111.70 If an entity has recently conducted a sale process without success or has been ‘in play’ for some period without an alternative bid emerging, it may be possible to comment that no alternative acquirer appears likely to offer a higher price.

### Option valuations

~~RG 111.57~~RG 111.71 The most commonly used methodologies for valuing unlisted or thinly traded options are the Binomial Model and the Black–Scholes Model. In selecting an approach, an expert should assess whether the assumptions used in the methodology are appropriate for the options being valued.

## Assumptions

~~RG 111.58~~RG 111.72 An expert’s opinion should be based on reasonable assumptions. This reduces the risk that the report will be misleading: s670A(2); s12DA of the *Australian Securities and Investments Commission Act 2001* (ASIC Act); *MGICA (1992) Ltd v Kenny & Good Pty Ltd* (1996) 140 ALR 313 at 356; *RAIA Insurance Brokers v FAI General Insurance Co Ltd* (1993) 112 ALR 511 at 522.

~~RG 111.59~~RG 111.73 An expert should disclose all material assumptions on which its report is based. This allows security holders to assess the reasonableness of the report and its main uncertainties: *Re BNQ Sugar Pty Ltd and Others* (1994) 12 ACSR 695 at 702; *GIO Australia Holdings Pty Ltd v AMP Insurance Investment Holdings Pty Ltd* (1998) 29 ACSR 584 at 621–622.

~~RG 111.60~~RG 111.74 The material assumptions disclosed should be specific and definite. All-embracing assumptions of no specific relevance to the entity being valued should not be included (e.g. the continued absence of war or the non-occurrence of natural disasters). However, assumptions concerning specific future economic conditions (such as assumed interest rates, exchange rates and commodity prices) and the assessment of their impact on the report should be disclosed.

~~RG 111.61~~RG 111.75 If changes in material assumptions are likely to materially impact on a report’s valuation (e.g. changes in the exchange rate or interest rate assumptions), an expert should consider including a sensitivity analysis which sets out the impact of such changes.

Note: See Regulatory Guide 170 *Prospective financial information* (RG 170) at RG 170.65 and RG 170.66.

## Value ranges

[RG 111.62](#)[RG 111.76](#) An expert should usually give a range of values. The value of securities is typically subject to uncertainty and volatility. Placing a precise dollar value on them is likely to imply a misleading accuracy to a valuation.

[RG 111.63](#)[RG 111.77](#) Nevertheless, the range of values should be as narrow as possible. If an expert cannot give a narrow range because of uncertainty (e.g. start-up companies), the expert should prominently explain in its report what factors create this uncertainty and how the expert is able to justify its findings despite the uncertainty. In our view, a broad range of values undermines the usefulness of the report.

## Valuing assets

[RG 111.64](#)[RG 111.78](#) An expert might need to value individual assets in undertaking the analysis required to prepare its report, for example, if the assets are considered ‘surplus’ to other business activities being valued. In valuing individual assets, an expert may need to quantify and discuss any material differences between its valuation and the market value of the asset used for accounting purposes.

[RG 111.65](#)[RG 111.79](#) An expert may also need to assess the carrying value of an entity’s assets if the primary valuation methodology it has employed results in a value that is less than the entity’s reported net assets (after allowing for reasonable realisation costs).

[RG 111.66](#)[RG 111.80](#) In such circumstances, the expert should ensure that it has the expertise to value the assets (e.g. to value real property or exploration mining tenements) or retain a specialist to do so.

[RG 111.67](#)[RG 111.81](#) Real property assets that are planned or are in the process of development should be valued on the basis of their current market value rather than on an ‘as complete’ basis.

## D Other key requirements

### Key points

An expert report should help security holders make their decision by clearly disclosing key information: see RG 111.82–RG 111.87.

An expert's opinion should be based on reasonable grounds. These grounds should be discussed in the report: see RG 111.88–RG 111.97.

An expert might need to act on changes in circumstances after issuing its report: see RG 111.98–RG 111.100.

Particular considerations apply to the inclusion of certain information (e.g. disclaimers): see RG 111.101–RG 111.112.

An expert should have the relevant expertise to prepare the expert report: see RG 111.113–RG 111.118.

[An expert should maintain adequate records of the work undertaken to prepare the expert report: see RG 111.119–RG 111.123.](#)

### Clear, concise and effective communication

~~RG 111.68~~ [RG 111.82](#) An expert report should help security holders make their decision.

The report should:

- (a) address the varying information needs of a report's audience;
- (b) clearly explain the meaning of the expert's opinion and the significance of that opinion to the decision to be made by security holders;
- (c) highlight key information;
- (d) be easy to navigate and understand (e.g. through the use of content tables, signposting, cross-references, numbered sections, sub-sections and the avoidance of jargon); and
- (e) be as brief as possible.

~~RG 111.69~~ [RG 111.83](#) An expert report should only contain information that relates directly to the decision to be made by security holders. Including extraneous information in an expert report undermines the effectiveness of that report. Santow J dealt with this issue in *Re Australian Co-operative Foods Ltd* (2001) 38 ACSR 71 at 77 in the following terms:

Experts are responsible for what they say in their reports. They must ensure that their reports deal adequately with the kind of concerns that could reasonably be anticipated from those affected by the scheme, in reporting on whether the relevant scheme proposal is fair and reasonable from their viewpoint ... This is so those members can then make an informed decision

with the benefit of a report that is as simple, clear and useful as possible. A plethora of peripheral information is more likely to distract than illuminate.

[RG 111.70](#)[RG 111.84](#) For example, an analysis of the industry in which the company (i.e. the subject of the opinion) operates might be useful. However, copying material out of an industry research database may merely add to the length of reports. An expert should include an analysis of the material and relate the material directly to its opinion.

### Technical terms

[RG 111.74](#)[RG 111.85](#) Technical terms should be avoided when possible. If the expert uses technical terms, it should use them consistently in a report and consistently with the way they are used in the relevant industry. When appropriate, the expert should provide a glossary, especially when the definition or interpretation of specific terms is central to its report.

### Concise or short form expert report

[RG 111.86](#) We encourage an expert to consider preparing a concise or short form expert report. The commissioning party would make a longer expert report containing additional, more technical or detailed information available on request free of charge or ensure it is accessible online. This reflects a developing market practice.

[RG 111.72](#) [Note: See RG 60.84 for information about the use of concise expert reports in schemes of arrangement.](#)

[RG 111.73](#)[RG 111.87](#) The concise report would still need to contain sufficient information to help security holders make their decision. The concise report should include the information that we emphasise in the rest of this guide and in Regulatory Guide 112 *Independence of experts* (RG 112) (e.g. material assumptions). If the longer report contained any 'surprises' for the security holder who only read the concise report, this would indicate the concise report was inadequate or misleading. Table 2 contains examples of types of information that an expert might consider including and leaving out of the concise report. Determining what information to include in the concise report and what to leave out is a matter for the expert's professional judgment in the particular circumstances of the report. However, we are happy to work with experts on these issues.

**Table 2: Examples of information that an expert might consider putting in and leaving out of a concise expert report**

<b>Include in the concise expert report</b>	<ul style="list-style-type: none"> <li>• Expert's conclusion</li> <li>• Meaning of conclusion and significance for the decision to be made</li> <li>• Summary of reasons for conclusion</li> <li>• Summary of valuation including:               <ul style="list-style-type: none"> <li>– methodologies used;</li> <li>– material assumptions; and</li> <li>– a justification of these</li> </ul> </li> <li>• Financial Services Guide</li> </ul>
<b>Leave out of the concise expert report</b>	<ul style="list-style-type: none"> <li>• Industry overview</li> <li>• Disclaimers</li> <li>• Detailed financial information</li> <li>• Detailed profile of parties to the transaction</li> <li>• Qualifications, declarations (e.g. indemnities) and consents</li> <li>• Detailed share price analysis</li> <li>• Details of capital structure (e.g. shareholder spread and directors' relevant interests if not linked to the expert's analysis)</li> <li>• List of previous ASX announcements</li> <li>• List of sources of information</li> </ul>

## Statements should be supportable

### Reasonable grounds

[RG 111.74](#)[RG 111.88](#) An expert's opinion should be based on reasonable grounds. These grounds should be set out in the report.

