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## Expert Valuation Witnesses in Australia and the UK

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***Abstract :***

This paper examines the role of the expert witness in valuation disputes in Australia and compares the findings with previous work in the UK. In particular, it examines the organisation, training and performance of expert valuation witnesses in the context of valuation variation.

The expert witness system has come under close scrutiny in the UK in recent years, with concerns over the cost and performance of expert witnesses. In previous research in the UK, the authors found that expert valuation witnesses were often not objective in their evidence and some of their valuations in negligence cases varied significantly from other experts in the same case. These variations were often outside the 'margin of error'; a concept sometimes used to establish negligence in the UK.

This paper extends this research to Australian expert valuation witnesses and the findings are based upon a case analysis and a survey of expert witnesses across Australia. The survey used a similar questionnaire to that used in the UK and enabled comparisons of attitudes to be undertaken.

The research reported in this paper found that Australian practitioners were less aware of their duties when acting as an expert witness. They tolerated less variation in valuations but also appeared to deliver less variation in valuations in the cases analysed. This supports other evidence that UK valuation variation is wider than in other markets, such as Australia and the US. The research also found that the use of expert witnesses was similar in both countries, with the one expert for each party dominating the system. Australian experts appeared to have less training and guidance opportunities from professional bodies than in the UK, where there is a mandatory RICS practice statement, but their attitude to being required to train or even be accredited to undertake expert witness work was far more positive than in the UK.

The research has found evidence in both countries that expert witnesses continue to fit evidence and advocate for clients in spite of being very well aware of their responsibilities to the courts rather than their particular clients and, given this awareness, this is not likely to change significantly with improved training. However, perhaps the most interesting question raised by this and previous research is the different valuation variation in the different countries and whether this is inherent within the different valuation methods and processes.

**EXPERT VALUATION WITNESSES IN AUSTRALIA AND THE UK****1. Introduction**

During 1997, Crosby, Lavers and Murdoch undertook research into professional negligence actions against valuers in both the UK and Australia, with particular reference to the application of the “margin of error” concept in the courts (Crosby, Lavers and Murdoch, 1998a; 1998b). This research raised questions concerning the role of the expert witness in these cases and, during 1999, the research was expanded into an examination of the role, performance and training of expert valuation witnesses in the UK (Crosby, Lavers and Murdoch, 1999).

The expert witness research was timely, as it closely followed an examination by a committee, chaired by Lord Woolf, of expert witness practice in the UK (as part of a general review of the civil justice system). The Woolf Committee expressed concern at the cost of hearings where expert witnesses were involved and also concluded that, where experts were appointed by parties to the dispute, their objectivity was not always obvious.

The UK research was based upon two main analyses. The first was an analysis of survey data of the opinions of judges, arbitrators and independent experts and expert witnesses on the role of the expert valuation witness, including the role of the Royal Institution of Chartered Surveyors’ guidance note on acting as an expert witness (RICS, 1997). The second was an analysis of the evidence given by expert valuation witnesses within 40 professional negligence cases in the UK courts.

Given the similarity of the legal and institutional framework between the UK and Australia, this paper sets out to compare the findings of those UK analyses with similar data for Australia. To this end, a survey of expert witnesses in Australia has been carried out using a virtually identical survey questionnaire, and data has also been collected from court hearings regarding the valuations put forward by the expert witnesses.

There are a few problems with these comparisons. First, the volume of property and business is greater in the UK, so that, while around 40 negligence cases can be found in the UK, similar research revealed only 8 cases in Australia. The Australian cases have therefore been supplemented with data from the Australian Family Court. A number of these cases revolve around the family home, and there are reasons to believe that any variation found in valuations of residential property may be less than for valuations which are of, for example, commercial or recreational property or are appraisals of development opportunities.

Despite this, using statistical analysis of significant differences, comparisons of the survey results between the UK and Australia have been undertaken and these are supported by the analysis of differences in the valuations of expert witnesses within the cases.

This paper therefore examines the role of the expert witness in valuation disputes in Australia and compares the findings with previous work in the UK. In particular, it examines the organisation, training and performance of expert valuation witnesses in the context of valuation variation.

Section Two identifies the legal context underpinning the expert witness system. Section Three examines the criticisms of expert witnesses made by judges and others within the cases and the literature. Section Four looks at the empirical evidence from the cases and examines the performance of expert valuation witnesses within them. Section Five presents the findings of the Australian survey and Section Six compares these to the findings in the UK. Section Seven examines the implications of the findings and states the conclusions from the study.

## 2. The Legal Context

### 2.1 *The nature and importance of expert evidence*

This paper is concerned with the role of those who provide expert evidence to a court or other tribunal in the course of a legal dispute. Such evidence is necessary where a dispute involves specialist matters of which the judge may lack knowledge. The significance of expert evidence is that it may consist of the witness's *opinion*; it thus forms an exception to the general rule that a witness may give evidence only as to *fact*. The particular focus of this paper is on valuers who provide expert evidence on property values.

As a general principle, persons giving expert evidence must possess appropriate specialised qualifications or experience, and their expertise must form part of a body of knowledge or experience which is sufficiently organised or recognised to be accepted as reliable (ALRC 1999). However, in neither the UK nor Australia is it necessary for the expert witness to possess any formal professional or academic qualification – “expertise” is a question of fact. For example, both the Commonwealth and New South Wales Evidence Acts 1995 refer to “specialised knowledge based on the person's training, study or experience” (Section 79).

### 2.2 *Controls on expert evidence*

In both the UK and Australia, expert witnesses and expert evidence are subject to a range of controls, deriving from legislation, case law and the rules of particular professional bodies to which experts belong. Depending on their source, these controls may be different in scope. Thus, legislative rules such as the Civil Procedure Rules (UK) and the Federal Court Rules (Australia) apply only to cases tried in a court of law (though they cover not only an expert's appearance in court but also the preparation of evidence for potential court proceedings). The common law “duty to the court” described below has traditionally been expressed by judges in the context of court proceedings, although there seems no reason why it should not apply equally to proceedings in other tribunals. Significantly, the RICS Practice Statement on “Surveyors Acting as Expert Witnesses” specifically applies to all “judicial or quasi-judicial bodies” and defines these to include “Courts, Tribunals, Committees, Inspectors, Adjudicators, Arbitrators and Independent Experts” (RICS, 1997).

### 2.3 *The expert's duty – general*

Judges have stated on many occasions that an expert witness owes a duty to “the court” (as the embodiment of justice), and that this transcends any duty owed by the expert to the client. The best known description of this duty by an English court was supplied by Cresswell J in *The Ikarian Reefer* [1993] 2 Lloyd's Rep 68, where it was emphasised that the witness should always be independent, objective and unbiased, and that he or she should never assume the role of an advocate. This general requirement of impartiality has since been enshrined in legislation in both countries: in the UK Civil Procedure Rules; in Australia, in the Federal Court Practice Direction, Guidelines for Expert Witnesses in proceedings in the Federal Court of Australia and in Schedule K to the Supreme Court Rules in New South Wales.

The need for expert witnesses to be independent of their clients is also stressed by Codes of Practice and Guidance Notes issued by various professional bodies; in the UK these include the Law Society (1995) and the Academy of Experts (1995). In relation to valuers, the RICS Practice Statement (1997) is of particular interest. This provides that :

“The primary duty of the Surveyor is to the Judicial Body to whom his evidence is given ... The duty is to be truthful as to fact, honest as to opinion and complete as to coverage of relevant matters ... The Surveyor's evidence must be independent, objective and unbiased. In

particular, it must not be biased towards the party who is responsible for paying him. The evidence should be the same whoever is paying for it.”