[RG 111.75](#)[RG 111.89](#) We consider that setting out the reasons for the opinion will assist security holders to understand the expert's opinion, to assess the weight to attach to that opinion and to evaluate the validity of the expert's conclusions: s636(2); 640(1); 667A(1)(c); sch 8, cl 8303 of the Corporations Regulations and *Makita (Australia) Pty Ltd v Sprowles* (2001) 52 NSWLR 705 at 729 and following. Further, security holders cannot make an informed decision without the benefit of 'sufficient supporting information': *Australian Co-operative Foods* at 77.

### Review of information

[RG 111.76](#)[RG 111.90](#) We expect an expert to:

- (a) critically evaluate the information provided to it; and

- (b) take note of any grounds held for questioning the truth, accuracy and completeness of the information.

~~RG 111.77~~ RG 111.91 An expert should conduct such critical analysis of the information on which it relied to prepare the report as is reasonable in the circumstances and as the law requires: *Australian Co-operative Foods* at 77. The more material the information is to the conclusions reached by the expert, the greater the responsibility on the expert to be satisfied that the information is not materially inaccurate. If there are indications suggesting that the information in question may not be reasonably relied on, then the expert should make additional enquiries. We do not expect an expert to conduct an audit of the subject matter of the report. ~~If an expert cannot satisfy itself that it is reasonable to rely on otherwise material information, it should say this in its report with an explanation. In some circumstances, an expert may need to consider not relying on such information.~~

~~RG 111.78~~ RG 111.92 For example, the expert must review directors' valuations and management accounts, partly to detect changes in the way those valuations and accounts have been prepared from period to period: see RG 111.94. If there are no indications of irregularities or omissions, an expert will ordinarily be entitled to take at face value valuations previously prepared by outside experts, audited financial statements and the accounting records of the company. An expert may also rely on management accounts if it has established reasonable grounds: see RG 111.94.

### Prospective financial information

~~RG 111.79~~ RG 111.93 An expert should not include prospective financial information (including forecasts and projections) in its report unless there is a reasonable basis for that information. Otherwise the opinion may be misleading.

~~RG 111.80~~ RG 111.94 An expert should make sufficient inquiries to satisfy itself that prospective financial information on which it has relied was prepared on a reasonable basis. It is important that those producing such information have used methods of analysis and presentations previously used by the company, and have not used new systems or approaches which favour their objectives. If there are any material variations in method or presentation, the expert should adjust for or comment on them in the report.

~~RG 111.81~~ RG 111.95 When an expert includes prospective financial information in its report, the report should include details of:

- (a) the assumptions used;
- (b) the extent of inquiries and research undertaken by the expert and the compiler of that information; and
- (c) the specific period to which the information relates and the reason for the use of that period.

[RG 111.82](#)[RG 111.96](#) RG 170 gives detailed guidance on what we consider is a reasonable basis for stating prospective financial information. While RG 170 is expressed to apply to fundraising documents under Chs 6D and 7, it provides useful guidance for inclusion of prospective financial information in expert reports.

[RG 111.83](#)[RG 111.97](#) However, we recognise that using discounted cash flow (DCF) methodology will involve the use of prospective financial assumptions over a longer period than the two-year period in RG 170: see RG 170.18 and RG 170.29. So long as the focus of the disclosure in the expert report is on the valuation rather than the prospective financial information that supports it, the expert does not need to commission an independent accountant report for the DCF methodology: see RG 170.18(c). However, the expert should undertake a critical analysis of the prospective financial information used in applying the DCF methodology. [A start-up or potential development asset should only be valued using a DCF methodology when there is a reasonable basis to conclude that the proposed development will proceed.](#)

## Changes in circumstances

[RG 111.84](#)[RG 111.98](#) An expert who has delivered its report to the commissioning party should notify that party as soon as possible if the expert becomes aware of a significant change affecting the information in its report or if the expert believes that a material statement in the report is misleading or deceptive. [The commissioning party should also notify the expert if that party becomes aware of a significant change affecting the information in the expert report prior to a meeting being held or during the offer period.](#)

[RG 111.85](#)[RG 111.99](#) When a material change in circumstances has arisen since a report was prepared, a failure by the expert to provide a supplementary report to its client may constitute misleading or deceptive conduct. Security holders will rely on an expert report when making their decision, not when they first receive the report: *ASIC v Solution 6 Holdings Ltd* (1999) 30 ACSR 605 at 611. If an expert becomes aware of a material change in circumstances, then depending on the circumstances, it may be appropriate for a commissioning party to send a supplementary report, even if security holders would receive the report:

- (a) shortly before a meeting is held; or
- (b) towards the end of an offer period.

See *Troy Resources NL v Taipan Resources NL* (2000) 36 ACSR 197.

[RG 111.86](#)[RG 111.100](#) Changes affecting valuations in reports are more likely to trigger the supplementary report obligation than tactical events in the progress of transactions, for example, the level of acceptances in a bid.



## Inclusion of other information

### Confidential information

[RG 111.87](#)[RG 111.101](#) While an expert should not omit material information from its report merely because it is confidential, the expert may be able to adequately support an opinion by careful disclosure without revealing confidential information.

### Disclaimers

[RG 111.88](#)[RG 111.102](#) The purpose of an expert report is to give security holders an assessment on which they can rely. A disclaimer defeats this purpose.

[RG 111.89](#)[RG 111.103](#) An expert cannot limit its statutory liability for the report through disclaimers (e.g. that the expert will not be liable for any loss incurred through reliance on its report). An expert report that purports to exclude the expert from liability may be misleading.

[RG 111.90](#)[RG 111.104](#) An expert should consider refusing to give a report when it has not been given:

- (a) sufficient information or unimpeded access to an entity's records; or
- (b) enough time to prepare the report.

[RG 111.91](#)[RG 111.105](#) When an expert decides that its report will assist security holders despite limitations that the expert cannot resolve (e.g. because the expert does not have time to investigate the reliability of certain information), the expert should prominently explain the nature of the uncertainties and the impact on its opinion so that security holders can assess what weight to attach to the opinion.

[RG 111.92](#)[RG 111.106](#) When an expert is retained to provide a report on a limited matter, the expert may disclaim responsibility for matters outside the scope of its retainer.

### Indemnities

[RG 111.93](#)[RG 111.107](#) An expert may take an indemnity from the commissioning party (or any other person) under which it is to be compensated for certain liability. An acceptable indemnity would cover liability that arises because:

- (a) the expert relied on information provided by the person; or
- (b) the person did not provide the expert with material information.

[RG 111.94](#)[RG 111.108](#) Such an indemnity will not diminish the liability of an expert to security holders. Nor will it reduce the expert's responsibility to ensure that

it has reasonable grounds for its opinion and that the report is not misleading or deceptive.

~~RG 111.95~~ RG 111.109 An expert report that implies that an indemnity relieves the expert from liability to security holders is potentially misleading. ASIC expects reports to explain the effect of any indemnity.

### **Additional disclosures**

RG 111.110 Security holders will generally expect that an expert report will have been prepared on the following basis:

- (a) the expert will have made all the inquiries that it believes are desirable and appropriate in order to prepare the report;
- (b) the report will not omit any matter that the expert regards as material to security holders' assessment of the expert's conclusions; and
- (c) the report will have been prepared in accordance with normally applicable standards and guidelines (e.g. international valuation standards developed by the International Valuation Standards Committee for valuations involving property-based investments, and the Valmin Code for valuations involving mineral and hydrocarbon assets).

RG 111.111 If an expert report has not been prepared on this basis, the report should prominently explain why this is the case and the impact of this on the report. If the report is unable to be prepared on such a basis, the expert may need to consider refusing to give the report: see RG 111.104–RG 111.105.

~~RG 111.96~~ RG 111.112 An expert should also disclose to security holders, to the extent necessary to help them assess what weight to give to reports:

- (a) the source of material used in the reports;
- (b) the inquiries made by the expert;
- (c) any unacceptable or unusual time constraints the expert worked under;
- (d) whether the expert is dissatisfied with the quality of the information used for the report; and
- (e) whether any concerned party to the relevant transaction has refused to provide adequate:
  - (i) access to information; or
  - (ii) explanations;

if the information or the explanations might have impacted on the report's conclusions.

## Expertise

~~RG 111.97~~[RG 111.113](#) ASIC expects an expert preparing an expert report to be, in fact, an expert in the relevant field. Section 9 defines an expert as ‘a person whose profession or reputation gives authority to a statement made by him or her’. To this end, we expect an expert and the commissioning party to ensure that:

- (a) the expert’s profession or reputation is relevant to the matters upon which the expert is to report;
- (b) the expert holds the licences or authorities necessary for providing the type of advice sought; and
- (c) the expert states in the report its qualifications and experience or, if the report is made by a corporation or firm, the qualifications and experience of the individuals responsible for preparing the report.

~~RG 111.98~~[RG 111.114](#) Gyles J observed in *Reiffel v ACN 075 839 266 Ltd* (2003) 45 ACSR 67 at 87:

It is implicit ... that such an expert will exercise the care, skill and judgment appropriate to the relevant field of expertise in forming and expressing the opinion.

~~RG 111.99~~[RG 111.115](#) For technical matters beyond the expert’s expertise, an expert should retain a specialist to advise them (e.g. a geologist to provide an opinion on recoverable ore the subject of mining tenements, [or a traffic forecast report in relation to a toll road](#)): see RG 112 at RG 112.67–RG 112.69.

~~RG 111.100~~[RG 111.116](#) An expert should ensure that staff preparing and supervising the preparation of the report have sufficient skill, knowledge and experience to perform the expert’s role.

~~RG 111.101~~[RG 111.117](#) Expert reports typically constitute the giving of financial product advice so an expert must hold an Australian financial services (AFS) licence. An AFS licensee should have sufficient human and technological resources to provide the services specified in its licences and should ensure its staff are adequately trained and competent to provide those services: s912A(1).

Note: ASIC has taken action against an expert when the expert lacked the expertise to complete the task, failed to comply with the law and did not meet standards of good practice: see Media Release MR 01-421 *ASIC clips Falconer’s wings*.

~~RG 111.102~~[RG 111.118](#) Detailed guidance on how we consider these licence obligations can be met are contained in Regulatory Guide 104 *Licensing: Meeting the general obligations* (RG 104), Regulatory Guide 105 *Licensing: Organisational competence* (RG 105) and Regulatory Guide 146 *Licensing: Training of financial product advisers* (RG 146).

## Working papers

- RG 111.119 In preparing an expert report, an expert should document its work and maintain adequate working papers that record the basis of the report. The expert should be able to readily draw on its working papers to demonstrate that its opinion is reasonably based.
- RG 111.120 Maintaining adequate working papers is an important aspect of an expert's quality control and review process. In our view, the duties imposed by the Corporations Act on AFS licensees require licensees to keep adequate records about their financial services business: see Regulatory Guide 175 *Licensing: Financial product advisers—Conduct and disclosure* (RG 175) at RG 175.97 and RG 175.141. Applicable professional standards may also require an expert to maintain working papers. For example, paragraph 6.1 of APES 225 *Valuation services* (issued July 2008) requires that:
- A Member shall appropriately document the work performed, including aspects of the Valuation Service that have been provided in writing in accordance with this Standard, and the basis on which, and the method by which, calculations or estimates used in the Valuation Service have been made.
- RG 111.121 Maintaining adequate working papers will also assist the expert in demonstrating compliance with its legal obligations (including the obligations described in this guide and RG 112 and its obligations as an AFS licensee) and its internal procedures and processes.
- RG 111.122 Working papers should be compiled so that someone with no prior involvement with the transaction can review them and understand the major issues. They should include, for example:
- (a) documents supporting the expert's choice of methodology;
  - (b) documents supporting significant assumptions underpinning the expert's opinion;
  - (c) factual information relied on, or used by, the expert in preparing the report and material documenting the inquiries made by the expert in relation to that information;
  - (d) analysis of any financial models that the expert has relied on. Where the expert has relied on a financial model, the expert should undertake a review of the model and document its analysis, including which aspects of the model have been reviewed by the expert and the extent of the review; and
  - (e) file notes of discussions and correspondence between the expert and the commissioning party: see RG 112.52.
- RG 111.123 All records relevant to the preparation of an expert report may be subject to review by ASIC. Even where we do not have any particular concerns about an expert report, we may review the report, the working papers and the independence of the expert as part of our regular review of the independent expert sector.

## E Regulatory action

### Key points

We will consider regulatory action if we consider there are material issues with the content of an expert report or have concerns about the independence of an expert.

[RG 111.103](#)[RG 111.124](#) We will consider regulatory action if we consider that there are material issues with the content of the report (e.g. as to the adequacy and the completeness of the expert's analysis) or if we have concerns about the independence of an expert.

[RG 111.104](#)[RG 111.125](#) We might write to the expert or the commissioning party or both to raise concerns or request changes to an expert report. However, when delay might prejudice the interests of security holders or the market, we might take enforcement action without consulting the expert or the commissioning party.

[RG 111.105](#)[RG 111.126](#) The action we might take could be one or more of the following:

- (a) in a takeover bid, an application to the Takeovers Panel for a declaration of unacceptable circumstances;
- (b) in a scheme of arrangement, opposition to the scheme at a court hearing;
- (c) action for contravention of misleading or deceptive conduct provisions;
- (d) action by us to revoke, suspend the expert's licence or add a condition after a hearing: s915C; or
- (e) action by us to cease or suspend nominating the expert to prepare reports in compulsory acquisitions: s667AA and RG 159.107.

## Key terms

Term	Meaning in this document
AFS licence	<a href="#">An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries out a financial services business to provide financial services</a> <a href="#">Note: This is a definition contained in s761A of the Corporations Act.</a> <del>Australian financial services licence</del>
<a href="#">AFS licensee</a>	<a href="#">The holder of an Australian financial services licence</a>
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i> <del>(Cth)</del>
ASX	Australian Securities Exchange Limited
bidder	The meaning given to that term in s9
Corporations Act	<i>Corporations Act 2001</i> <del>(Cth)</del> , <a href="#">including regulations made for the purposes of that Act</a>
Corporations Regulations	Corporations Regulations 2001 <del>(Cth)</del>
expert	The meaning given to that term in s9
<a href="#">related party</a>	<a href="#">Has the meaning given to that term in s228</a>
<a href="#">RG 175 (for example)</a>	<a href="#">An ASIC regulatory guide (in this example, numbered 175)</a>
s648A <a href="#">(for example)</a>	A section of the Corporations Act (in this example, numbered 648A), <a href="#">unless otherwise specified</a>
sch 4 <a href="#">(for example)</a>	A schedule of the Corporations Act (in this example, numbered 4), <a href="#">unless otherwise specified</a>
scheme of arrangement	A scheme of arrangement conducted under Pt 5.1
securities	The meaning given to that term in s9
security holder	The holder of interests or securities
target	The meaning given to that term in s9
<a href="#">Valmin Code</a>	<a href="#">Code for the Technical Assessment and Valuation of Mineral and Petroleum Assets and Securities for Independent Expert Reports</a>