The Australian Council of Professions, which includes among its members professional bodies representing accountants, architects, surveyors and engineers, has published guidance on the “Roles and Duties of an Expert Witness in Litigation” (ACP 1998). This says that the expert has a threefold duty. The expert's primary duty is to the court. There is a secondary duty “to the body of knowledge and understanding from which his or her expertise is drawn”. The expert's tertiary duty is to the party which has sought his or her advice.

The Australian Property Institute is in the process of developing a Guidance Note on Acting as an Advocate or Expert. The Australian and New Zealand Forensic Science Society has a Code of Ethics which 'makes very clear the neutral stance required of expert witnesses' (Freckelton and Selby).

Although the existence of the expert's “duty to the court” is widely acknowledged, it is worth pointing out that there is considerable doubt as to how it can be enforced. While experts who disobey the rules of their own professional body will of course risk disciplinary measures within that body, *legal* sanctions for lack of objectivity are more difficult to identify. In extreme cases, an expert witness could be prosecuted for perjury or held in contempt of court; however, in most situations the only likely sanction is that a court which has doubts as to the expert's impartiality will treat that expert's evidence as unreliable.

#### **2.4 The expert's duty – specific**

Major government reviews of the civil justice system have recently taken place in the UK and in Australia at both Federal and State levels. The committees undertaking these reviews have all expressed concerns about expert witnesses, and resulting amendments to the law have sought to address these concerns. A detailed comparison of these concerns, and of the way in which the various jurisdictions have sought to meet them, will be the subject of another forthcoming paper. For the moment it is sufficient to note that certain aspects of reform, aimed at reducing the possibility of witness bias, have been identified as desirable by almost every jurisdiction. These are:

- regulation of the form and content of experts' reports;
- judicial power to direct and control meetings of the opposing parties' expert witnesses; and
- increased use of single experts, appointed either by the court or by the agreement of the parties.

It should be pointed out that this last proposal, though strongly favoured by both the Woolf Committee (UK) and the Australian Law Reform Commission, met with extremely strong opposition from lawyers and other professionals, so much so that Woolf's proposals were substantially watered down in the resulting legislation. The earlier, UK-based, research work found that the vast majority of valuers who carried out expert witness work were in favour of the status quo (ie one expert witness for each of the opposing parties), and this view was also strongly held by lawyers interviewed for that research (Crosby, Lavers and Murdoch, 1999).

Matters on which there is less agreement across the various jurisdictions, but which have attracted support from at least some, include:

- removal of the privileged (ie exempt from disclosure) status of communications between expert witness and the client or the client's lawyers;
- use of innovative procedures, such as the giving of expert evidence in a panel format.

Interestingly, while law reform bodies have paid at least some attention to the *quality* of expert evidence, as opposed to its *objectivity*, neither the UK nor any Australian jurisdiction has yet attempted to introduce any system of formal qualification and accreditation for expert witnesses (such as exists in a number of European countries).

### 3. Criticisms of Expert Witnesses' Performance

#### 3.1 UK

The Woolf Committee, in its Interim Report on the UK Civil Justice system, noted that expert evidence was one of the two aspects of civil procedure which had caused most concern among those making submissions (the other was discovery) (Woolf, 1995). The Committee's summary of this concern (much of which was expressed by both lawyers and judges) was:

"The need to engage experts was a source of excessive expense, delay and, in some cases, increased complexity through the excessive or inappropriate use of experts. Concern was also expressed as to their failure to maintain their independence from the party by whom they had been instructed."

Criticisms of expert witnesses, on the ground of failing to maintain a proper degree of independence from their clients, can also be found in a number of court judgments. In *Abbey National Mortgages plc v Key Surveyors Nationwide Ltd* [1995] 2 EGLR 134, Sir Thomas Bingham MR said that: "For whatever reason, and whether consciously or unconsciously, the fact is that expert witnesses instructed on behalf of parties to litigation often tend, if called as witnesses at all, to espouse the cause of those instructing them to a greater or lesser extent, on occasion becoming more partisan than the parties." Whether or not his lordship was referring specifically to valuers is not clear (though the case itself was one of alleged negligence in mortgage valuations), but there can be no such doubts about the remarks of Wright J in *Arab Bank plc v John D Wood (Commercial) Ltd* [1998] EGCS 34:

"The court has not been assisted by the tendency which I detected in all the expert witnesses who gave evidence before me to take upon their own shoulders the mantle of advocacy and themselves to seek to persuade the court to a desired result rather than to offer dispassionate and disinterested assistance and advice to the court to enable it to arrive at a fair and balanced view of the conflicting contentions of the parties."

In the course of previous research, Crosby et al (1999) carried out a survey of persons who acted as arbitrators and/or independent experts in property disputes, in order to ascertain their opinion of valuers who appeared before them as expert witnesses. The results were not flattering to those valuers. Asked whether expert valuation witnesses actually believed the evidence which they put forward, about 55% of the respondents thought that this happened only "occasionally". Approximately 65% thought that expert witnesses "always" or "usually" fitted their evidence to their client's case and another 30% thought that this was done "occasionally". Finally, over 60% of the arbitrators and independent experts thought that expert witnesses "always" or "usually" advocated on behalf of their clients.

#### 3.2 Australia

Australian judges have also been concerned about the issue of bias. In *Vakauta v Kelly* (1989) 87 ALR 633, for example, Hunt J referred to three medical practitioners who appeared as expert witnesses as "that unholy trinity; the GIO's usual panel of doctors who think you can do a full week's work without any arms or legs; whose views are almost inevitably slanted in favour of the GIO by whom they have been retained, consciously or unconsciously". Somewhat ironically, the case went to the High Court on the issue of the judge's own bias.

In *Permanent Trustee Aust Ltd v Boulton* (1994) 33 NSWLR 735, Young J complimented an expert who “showed a refreshing attitude for any expert witness in that he refused to put his evidence any higher than a careful expert should”.

The Australian Institute of Judicial Administration published a report in 1999 entitled “Australian Judicial Perspectives on Expert Evidence: an Empirical Study” (Freckelton et al., 1999). The study, conducted by Dr Ian Freckelton and others, surveyed all 478 Australian judges. The judges rated bias as the most serious problem (para 4.9) with the failure to prove the bases of expert opinion as the next most serious. Nevertheless, the judges had quite a positive response to expert reports (para 4.11). The most persuasive factors when an expert was giving evidence were “clarity of expression and impartiality” (para 4.13).

The Australian Law Reform Commission, in both its report: “Managing justice” (ALRC 1999c) and its earlier Discussion paper 62 (ALRC 1999b), discussed the role of experts and the problems of the use of expert witnesses within the Australian court system. It echoed the Woolf Report:

“Some of the criticism of the present use of expert evidence is based on claims that the use of expert evidence is a source of unwarranted cost, delay and inconvenience in court and tribunal proceedings. Other mischiefs frequently associated with expert evidence include that:

- the court hears not the most expert opinions, but those most favourable to the respective parties and partisan experts who frequently appear for one side
- experts are paid for their services, and instructed by one party only; some bias is inevitable and corruption a greater possibility
- questioning by lawyers may lead to the presentation of an inaccurate picture, which will mislead the court and frustrate the expert
- where a substantial disagreement concerning a field of expertise arises, it is irrational to ask a judge to resolve it; the judge has no criteria by which to evaluate the opinions
- success may depend on the plausibility or self-confidence of the expert, rather than the expert's professional competence.”

The Commission endorsed the development of guidelines similar to that used in the Federal Court (Recommendation 64). The Commission also recommended the development of a generic template code of practice for expert witnesses (Recommendation 65).

The Western Australia Law Reform Commission's Review of the Criminal and Civil Justice System (WALRC 2000) made similar comments:

- The growth in use of expert evidence has reached the point where uncontrolled expert evidence has been described as one of the major costs in civil litigation [22.1]
- The lack of impartiality of expert witnesses is a major problem...Unlike other witnesses, experts are paid for their evidence. No matter how honest, experts tend to be aligned with their employer...[22.2]

The WALRC's recommendations include limiting the use of experts (Recommendations 238, 239 and 241) and requiring experts to consider the opposing expert's statement and to specify areas of agreement and disagreement (Recommendation 246).

#### 4. Evidence as to Performance of Valuers as Expert Witnesses

It is worth recalling that, as indicated earlier, the RICS view of the legal duty of an expert valuation witness is that: “The evidence should be the same whoever is paying for it.” This provides an interesting perspective on the previous research into valuation variation and the ‘margin of error’, which compared the retrospective valuations put forward by expert witnesses for the opposing parties in 40 UK professional negligence cases brought by mortgage lenders against valuers (Crosby et al., 1998a, 1998b). As shown in Table 4.1, these differed from each other on average by +22% to –22%. This variation made a striking contrast with the view routinely put forward by expert witnesses that the “margin of error” (ie the maximum permissible variation in non-negligent valuations) is rarely greater than 15%; indeed, no expert witness has argued for more than 20% in the UK.

**Table 4.1: Valuation Variation Between Expert Witnesses in UK Negligence Cases**

	All Valuations	Residual	Commercial	Residential
<b>Average</b>	<b>21.96</b>	<b>27.18</b>	<b>25.95</b>	<b>17.42</b>
<b>Standard Deviation</b>	<b>13.1</b>	<b>15.78</b>	<b>7.84</b>	<b>7.86</b>
<b>Maximum</b>	<b>68.29</b>	<b>45.95</b>	<b>37.34</b>	<b>36.67</b>
<b>Minimum</b>	<b>3.70</b>	<b>4.26</b>	<b>15.15</b>	<b>3.70</b>
<b>Count</b>	<b>40</b>	<b>8</b>	<b>8</b>	<b>18</b>

Source (Crosby, et al, 1998a; 1998b)

It would be instructive to compare the performance of UK valuation expert witnesses, as evidenced by the variations set out in Table 1, with that of their Australian counterparts. However, for reasons which are not clear, judgments in the vast majority of reported Australian cases involving allegedly negligent valuations do not reveal the retrospective valuations provided by the expert witnesses for the opposing parties. Nevertheless, this information has been found in 8 reported cases. This data has been supplemented by details of 19 valuations in 17 reported cases decided in the Australian Family Court, in which expert valuers instructed by husband and wife each submitted a valuation of matrimonial property. Eleven of these valuations were of the family home. The analysis of the data is set out in Table 4.2

**Table 4.2: Valuation Variation Between Expert Witnesses in Australia**

	UK Negligence cases	Australia All cases	Australia Negligence cases	Australia Marital Homes
<b>Number of cases</b>	40	27	8	11
<b>Average variation</b>	21.96	14.97%	15.61%	9.90%
<b>Standard deviation</b>	13.10	12.48%	15.78%	6.22%
<b>Maximum variation</b>	68.29	46.85%	46.85%	18.61%
<b>Minimum variation</b>	3.70	0.00%	2.19%	0.00%
<b>% less than +/-5%</b>	5.00%	14.81%	12.50%	18.18%
<b>% less than +/-10%</b>	17.50%	40.74%	50.00%	45.45%
<b>% less than +/-15%</b>	30.00%	62.96%	62.50%	72.73%
<b>% less than +/-20%</b>	55.00%	77.78%	75.00%	100.00%
<b>% less than +/-25%</b>	70.00%	81.48%	75.00%	100.00%

In the Australian negligence cases, the expert witnesses varied from each other by an average of 15.6%, around 6% less than their UK counterparts. This can be related to the Australian expert witness survey results, which showed a lesser tolerance for valuation variation by Australian

experts than their UK counterparts. Australian expert witnesses expect less variation and also deliver it in their valuations before the courts in negligence cases. However, as the dataset is so small, it would be premature to suggest that this is clear evidence of both expectation and delivery of lower valuation variation amongst expert witnesses in Australia than in the UK.

The small negligence data set has been combined with the set of matrimonial disputes within the Family Court. The average variation across all this data is 15%, slightly less than for the negligence cases alone. The average variation for the 11 marital home valuations is lower than the others, at only 9.9%.

Given the different nature of the UK and Australian datasets (the UK data is all negligence valuations and the negligence data in Australia is only 8 cases), it would be misleading to carry out any more detailed comparisons. However, residential valuations consistently show a reduced variation compared with other types. This is true in both datasets; in the UK data, the variation was only 17.5%, compared with the overall 22%. The hypothesis that residential valuations have less variation than other valuations warrants further testing.

There are indications that the UK has a greater variation than Australia. However, the UK cases did include about 20% of development valuations, which exhibited much higher than the overall variation, and the Australian dataset does not appear to have more than one development valuation within it. The highest variation in the Australian data appears in valuations of commercial and recreational property (but this observation relates to very few properties). However, in more general accuracy studies in the UK, US and Australia, the UK consistently exhibits greater variation (Crosby, 2000) and the weight of evidence is growing that there is something inherently different about the valuation process and methodology in the UK compared to the other two.

## 5. Surveys of Expert Valuation Witnesses (UK and Australia)

### 5.1. Destination and response

A postal survey of expert valuation witnesses was undertaken across Australia to identify how the expert witnesses viewed their task. The survey destinations were identified from API lists of expert witnesses. The total number of destinations was 169. The number of responses was 126 of which 112 were usable. The usable response rate was therefore 66% and the total response rate was 75%. Of the 14 responses not used, one response was too late for the analysis and the other 13 were for reasons that the respondent did not or no longer carried out this kind of work. The actual questionnaire is included in Appendix One with the raw responses indicated. The analysis was undertaken after a few very minor amendments had been made to the responses; for example, where respondents stated that they had not read any guidance but then proceeded to respond on the quality and usefulness of the guidance.