## Related information

### Headnotes

experts, expert report, analysis of control transactions, substance of transaction not legal mechanism used, assumptions, methodology, valuing assets, clear communication, incorporation by reference, supportable statements, prospective financial information, disclaimers, indemnities, expertise

### Regulatory guides

[RG 60 \*Schemes of arrangement\*](#)

RG 74 *Acquisitions agreed to by shareholders*

RG 104 *Licensing: Meeting the general obligations*

RG 105 *Licensing: Organisational competence*

RG 110 *Share buy-backs*

RG 112 *Independence of experts*

~~[RG 142 \*Schemes of arrangement and ASIC review\*](#)~~

RG 146 *Licensing: Training of financial product advisers*

RG 159 *Takeovers, compulsory acquisitions and substantial holding notices*

RG 170 *Prospective financial information*

[RG 175 \*Licensing: Financial product advisers—Conduct and disclosure\*](#)

### Legislation

*Corporations Act 2001*, [Ch 2E](#), s9, 218, 219, 220, 221, 256C(4), 606, item 7(b) of 611, 636(1)(g), 636(1)(h)(iii), 636(2), 640, 663B, 664C, 665B, 667A, 667C, 670A(2), 766B(3), 766(4), 912A(1) and sch 4, cl 29(4).

*Corporations Regulations 2001*, reg 5.1.01; sch 8, cls 8303 and 8306

*Australian Securities and Investments Commission Act 2001*, s12DA

**Cases**

*ASIC v Solution 6 Holdings Ltd* (1999) 30 ACSR 605

*Re Australian Co-operative Foods Ltd* (2001) 38 ACSR 71

*Re BNQ Sugar Pty Ltd and Others* (1994) 12 ACSR 695

*Capricorn Diamonds Investments Pty Ltd v Catto* (2002) 41 ACSR 376

*Duke Group v Pilmer* (1999) 31 ACSR 213

*Re EPHS Ltd* [2002] ATP 12

*Re Goldfields Kalgoorlie; Winpar Holdings Ltd v Goldfields Kalgoorlie Ltd* (2000) 34 ACSR 737

*GIO Australia Holdings Pty Ltd v AMP Insurance Investment Holdings Pty Ltd* (1998) 29 ACSR 584

*Makita (Australia) Pty Ltd v Sprowles* (2001) 52 NSWLR 705

*Re Matine* (1998) 28 ACSR 268

*MGICA (1992) Ltd v Kenny & Good Pty Ltd* (1996) 140 ALR 313

*RAIA Insurance Brokers v FAI General Insurance Co Ltd* (1993) 112 ALR 511

*Reiffel v ACN 075 839 266 Ltd* (2003) 45 ACSR 67

*Teh v Ramsay Centauri* (2002) 42 ACSR 354

*Troy Resources NL v Taipan Resources NL* (2000) 36 ACSR 197

*Winpar Holdings Ltd v Austrim Nylex Ltd* [2005] VSCA 211

**Consultation papers and reports**

CP 62 *Better experts' reports*

[CP 133 \*Agribusiness managed investment schemes: Improving disclosure for retail investors\*](#)

[CP 134 \*Infrastructure entities: Improving disclosure for retail investors\*](#)

[CP 142 \*Related party transactions\*](#)

**Media releases**

MR 01-421 ASIC clips Falconer's wings

**Miscellaneous**

ASX Listing Rule 10.10.2





**ASIC**

Australian Securities & Investments Commission

## REGULATORY GUIDE 112

# Independence of experts

October 2010

### About this guide

This is a guide for any person who commissions, issues or uses an expert report.

It explains how ASIC interprets the requirement that an expert is independent of the party that commissions the expert report (commissioning party) and other interested parties.

Note: An interested party is a person with an interest in the outcome of the transaction different from the interest of the general body of security holders.

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### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Document history

This version was issued on 18 October 2010 and is based on legislation and regulations as at 18 October 2010.

Previous versions:

- Superseded Regulatory Guide 112, issued 30 October 2007

### Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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## A Overview

### Key points

This guide gives ASIC's view on:

- the need for an expert to be independent (see Section B);
- how previous and existing relationships with commissioning and other interested parties may affect the independence of an expert (see Section C);
- how an expert should deal with the commissioning party and other interested parties to maintain its independence (see Section D); and
- when and how an expert should use a specialist when preparing an expert report (see Section E).

### Reports covered by this guide

- RG 112.1 This guide focuses on reports prepared for transactions under Chs [2E](#), 5, 6 and 6A of the *Corporations Act 2001* ~~(Cth)~~ (Corporations Act), whether the reports are required in the Corporations Act or are commissioned voluntarily. The principles in this guide may also be relevant to independent expert reports commissioned for other purposes—for example, specialist reports like geologist reports [or traffic forecast reports](#) (see Section E) for inclusion in Ch 6D disclosure documents and Ch 7 product disclosure statements.

[Note: Other ASIC guidance may be relevant to the commissioning and preparation of expert reports in particular industry sectors. For example, we have recently consulted on disclosure requirements for agribusiness managed investment schemes and infrastructure entities \(including the use of specialist reports by such schemes and entities\): see Consultation Paper 133 \*Agribusiness managed investment schemes: Improving disclosure for retail investors\* \(CP 133\) and Consultation Paper 134 \*Infrastructure entities: Improving disclosure for retail investors\* \(CP 134\).](#)

- RG 112.2 We consider that security holders regard an expert report as being prepared by an independent expert irrespective of whether the report has been prepared voluntarily or because it is required under statute.
- RG 112.3 This approach is consistent with the obligations on the holder of an Australian financial services licence (AFS licensee) to manage conflicts of interest. An AFS licensee's obligation to manage conflicts of interest applies to all of its activities as an AFS licensee and, as such, an expert who holds an AFS licence needs to manage conflicts of interest in respect of all expert reports it prepares.
- RG 112.4 This guide does not apply to independent or investigating accountant reports.

## Underlying principles

- RG 112.5 An expert report that is biased frustrates rather than assists informed decision-making. Security holders will assume that an expert report is an independent opinion and will be misled if the opinion is not.
- RG 112.6 Brooking J described the role of an expert in *Phosphate Co-operative v Shears (No 3)* (1988) 14 ACLR 323 (*Pivot*) at 339 in the following terms:
- Those who prepare experts' reports in company cases carry a heavy moral responsibility, whatever their legal duties may be. These reports are either required by the [Corporations Act] or provided by way of analogy with those requirements. In either case, they are supposed to be for the protection of individuals who are being invited to enter into some kind of transaction. Unless high [independence] standards are observed by those who prepare these reports, there is a danger that systems established for the protection of the investing public will, in fact, operate to their detriment through reliance on these reports and on the reputations of those who furnish them. In lending his name, the expert will often, as in this case, be lending a name to conjure with ... The expert's integrity and freedom from baneful influences are essential.
- RG 112.7 The Corporations Act indicates the need for an expert to be independent:
- (a) an expert must not be associated with certain interested parties, and must disclose certain interests and relationships, when preparing reports required by the Corporations Act for:
    - (i) a takeover bid under Ch 6: s648A;
    - (ii) a scheme of arrangement: reg 5.1.01 and sch 8, cls 8303 and 8306 of the Corporations Regulations 2001-~~(Ch)~~ (Corporations Regulations); and
    - (iii) a compulsory acquisition or buy-out under Ch 6A: s667B; and
  - (b) as an AFS licensee, an expert needs to establish and maintain systems to comply with its obligations to manage conflicts of interest.