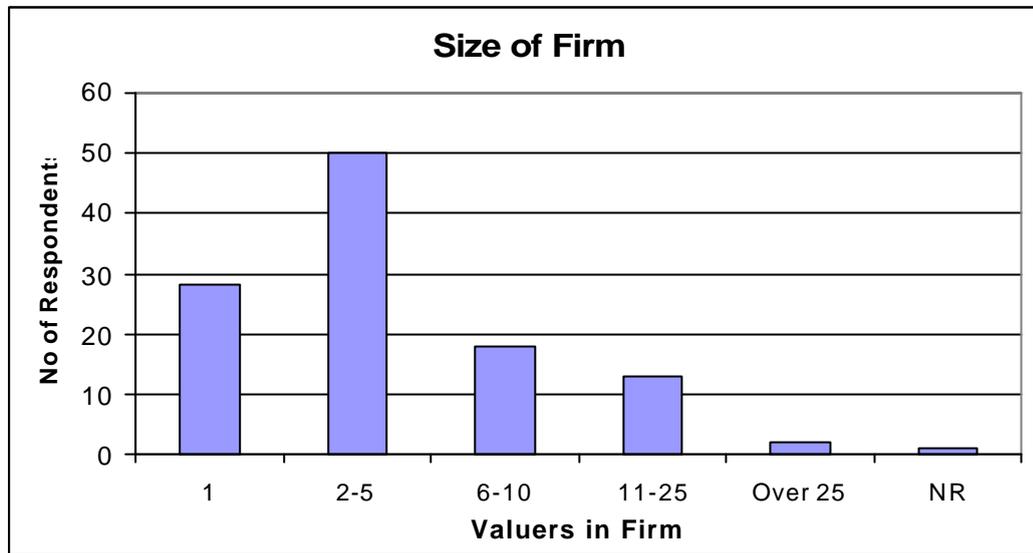
### 5.2 Details of the respondents

The response was from expert valuation witnesses spread all over Australia. Table 5.1 sets out the breakdown by State.

**Table 5.1 : Usable Response by State.**

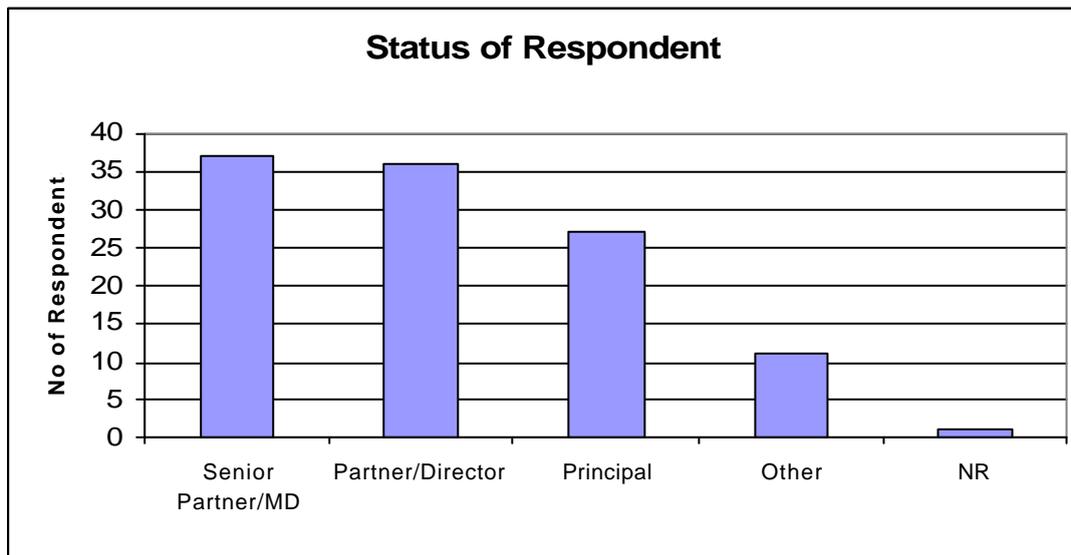
State	Number	State	Number
Australian Capital Territory	6	Victoria	13
New South Wales	28	Western Australia	39
Queensland	11	Tasmania	8
South Australia	6	Not known	1

The size of the firms measured by qualified professional staff is illustrated in Figure 5.1.



**Figure 5.1 : No. of Valuers in the Firm or Organisation**

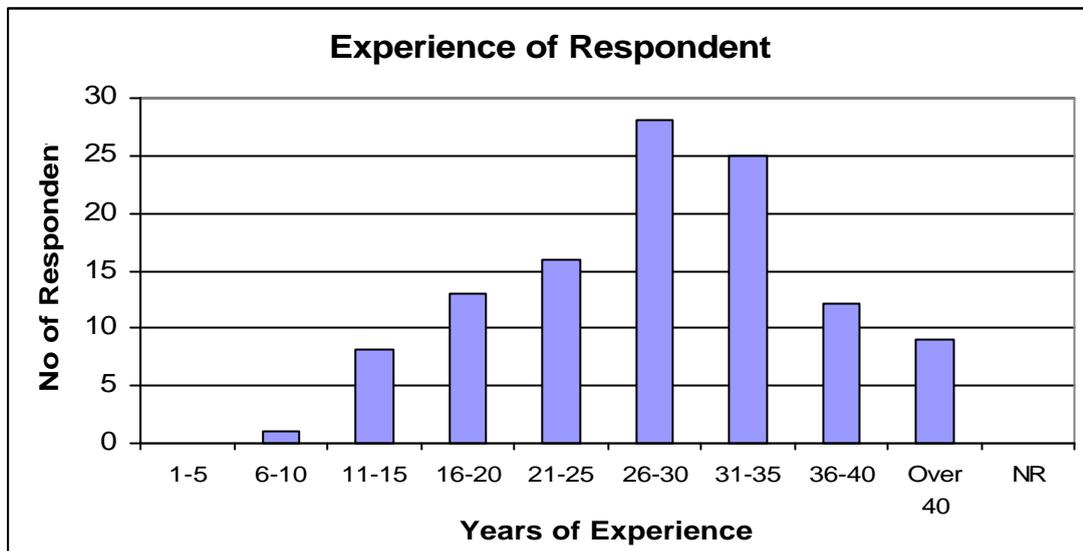
Around 75% of respondents worked in offices which included 5 or fewer qualified staff, with around 25% in sole partnerships/managerships. In addition, Figure 5.2 illustrates that the majority of respondents were senior within their organisation, with only eleven respondents (10%) who were neither senior partner/principal nor other partner/director.



**Figure 5.2 : Status of Respondents**

The major professional qualification held by respondents was membership of the Australian Property Institute. Around 95% held an API qualification and one-quarter of those held some form of dual qualification, mainly CPV.

The experience of respondents is illustrated in Figure 5.3. More than 40% of respondents had over 30 years' experience in the profession and another 50% had over 15 years' experience. Less than 10% had below 15 years' experience. Expert witness work appears to be undertaken by senior professionals.



*Figure 5.3 : Experience of Respondents*

The type of experience is set out in Table 5.2. It records the number and type of cases with which respondents had been involved in the last 5 years.

*Table 5.2 : Type of Expert Witness Work Undertaken*

<i>Type of CASE</i>	<i>Resp</i>	<i>cases</i>	<i>Type of CASE</i>	<i>Resp</i>	<i>cases</i>
<b>Professional liability case in Federal Court</b>	<b>21</b>	<b>41</b>	<b>Professional liability case in State Court</b>	<b>43</b>	<b>202</b>
<b>Land acquisition case in Federal Court</b>	<b>10</b>	<b>19</b>	<b>Land acquisition case in State Court</b>	<b>53</b>	<b>800</b>
<b>Property dispute in Family Court</b>	<b>58</b>	<b>989</b>	<b>Rating dispute in State Court</b>	<b>51</b>	<b>1206</b>
<b>Rental determination/review (commercial)</b>	<b>65</b>	<b>974</b>	<b>Rental determination/review (residential)</b>	<b>19</b>	<b>112</b>

The most widespread experience is in the commercial rent determination area, although rating work appears to account for the highest number of cases with which the expert witnesses had been involved. In addition, 65 respondents (58%) suggested other types of expert witness work they had undertaken.

The survey also sought information about certain procedural matters. Around 55% of respondents had appeared (legitimately) as an advocate in a dispute. In addition, 88 respondents (80%) had been in attendance at court while other expert witnesses gave evidence in the same court, and 37 respondents (33%) had given evidence as part of a panel of expert witnesses.

Overall, the respondents are experienced and senior members of the valuation profession, who appear to represent opinion taken from a wide range of backgrounds in terms of location, size of organisation and type of work.

### 5.3. Guidance and training of experts as valuation witnesses.

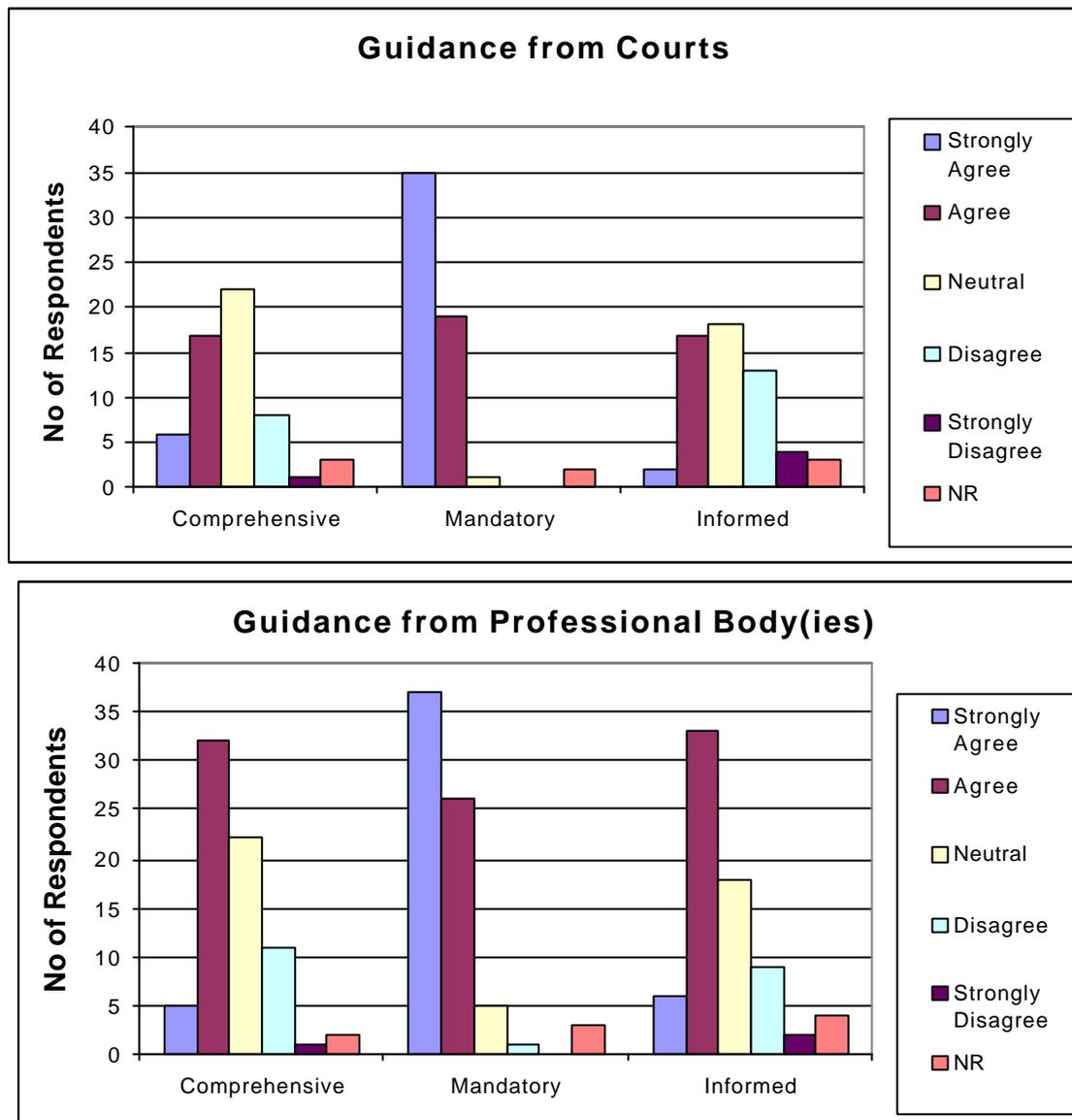
Only around 40% of expert witnesses had ever undertaken specific training for expert valuation witness work. Almost exactly one-half said they had read guidance from the court on acting as an expert witness, and 64% said they had read guidance from one or more professional institutions. However, it became clear from respondent comments on these questions that a significant number had confused court and professional guidance. In total, 90 respondents (80%) said they had read guidance from one or both sources.

The views of the expert witnesses on the guidance note are set out in Table 5.3 and illustrated in Figure 5.4.

**Table 5.3 : Expert Witness Opinion on Court /Professional Guidance**

	Strongly agree (5)		agree (4)		Neither agree or disagree (3)		disagree (2)		strongly disagree (1)	
	<i>C</i>	<i>P</i>	<i>C</i>	<i>P</i>	<i>C</i>	<i>P</i>	<i>C</i>	<i>P</i>	<i>C</i>	<i>P</i>
<b>The guidance from the court/professions is a comprehensive guide to acting as an expert witness</b>	6	5	17	32	22	22	8	11	1	0
<b>The guidance from the court /profession should be mandatory reading for any valuer acting as an expert witness</b>	35	37	19	26	1	5	0	1	0	0
<b>The guidance from the court /professions informed me of issues and/or responsibilities of which I was formerly unaware</b>	2	6	17	33	18	18	13	9	4	2

C = Court Guidance : P = Professional Guidance



**Figure 5.4 : Expert Witness Opinion on Guidance from Courts and Professional Bodies**

Of the 90 respondents who said that they had read guidance of one sort or another, 57 said they had read guidance from the court. Only 23 respondents (40%) agreed or strongly agreed that court guidance is comprehensive concerning acting as an expert witness, although this rose to 37 respondents out of 72 who said they had read professional guidance (51%). However, the number who thought that guidance should be mandatory reading for expert witnesses rose substantially, to 95% and 88% respectively. The number who felt that the guidance added to the respondent's knowledge fell to 33% for the court guidance and 54% for the professional guidance. It would appear that the guidance is not particularly well regarded by respondents, but they nevertheless feel that it should be read by expert witnesses, even though a significant number did not feel it added to their own knowledge.

Figure 5.5 illustrates the response of expert witnesses to the level of formal training they should be required to undertake. There is no doubt that the respondents felt that they should be advised to undertake formal training, with 80% agreeing and strongly agreeing. Support fell to 64% if that training were to be required rather than merely advised. The issue of specific professional accreditation of expert witnesses provoked a further fall in support, with only 42% agreeing or strongly agreeing and 32% disagreeing and strongly disagreeing.