## B Expert needs to be independent

### Key points

An expert should be, and should appear to be, independent: see RG 112.8–RG 112.15.

An expert should give an opinion that is genuinely its own opinion: see RG 112.16–RG 112.20.

### Independence

- RG 112.8 The Corporations Act contains indicators that an expert must be, and must appear to be, independent in the provisions requiring an expert report for certain takeover bids, schemes of arrangement, for any compulsory acquisition and in the AFS licensee conflicts management provisions.
- RG 112.9 The need for an expert to be, and to appear to be, independent is also indicated in case law establishing that the independence of an expert is critical for the protection of security holders. Mullighan J observed in *Duke Group v Pilmer* (1998) 27 ACSR 1 at 268:
- It may be seen that a true state of independence on the part of the expert is crucial to the efficacy of the [takeover] process and for the protection of the public generally and the company and its members in particular.
- RG 112.10 We will consider regulatory action if we have concerns about the independence of an expert: see Regulatory Guide 111 *Content of expert reports* (RG 111) at RG 111.124–RG 111.126.

Note: In addition to the term ‘independence’, language also used by the courts, our policies and commentators include: ‘impartial judgment’; ‘disinterested’; ‘objective’; ‘unbiased’; ‘genuine expression of opinion’; ‘integrity’ and, negatively: ‘conflict of interest’; ‘compromised’; ‘collusion’ and ‘acting in a partisan capacity’.

### AFS licensee obligations to manage conflicts

- RG 112.11 An expert report typically includes a statement of opinion or recommendation intended to influence investors in making a decision on a financial product: s766B(1). This means the expert report usually constitutes financial product advice, triggering the need for an AFS licence: s766A and 911A(1). Accordingly, in most cases, an expert who prepares an independent expert report that will be made available to retail investors will hold an AFS licence.

- RG 112.12 Under s912A(1)(aa), an AFS licensee must:
- have in place adequate arrangements for the management of conflicts of interest that may arise wholly, or partially, in relation to activities undertaken ... in the provision of financial services as part of the financial services business of the licensee or the representative ...
- RG 112.13 This conflicts management obligation applies irrespective of:
- (a) whether the expert states that it is independent of the commissioning party;
  - (b) any requirement that the expert not be an associate of the commissioning party or any other interested party to a transaction (e.g. s648A); or
  - (c) whether the expert report has been prepared to meet a statutory obligation.
- RG 112.14 Whether an expert's conflicts management arrangements (i.e. measures, processes and procedures) are adequate will depend on the nature, scale and complexity of the expert's business and the circumstances of the expert's engagement. The expert should document its conflicts management policies and procedures. The expert should keep records demonstrating how it has complied with those procedures. General guidance on these obligations is provided in Regulatory Guide 181 *Licensing: Managing conflicts of interest* (RG 181) at RG 181.10–RG 181.11.
- RG 112.15 Expert reports are exempt from the licensing regime (reg 7.6.01(u)) when the advice is an opinion on matters other than financial products (e.g. a geologist report) and:
- (a) it does not include advice on a financial product;
  - (b) the document includes a statement that the person is not operating under an AFS licence when giving the advice; and
  - (c) the expert discloses remuneration, interests and relationships.

## Genuine opinion

- RG 112.16 The courts have required the opinion of an expert to be genuine and a product of the expert's professional judgment. An expert's opinion that is tailored to support the views of the commissioning party or any other interested party is not a genuine opinion. It may also be misleading or deceptive.
- RG 112.17 A court found that a commissioning party's active role in shaping an expert report meant that the expert report was not the product of 'an exercise of judgment' by the expert 'uninfluenced by pressure brought to bear by or on behalf of [the commissioning party]' and was not 'a genuine expression of opinion ... but was the result of an exercise carried out for the purpose of arriving at a desired result': *Pivot* at 340 and 342 per Brooking J.

RG 112.18 An expert is subject to statutory obligations to avoid making misleading or deceptive statements and engaging in misleading or deceptive conduct.

Note: See, for example, s412(8), 670A(1)(h), 1041E, 1041F and 1041H and s12DA of the *Australian Securities and Investments Act 2001* ~~(CA)~~ (ASIC Act).

RG 112.19 An expert has been found to have engaged in misleading or deceptive conduct when the expert did not hold the opinions expressed in the expert report: *MGICA v Kenny & Good* (1996) 140 ALR 313 at 356–357 (a case involving a property valuation).

RG 112.20 Similarly in *Reiffel v ACN 075 839 226* (2003) 45 ACSR 67 at 92–93, the court held that the expert report was misleading and deceptive in circumstances when ‘there was no reasonable basis for the [expert’s] statement in the report’ and the expert ‘did not hold the opinion it expressed’. The court held that the expert should have disclosed that it disagreed with the methodology used by a promoter in its forecasts and disclosed the methodology that the expert in fact used.



## C Relationship between the expert and the commissioning party

### Key points

An expert should identify relationships and interests that may affect, or may be perceived to affect, the expert's ability to prepare an independent report: see RG 112.21–RG 112.24.

The expert should then consider whether, on the basis of that relationship or interest:

- it should decline the engagement (see RG 112.25–RG 112.27); or
- the relationship or interest can be adequately dealt with by way of disclosure in the expert report (see RG 112.28–RG 112.37).

The expert may also need to take other actions to manage a conflict of interest: see RG 112.38.

[Before engaging an expert, a commissioning party should be satisfied that the expert is independent and has sufficient expertise or resources to provide a thorough report: see RG 112.39–RG 112.41.](#)

Note: A reference to expert in this guide is to the person or entity that issues the report. In most cases, this will be a corporate entity holding an AFS licence, even though a senior director or employee may sign the report in the name of the corporate entity and be principally responsible for preparing the report.

### Identifying relationships

- RG 112.21 Previous and existing relationships may threaten, or appear to threaten, the independence of an expert. The objectivity of an expert may also be compromised, or called into question, if the expert has an interest in the outcome of the transaction that is the subject of its report.
- RG 112.22 The closer the relationship between the expert and a commissioning party or any other interested party, the greater the onus on the expert to demonstrate the absence of bias.
- RG 112.23 In identifying relationships and interests that may affect, or may be perceived to affect, the expert's ability to prepare an independent report, the expert should not only identify relationships with, and interests of, the expert but also of:
- (a) the expert's associates;
  - (b) those directors and senior employees who are principally responsible for preparing and issuing the expert report; and
  - (c) the spouse, children and associates of the directors and senior employees who are principally responsible for preparing and issuing the expert report.

- RG 112.24 The need to undertake this identification process also arises from the obligation to manage conflicts of interest if the expert is an AFS licensee.