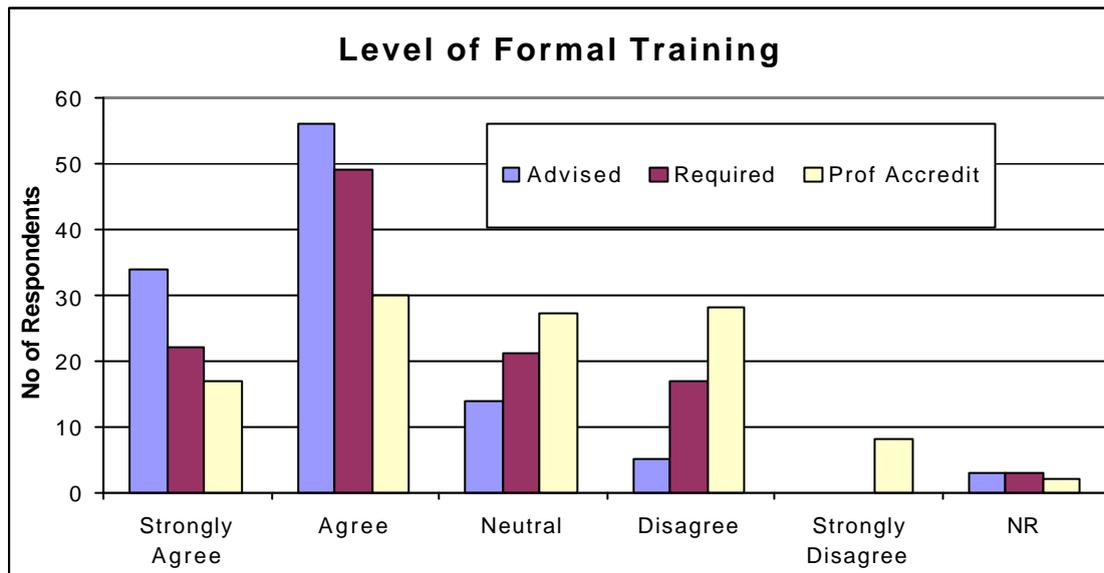


Figure 5.5 : Expert Witness Opinion on Formal Training and Accreditation

#### 5.4. Organisation of appointment of the expert witnesses.

The third section of the questionnaire addressed two main issues: how expert witnesses in courts and tribunals were and should be organised, and whether they carried out their task in accordance with their duty. Expert witnesses were asked what would be the best arrangement for their appointment as well as the current arrangements. At present, most disputes are heard with the assistance of two expert witnesses, one called by each of the opposing parties. However, four other alternatives were suggested: a single court appointed expert; a single expert agreed between the parties; multiple experts for each party; and an expert for each party giving evidence in panel format.

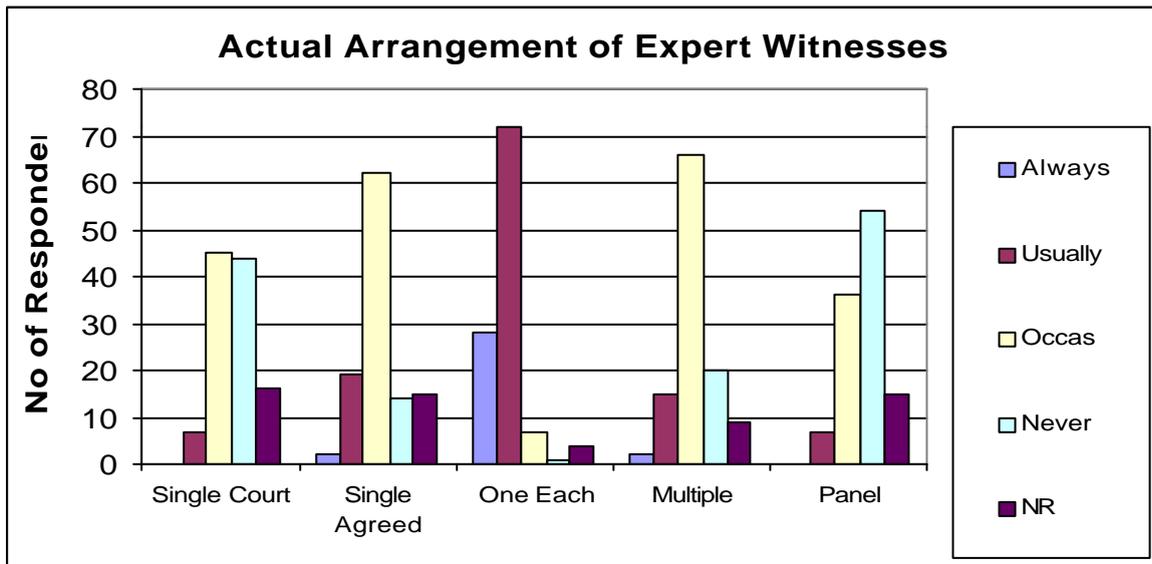
The results are set out in Table 5.4/5.5 below and illustrated in Figures 5.6/5.7.

**Table 5.4 : Expert Witnesses' Views on Their Organisation : Current Experience**

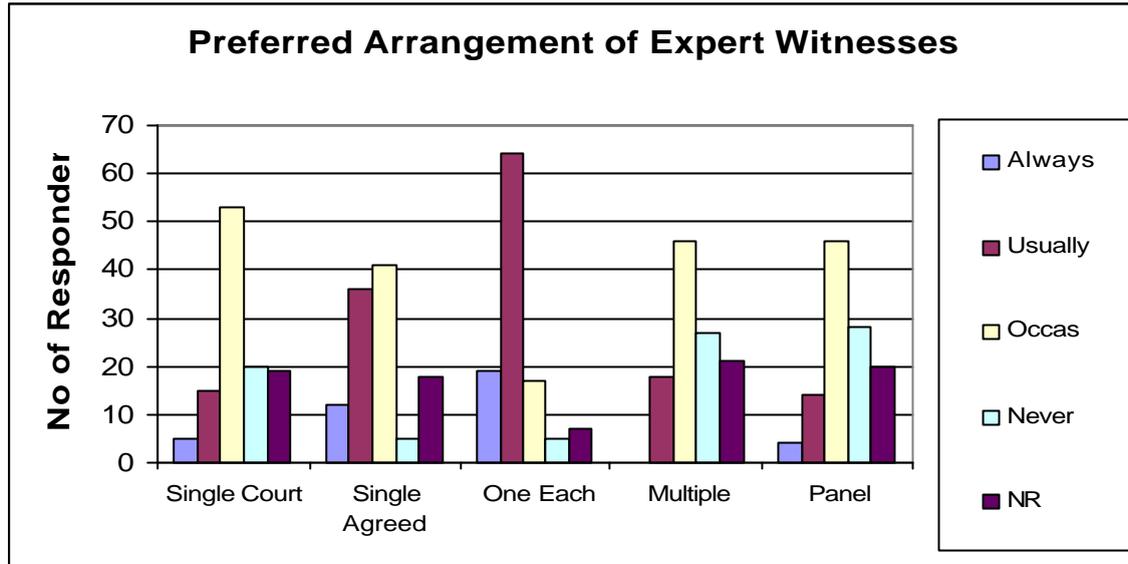
	Always	Usually	Occasionally	Never	No Response
Single court appointed expert	0	7	45	44	16
Single expert agreed between parties	2	19	62	14	15
Each party appointing own expert	28	72	7	1	4
Each party appointing multiple experts	2	15	66	20	9
Experts from opposing parties giving evidence in panel format	0	7	36	54	15

**Table 5.5 : Expert Witnesses' Views on Their Organisation : Preferred Arrangement**

	Always	Usually	Occasionally	Never	No Response
Single court appointed expert	5	15	53	20	19
Single expert agreed between parties	12	36	41	5	18
Each party appointing own expert	19	64	17	5	7
Each party appointing multiple experts	0	18	46	27	21
Experts from opposing parties giving evidence in panel format	4	14	46	28	20



**Figure 5.6 : Actual Arrangement of Expert Witnesses in Australia**



**Figure 5.7 : Preferred Arrangement of Expert Witnesses in Australia**

At present, one expert witness for each party is usual in valuation disputes. This was cited as always or usually the case by 100 respondents (89%). However, this fell to 83 respondents (74%) when asked for the preferred arrangement. Court-appointed single experts increased in favour (from 7 respondents to 20 wishing that they were always or usually adopted) as did single experts agreed by the parties (21 to 48 respondents) and panel evidence (7 respondents to 18). Multiple experts were always, usually or occasionally found currently by 83 respondents. In terms of preference, this fell to 64. These differences in always, usually, occasionally and never responses are statistically significant at the 1% level in terms of the ‘always’, ‘occasionally’ and ‘never’ responses and at the 10% level in respect of the ‘usually’ responses.