## Declining the engagement

- RG 112.25 An expert should seriously consider declining an engagement when:
- (a) a person to be involved in preparing the expert report is an officer of the commissioning party or an interested party;
  - (b) the expert, a director or a senior employee who is involved in preparing the expert report has a substantial interest in or is a substantial creditor of the commissioning party or has other material financial interests in the relevant transaction;
  - (c) the expert has participated in strategic planning work for the commissioning party as a lawyer, financial consultant, tax adviser or accountant, whether in connection with the relevant transaction or generally (e.g. advising on possible takeovers or takeover defences); or
  - (d) the expert has acted as a lawyer, financial consultant, tax adviser or accountant to the commissioning party (other than providing professional services strictly for compliance purposes rather than strategic or operational decisions or planning).
- RG 112.26 The Corporations Act specifically states that an expert must decline an engagement for the preparation of an expert report in each of the following circumstances:
- (a) when the report is to be cited or included in a target statement if the expert is an ‘associate’ (as defined in s12) of the bidder or the target and the bidder has 30% or more of the voting power in the target entity or there are common directors of the target and the bidder (s640 and 648A(2));
  - (b) when the report is to be cited or included in a bidder’s statement if the expert is an ‘associate’ (as defined in s12) of the bidder or the target and the consideration for a pre-bid stake acquired in a target was unquoted securities (s636(1)(h)(iii), 636(2) and 648A(2));
  - (c) when the report is to be cited or included in the explanatory statement for a scheme of arrangement if the expert is an ‘associate’ (as defined in s12) of the parties to the scheme if the other party to a reconstruction in a scheme of arrangement has at least 30% of the voting shares of the scheme company or there are common directors (reg 5.1.01(b) and sch 8, cls 8303 and 8306 of the Corporations Regulations); and
  - (d) if the expert is an ‘associate’ (as defined in s12) of the person issuing a compulsory acquisition or buy-out notice (s663B, 664C, 665B and 667B).

- RG 112.27 An expert's AFS licensee obligations to manage conflicts of interest may oblige an expert to decline engagements in some circumstances. Licensee experts may be offered an engagement in which relationships and interests pose such a serious risk of conflict of interest that the threat to the expert's independence cannot be adequately managed through disclosure or internal controls. The only way an expert can adequately manage these threats is to avoid them and the expert's conflicts management policies and procedures should give specific guidance on circumstances when it should decline engagements: see RG 181.42–RG 181.43 and RG 181.60.

## Disclosing relationships and interests

### Requirement

- RG 112.28 As security holders rely on an expert report, they should be clearly informed about any relationships or interests (including financial or other interests) that could reasonably be regarded as relevant to the independence of the expert. This requirement arises from the Corporations Act and case law: see *ANZ Nominees v Wormald* (1988) 13 ACLR 698 at 707.
- RG 112.29 Disclosure of relationships or interests is required under the Corporations Act for an expert report when the report is required to be included in:
- (a) a target statement, when the bidder has 30% or more of the voting power in the target entity or there are common directors of the target and the bidder (s648A(3));
  - (b) a bidder's statement, when the consideration for a pre-bid stake acquired in a target is unquoted securities (s648A(3)); and
  - (c) a compulsory acquisition or buy-out notice (s667B(2)).
- RG 112.30 Similarly, as an AFS licensee, an expert needs to make appropriate disclosure of conflicts of interest to commissioning parties and to those relying on the report as part of the conflicts management obligation: see RG 181.49–RG 181.63.

### Content of disclosure

- RG 112.31 An expert should prominently disclose in the report:
- (a) the business or professional relationships with a commissioning party or any other interested party;
  - (b) any financial or other interest that could reasonably be regarded as capable of affecting the expert's ability to give an unbiased opinion on the matter being reported on; and

- (c) any fee or benefit (whether direct or indirect) to be received in connection with the report (s648A(3) and 667B(2)).

~~RG 112.32~~ RG 112.32 If an expert has, within the previous two years, valued an asset representing at least 30% (by value) of the assets that it has been engaged to value for the commissioning party, this should also be prominently disclosed in the report.

~~RG 112.32~~ RG 112.33 These disclosures should be made in all expert reports irrespective of whether the report is required to be prepared by the Corporations Act or is voluntarily commissioned and supplied to security holders.

~~RG 112.33~~ RG 112.34 These disclosures should relate to relationships or interests existing at the time of preparation of the report or existing in the previous two years. This two-year period is a minimum period for disclosure and earlier relationships might be so significant that they warrant disclosure as well.

Note: In *Duke Group v Pilmer*, Mullighan J referred to this benchmark with approval (at 268).

~~RG 112.34~~ RG 112.35 Disclosures should be timely, prominent, specific and meaningful. An expert should not use 'boilerplate' disclosures (e.g. that the expert has been paid 'a normal professional rate'). An actual amount should be shown for fees paid to an expert for the report.

~~RG 112.35~~ RG 112.36 When an expert report is cited or included in a bidder's statement in which any securities in the bidder (or a person who controls the bidder) are offered as consideration under the bid, these disclosures must also meet the specific disclosure obligations that apply to prospectuses under s711(2)–(4), including:

- (a) any interests that the expert has in the bidder; and
- (b) any fees or benefits given or agreed for the expert's services (s636(1)(g)).

~~RG 112.36~~ RG 112.37 As an expert report will usually constitute financial services advice, an expert will need to give retail investors a Financial Services Guide (FSG). We have given relief to allow an expert to include a FSG as a separate and clearly identifiable part of an expert report: see Class Order [CO 04/1572] *Secondary Services: Financial Services Guide relief for experts*. In view of this relief, we consider that an expert should include all of its disclosure of interests and benefits, whether flowing from the FSG requirements, conflicts management, s648A or case law, in the FSG rather than duplicating that disclosure in another part of the expert report.

## Other measures

~~RG 112.37~~ RG 112.38 In addition to disclosing any conflict of interest, an expert will need to consider whether other measures to properly manage the conflict of interest are appropriate (e.g. implementing information barriers): see RG 181.35–RG 181.37.

## Commissioning an expert

RG 112.39 In commissioning an expert, a commissioning party should consider whether the expert is independent and whether the expert has sufficient expertise and resources to give a thorough opinion on the proposed transaction. The quality of an expert report may be affected if this is not the case. If an expert considers that it is not independent or does not have sufficient expertise or resources to give a thorough opinion, it should decline the engagement.

RG 112.40 In selecting an appropriate expert, we consider that relevant factors are likely to include:

- (a) whether the expert has adequate resources (which may include access to appropriate third party specialists) to perform the necessary work;
- (b) the qualifications of the expert and whether the expert has the requisite level of technical expertise (including whether the expert meets the requirements of any relevant industry codes);
- (c) the experience of the expert. For example, a commissioning party may ask what comparable transactions the expert has given an opinion on and whether that experience is relevant to the current transaction;
- (d) whether the expert can meet the timeframe required for the report to be produced; and
- (e) whether there are any independence issues.

RG 112.41 While a commissioning party should satisfy itself that an expert is competent, it should ensure that any pre-engagement discussions do not compromise the expert's independence. For example, these discussions should not deal with how the expert proposes to evaluate the transaction or the merits of the transaction: see RG 112.46–RG 112.48.

## D Expert's conduct in preparing its report

### Key points

An expert should:

- obtain written terms of engagement from the commissioning party before commencing work;
- take care to avoid any communication with the commissioning party or any other interested party that may undermine, or appear to undermine, independence; and
- consent to the use or incorporation of its report.

Commissioning parties should be careful not to release the conclusions of an expert report in advance of the final report.

## Interactions with commissioning party

### Terms of engagement

~~RG 112.38~~RG 112.42 Before commencing work, an expert should obtain written terms of engagement from the commissioning party that:

- (a) set out the scope and purpose of the report;
- (b) set out the facts of the proposal and relevant data;
- (c) recognise the expert's right to refuse to give an opinion or report at all if it is not given the information and explanations it requires to prepare the report;
- (d) give the expert the same access to the commissioning party's records as the auditor of the commissioning party; and
- (e) set out the fee.

### Approval of appointment

~~RG 112.39~~RG 112.43 It is possible that some directors of a commissioning party may have a conflict of interest in the proposed transaction, such as cross-directorships held in the target and the bidder. In these circumstances, the expert and commissioning party should ensure that the directors without a conflict select and engage the expert.

RG 112.44 The commissioning party should ensure that the method by which an expert is appointed, and the scope of its engagement, is consistent with the concepts of independence and perceived independence of the expert. For example, it

may be appropriate to have a non-executive director oversee the appointment process if management is likely to be perceived to have a strong interest in the outcome of the expert report.

### Expert's fee

~~RG 112.40~~ RG 112.45 We will consider that an expert is not independent if the amount it is to receive for the expert report depends in any way on the outcome of the transaction to which the report relates. This is consistent with the requirement that a person who provides financial services must not hold itself out as 'independent', 'impartial' or 'unbiased' if it is paid success fees or has a conflict of interest arising from a relationship with an issuer of financial products that might reasonably be expected to influence the report: s923A.

### Manner of communication

~~RG 112.41~~ RG 112.46 Ensuring security holders receive an objective expression of opinion in an expert report involves more than identifying and dealing with previous or existing relationships or interests. An expert's objectivity, or the appearance of objectivity, may be undermined by the interactions between the expert and the commissioning and other interested parties.

~~RG 112.42~~ RG 112.47 We are likely to view the following interactions as indicators of a lack of independence:

- (a) the commissioning party having rejected another expert after the expert disclosed its likely approach to evaluating the proposal;
- (b) an expert attending discussions on the development of the transaction, the merits of the transaction or on strategies to be adopted by the commissioning party;
- (c) an expert taking instructions from, or holding discussions with, a commissioning party, its advisers or any interested party on the choice of methodologies for the report or evaluation of the transaction (including the underlying assumptions or reasoning), although the expert may interrogate those parties for the purpose of the expert's own analysis;
- (d) an expert accepting from a commissioning party, its advisers or any interested party their analysis of the transaction, although the expert may interrogate those parties for the purpose of the expert's own analysis;
- (e) the expert discussing preliminary views or findings with the commissioning party or any other interested party;
- (f) the expert entering into a success fee arrangement with the commissioning party or any other interested party;

- (g) the expert discussing future business relationships with the commissioning party or any other interested party before finalising the report. This includes refraining from cross-selling other services of the expert; and
- (h) the expert changing its opinion at the suggestion of the commissioning party or any other interested party without adequate explanation: see RG 112.56–RG 112.57.

~~RG 112.43~~RG 112.48 We expect that an expert who is an AFS licensee will include in its internal policies and procedures guidelines to address:

- (a) communications and interactions with the commissioning party and any other interested party during the commissioning of the expert and the preparation of the report;
- (b) remuneration arrangements; and
- (c) supervision of the preparation of the report.

## Preparing the report

### Access to information

~~RG 112.44~~RG 112.49 The expert, not the commissioning party, should determine what information will be required for the report. The commissioning party should give the expert all the information it is aware of about the subject of the expert report, in sufficient detail to enable the expert to determine its relevance.

~~RG 112.45~~RG 112.50 If the expert is not given access to the records it requires, or is given an unduly short time to complete the report (relative to any applicable statutory time constraints), it should consider refusing to prepare a report at all. An expert should not prepare an unsatisfactory report and attempt to deal with deficiencies in the report by disclaiming responsibility.

### Communication

~~RG 112.46~~RG 112.51 An expert and its commissioning party may communicate and meet with each other during the preparation of the expert report for the expert to:

- (a) discuss the progress of the report;
- (b) gain access to information;
- (c) ascertain matters of fact or to correct factual errors: *Re Matine* (1998) 28 ACSR 268 at 288; and
- (d) interrogate the commissioning party or another interested party for the purposes of its own analysis.



[RG 112.47](#)[RG 112.52](#) To help maintain independence and negate any inference of bias, we consider that an expert should direct and lead all meetings and discussions with the commissioning party, its advisers and any other interested party. The expert should keep appropriate file notes of discussions and retain copies of documents worked on in discussions with the commissioning party, its advisers and any other interested party.

[RG 112.48](#)[RG 112.53](#) Brooking J in *Pivot* at 339 summarised this issue in the following terms:

The guiding principle must be that care should be taken to avoid any communication which may undermine, or appear to undermine, the independence of the expert.

### Drafts of reports

[RG 112.49](#)[RG 112.54](#) An expert may give draft copies of parts of its report to a commissioning party or its advisers for factual checking before delivery of a full draft copy of the report. These early drafts should not contain the expert's analysis of the transaction, the merits of a transaction or the methodologies employed: *Pivot* at 339.

[RG 112.50](#)[RG 112.55](#) The expert should only provide a full draft copy of the report to the commissioning party for factual checking when the expert is reasonably assured that the conclusions in the report are unlikely to change.

[RG 112.51](#)[RG 112.56](#) If a commissioning party or an adviser disagrees with the expert's analysis in a draft of the expert report, the report should only be altered if the expert is persuaded that all or part of the expert's assessment is based on an error of fact. We would expect an expert, in this situation, to independently reassess the whole or relevant part of the report based on its view of the revised facts.

[RG 112.52](#)[RG 112.57](#) After a full draft copy of an expert report has been provided to a commissioning party or its advisers, any alteration of the report made at the suggestion of the commissioning party or its advisers which affects an expert's analysis of the transaction or the expert's conclusions, should be clearly and prominently disclosed in the report. This disclosure should include an explanation of the changes, the reasons why the expert considered the changes appropriate and the significance of the changes to the expert's opinion.

[RG 112.53](#)[RG 112.58](#) Minor factual corrections made at the suggestion of the commissioning party or its advisers that are immaterial to an expert's analysis, conclusions or opinion need not be disclosed in the report.

## Use and distribution

~~RG 112.54~~RG 112.59 If a party commissions two or more reports, a copy of each report should be sent to security holders. This should be done regardless of whether more than one report is prepared by the same expert or by different experts: *Pivot* at 339. It should also be done regardless of whether the commissioning party is obliged to do so under s648A(1).

~~RG 112.55~~RG 112.60 An expert should deliver its final, signed report to the commissioning party even if the commissioning party requests otherwise (unless the transaction is discontinued or varied substantially).

~~RG 112.56~~RG 112.61 The directors of a commissioning party should not adopt or recommend that security holders accept the findings of an expert report without critically analysing the report. The directors should satisfy themselves that the information relied on in the report is accurate and that the report has not omitted material information known to the directors but not given to the expert.

## Release of conclusions of expert reports

RG 112.62 An expert report needs to contain sufficient information to assist security holders to make a decision, including providing details of the methodologies and material assumptions on which the report is based, together with any qualifications: see RG 111.62–RG 111.75. Moreover, the directors of a commissioning party need to ensure that an expert report is not used or referred to in a way that may be misleading or deceptive.

RG 112.63 If a commissioning party releases the conclusions of an expert report in advance of the final report, this is likely to be misleading or deceptive, particularly if the final report contains any ‘surprises’ for a person who has only read the conclusions. Releasing conclusions without providing relevant supporting information may cause confusion or uncertainty since security holders and the market will not be able to determine whether those conclusions are reasonable.

Note: In *Re Origin Energy Limited 02* [2008] ATP 23, the Takeovers Panel considered that it was potentially misleading to quote the conclusions of a technical expert’s report in a target’s statement without giving shareholders a copy of the report or the underlying assumptions and qualifications.

RG 112.64 Consequently, a commissioning party that releases the conclusions of an expert report in advance of the final report risks regulatory action for contravention of the misleading or deceptive conduct provisions or other regulatory action. For example, if a report is provided in relation to a bid, the commissioning party risks an application by us, or another party, to the Takeovers Panel for a declaration of unacceptable circumstances.

RG 112.65 There may be limited situations in which a commissioning party's continuous disclosure obligations will require disclosure of the conclusions of an expert report in advance of the final report (e.g. if confidentiality has been lost before the final report is ready for release to the market). Commissioning parties and experts should put in place processes that minimise the risk that preliminary disclosure will be required before the report has been finalised. If preliminary disclosure is required, commissioning parties should ensure that this is done in a way that is not misleading or confusing (e.g. by highlighting the limitations of the preliminary disclosure and providing all available material information about the report).