### 5.5. Duty and performance of the expert witness

The majority of respondents correctly identified their primary duty as owed to the court rather than their client or any other person or ethic. Figure 5.8 illustrates that 82 respondents (73%) indicated the court and a further 11 in the “other” category identified the court along with a combined duty to another party.



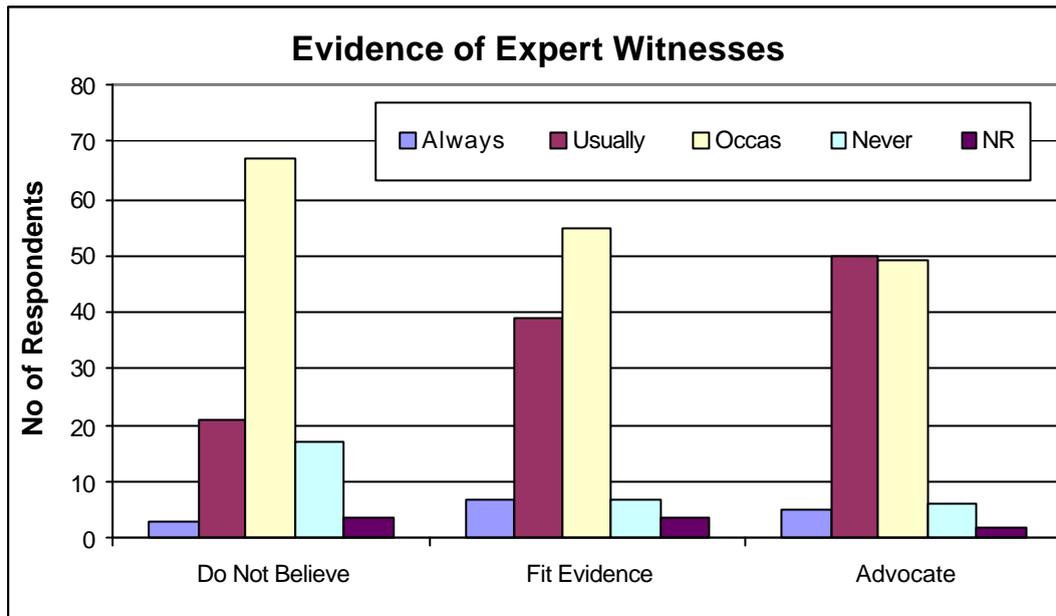
*Figure 5.8 : Duty of the Expert Witness*

Although the majority were aware of their duty to the court, the expert witnesses were less convinced that their opponents in any case adhered to the duty to provide objective evidence to the court. The respondents were asked to comment on whether those they opposed actually believed the evidence they gave in court, whether they fitted it to the client's case and whether they advocated the client's case while acting as an expert witness.

The responses are as set out in Table 5.6 and illustrated in Figure 5.9.

*Table 5.9 : Expert Witnesses' Views on their Opposing Expert Witnesses' Evidence*

	Always	Usually	Occasionally	Never	No Response
<b>Put forward evidence of value which they do not honestly believe</b>	3	21	67	17	4
<b>Fit the evidence to their client's case to produce a valuation to support their client</b>	7	39	55	7	4
<b>Act as advocate for their client during hearings when appearing as an expert witness</b>	5	50	49	6	2



**Figure 5.9 : Expert Witnesses' Views on their Opposing Expert Witnesses' Evidence**

A substantial minority of expert witnesses felt that the opposing experts advocate for their client and fit their evidence to the client's case. The majority also felt that opposing experts believed their evidence to be objective. The most extensive charge by the minority was that 49% of them feel that opponents advocate for the client 'always' or 'usually'. A total of 46 respondents (41%) felt that opponents fit evidence to the client's case 'always' or 'usually'. But only 24 respondents felt that opponents do not believe their evidence 'usually' or 'always'. However, 67 respondents (60%) felt that opponents do not believe their evidence 'occasionally', 55 respondents (49%) believe that evidence is fitted to the client's case 'occasionally' and 49 respondents (44%) felt that advocating for the client takes place 'occasionally'. Only 17 respondents felt that evidence is believed all the time and this falls to 7 (6%) of respondents for belief that evidence is never fitted and 6 respondents (5%) for belief that advocating for clients never happens.

The majority of respondents (62%) felt that instructions from client's legal advisors are adequate 'always' or 'usually'.

In view of the previous research into the margin of error, and its related issue of the performance of expert witnesses in valuation disputes, the questionnaire asked what answer the respondents would give if asked by a judge to specify a margin of error in a court, in both normal and exceptional circumstances. Of the 99 respondents who quoted a figure, 17 (17%) suggested that it should be +/-5% or less and a further 68 (69%) suggested it should be no more than +/-10% in normal circumstances. No response exceeded +/- 20%. In exceptional circumstances, the number of respondents who expressed an opinion on the margin falls to 81 and the average margin rises. The responses are also more variable. However, 18 respondents still felt that the margin should not exceed +/-10% and a further 45 that it should not exceed +/- 20%. The responses are illustrated in Figure 5.10.

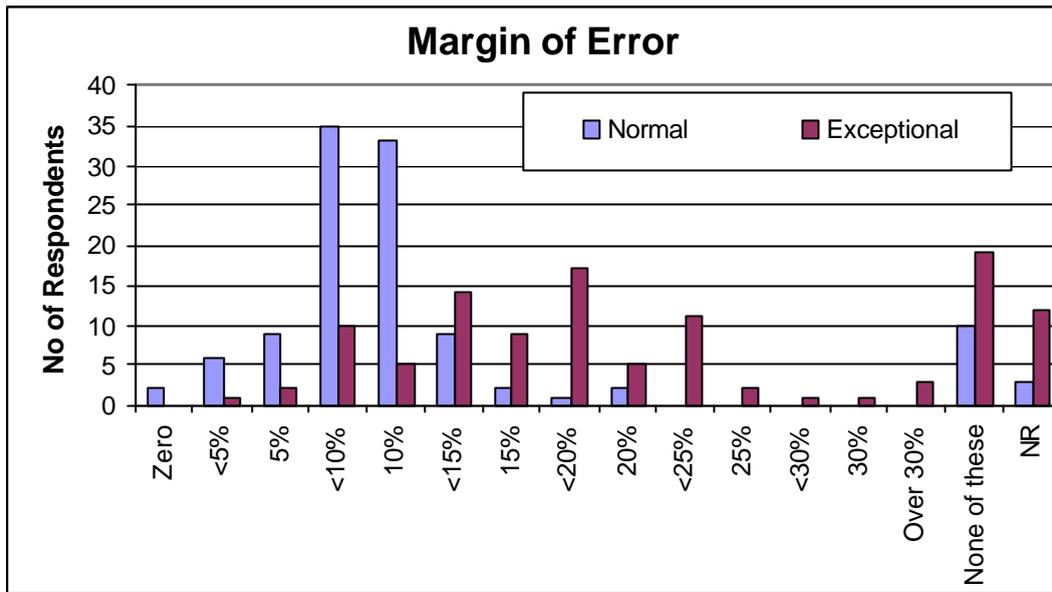


Figure 5.10 : Margin of Error

In addition, respondents were asked whether opposing experts, when putting forward a valuation to the court, came within the margin which they had identified. The responses are illustrated in Figure 5.11.