### **Consent of expert**

~~RG 112.57~~RG 112.66 An expert report may only be incorporated or referred to in a bidder's statement or target statement if the expert has consented to the use of the report in the form and context in which it appears: s636(3) and 638(5). Before consenting, the expert should consider whether the report has been accurately reproduced and used for the purpose for which it was commissioned. The expert should also consider the appropriateness, or otherwise, of express or implied representations about its report, the conclusions or recommendations: see Regulatory Guide 55 *Prospectus and PDS: Consent to quote* (RG 55), which also applies to the consent obligations in s636(3) and 638(5).

## E Use of specialists

### Key points

If an expert does not have the necessary specialist expertise on a matter that must be determined for the purposes of the report, it should retain an appropriate specialist for that matter who is independent of the commissioning party: see RG 112.67–RG 112.70.

The specialist should report to the expert rather than the commissioning party: see RG 112.71–RG 112.72.

The expert should ensure that the specialist has consented to the use of its report: see RG 112.73–RG 112.77.

### Engagement of specialists

~~RG 112.58~~RG 112.67 It is the expert's responsibility to:

- (a) determine that a specialist's assistance is required on a matter that must be determined for the purposes of the report;
- (b) select the specialist and ensure that the specialist is competent in the field;
- (c) negotiate the scope and purpose of the specialist's work and ensure that this is clearly documented in an agreement (though the agreement may be with the commissioning party or the expert); and
- (d) be satisfied that the specialist is independent of, and is perceived to be independent of, the commissioning party and any other interested party.

~~RG 112.59~~RG 112.68 We consider best practice would be for the expert to pay the specialist its fees and recover those fees from the commissioning party.

~~RG 112.60~~RG 112.69 We would expect a specialist report to be specifically commissioned and prepared for the transaction the subject of the expert report. We would also expect the expert to make it clear to the specialist that the report is being commissioned for inclusion in the expert report. If the specialist report is not prepared specifically for the current transaction, this should be clearly explained to security holders. The Panel in *Re Great Mines Limited* [2004] ATP 01 expressed the disclosure requirement in the following terms (at [56]):

Wherever a report is re-used in this way, however, shareholders should be advised of the purpose for which the report was prepared. It would be inappropriate to re-use a report in this way to satisfy a requirement for an independent experts report and in general, it would be misleading to describe a report re-used in this way as independent.

[RG 112.61](#)[RG 112.70](#) While these comments were made in the context of an independent expert report, we consider they are equally applicable to the use of a specialist report.

## Review of specialist report

[RG 112.62](#)[RG 112.71](#) The expert should:

- (a) critically review the specialist report, particularly to consider whether the specialist has used assumptions and methodologies which appear to be reasonable and has drawn on source data which appears to be appropriate in the circumstances;
- (b) have reasonable grounds for believing the specialist report is not false or misleading;
- (c) ensure the specialist signs its report and consents to its use in the form and context in which it will be published; and
- (d) ensure that the specialist report is used in a way that will not be misleading or deceptive.

[RG 112.63](#)[RG 112.72](#) A specialist report commissioned by the expert should be dated close enough to the date of the expert report to ensure that assumptions applied have not been overtaken by time or events.

## Use of specialist report

[RG 112.64](#)[RG 112.73](#) The expert should ensure that the specialist consents to the use of its report in the form and context in which it will be published. If a specialist does not take responsibility for, or authorise the use of, its report and the expert considers that the material the subject of the report needs to be included in the expert report, the expert must accept entire responsibility for the statements as the expert's own and, as such, must have reasonable grounds for believing the statements not to be misleading or deceptive. This is consistent with our approach to directors assuming responsibility for statements in a prospectus or PDS that are not attributed to another person: see RG 55.11–RG 55.12.

[RG 112.65](#)[RG 112.74](#) The expert should exercise its judgment to determine whether to include the specialist report in full or include a concise or short form version or cite or extract the specialist report.

[RG 112.66](#)[RG 112.75](#) We encourage an expert to consider whether it is appropriate to have the specialist prepare a concise or short form specialist report for inclusion in the expert report with a longer specialist report available on request free of charge or accessible online.

~~RG 112.67~~RG 112.76 An expert should only quote or cite the specialist's work in a way that is fair and representative. Otherwise the expert risks misleading security holders. If the full specialist report contains any 'surprises' for the security holder who only reads the short form or concise report, this would indicate the short form specialist report was misleading.

~~RG 112.68~~RG 112.77 In the situation when an expert has obtained more than one specialist report on the same matter, we consider that security holders will not be given all material information if the expert merely supplies abridged results of those reports, and states, without comment or analysis, the result is the sum of the values given in each of the specialist reports.

## Key terms

Term	Meaning in this document
<a href="#">AFS licence</a>	<a href="#">An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries out a financial services business to provide financial services</a> <a href="#">Note: This is a definition contained in s761A of the Corporations Act.</a>
AFS licensee	The holder of an Australian financial services licence
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i> <del>(Cth)</del>
<a href="#">[CO 04/1572] (for example)</a>	An ASIC class order (in this example, numbered 04/1572)
Corporations Act	<del>The Corporations Act 2001, (Cth)</del> including regulations made for the purposes of the <del>ate Corporations</del> Act
<a href="#">expert</a>	<a href="#">The meaning given to that term in s9</a>
RG 181 <a href="#">(for example)</a>	An ASIC regulatory guide (in this example, numbered 181)
s648A (for example)	A section of the Corporations Act (in this example, numbered 648A), <a href="#">unless otherwise specified</a>
sch 4 (for example)	A schedule of the Corporations Act (in this example, numbered 4), <a href="#">unless otherwise specified</a>

## Related information

### Headnotes

experts, expert reports, independence, genuine opinion, relationships or interests, declining the engagement, disclosing relationships or interests, conduct of experts, use of specialists

### Regulatory guides

RG 55 *Disclosure documents and PDS: Consent to quote*

RG 111 *Content of expert reports*

RG 181 *Licensing: Managing conflicts of interest*

### Class orders

[\[CO 04/1572\]](#) *Secondary Services: Financial Services Guide relief for experts*

### Legislation

*Corporations Act 2001* ~~(Cth)~~, [Ch 2E](#), s12, 412(8), 636, 638, 640, 648A, 663B, 664C, 665B, 667B, 670A(1)(h), 711, 766A, 766B(1), 911A(1), 912A(1)(aa), 1041E, 1041F and 1041H

*Corporations Regulations 2001* ~~(Cth)~~, [regs 5.1.01](#), [and 7.6.01\(u\)](#); ~~and~~ [sch 8](#), [cls 8303](#) and [8306](#)

*Australian Securities and Investments Commission Act 2001* ~~(Cth)~~, s12DA

### Cases

*ANZ Nominees v Wormald* (1988) 13 ACLR 698

*Re AuIron Energy Limited* [2003] ATP 31

*Duke Group v Pilmer* (1998) 27 ACSR 1

*Re Great Mines Limited* [2004] ATP 01

*Re Matine* (1998) 28 ACSR 268

*MGICA v Kenny & Good* (1996) 140 ALR 313

[Re Origin Energy Limited 02 \[2008\] ATP 23](#)

*Phosphate Co-operative Co of Aust Ltd v Shears & Anor (No 3)* (1988) 14 ACLR 323

*Reiffel v ACN 075 839 226* (2003) 45 ACSR 67

### Consultation papers and reports

CP 62 *Better experts' reports*

[CP 133 \*Agribusiness managed investment schemes: Improving disclosure for retail investors\*](#)

[CP 134 \*Infrastructure entities: Improving disclosure for retail investors\*](#)