Figure 5.11 : Expert Witnesses within Margin of Error

As can be seen, there was a fairly even split between those who thought that this occurred at least ‘usually’ (44%) and those who thought it occurred no better than ‘occasionally’ (50%).

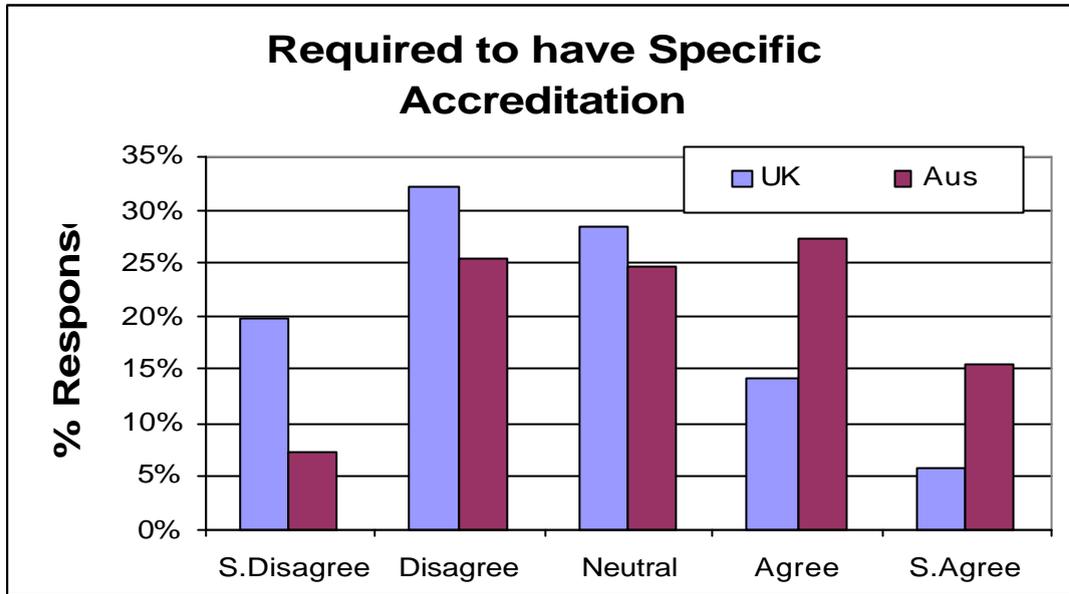
## 6. Comparison Between Australian and UK Expert Witnesses

The questionnaire survey followed very closely a previous survey of the UK and therefore a direct comparison of responses can be made. Table 6.1 sets out those comparisons, identifies which responses are significantly different (with the level of that statistical difference) and comments on the nature of the differences which can be observed.

**Table 6.1 : Differences Between Responses of UK and Australian Expert Witnesses (Chi-Squared Tests)**

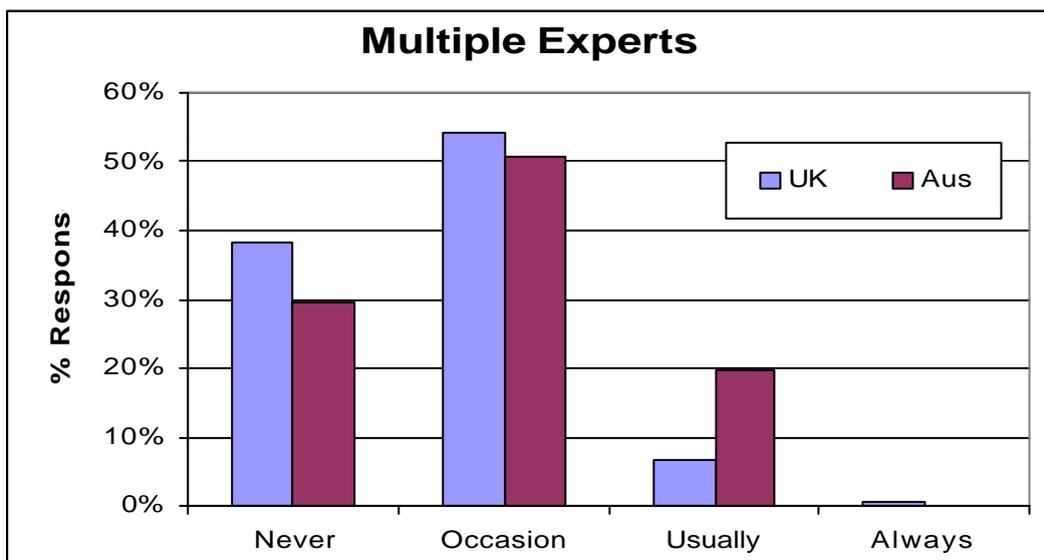
Comparison	Significant Difference	Level	Comment
<b>1. Training</b>			
Should EWs be advised to go through formal training?	No		
Should EWs be required to go through formal training?	Yes	1%	Australian expert witnesses are more enthusiastic for the requirement than their UK counterparts
Should EWs be required to obtain practising certificates?	Yes	1%	Australian expert witnesses are more enthusiastic for the requirement than their UK counterparts
<b>2. Organisation in Court</b>			
Single court appointed EW	No		
Single EW agreed between parties	No		
EW for each side	No		
Multiple EW for each side	Yes	5%	Australian expert witnesses are more enthusiastic for the use of multiple experts than their UK counterparts
<b>3. Performance of Experts</b>			
EWs do not believe case put forward	Yes	1%	Australian expert witnesses feel that their opponents in a case believe the evidence they are giving more than their UK counterparts
EWs fit evidence to clients' case	Yes	10%	The differences relate solely to the fact that more Australian expert witnesses have replied in both the never and always categories, whereas more UK experts have replied that their opponents usually and occasionally fit the evidence to the clients case.
EWs advocate for client when acting as expert witness	Yes	1%	Australian expert witnesses believe that their opponents actively advocate for their client when acting as expert witness more than their UK counterparts
<b>4. Duty of EW</b>			
Knowledge of where duty of EW lies	Yes	5%	UK expert witnesses are more aware of where their duty lies than Australian expert witnesses
<b>5. Margin of Error</b>			
Margin of Error in normal circumstances	Yes	10%	Australian expert witnesses expect the margin of error to be less than the UK expert witnesses
Margin of Error in exceptional circumstances	Yes	1%	There is no pattern to the differences between the expert witnesses in the UK and Australia. When the responses are combined into those who think the margin of error should be 15% or less and those over 15%, there is no statistical difference.

Regarding training, similar proportions of expert witnesses in the two countries had undertaken specific training; 40% in Australia and 36% in the UK. However, Australian expert witnesses appeared more receptive to the formalisation of training for expert valuation witness work, even to the extent of accepting some form of practising certificate following a required training programme. However, this was in the context of only 42% of Australian expert witnesses supporting any form of practising certificate. Figure 6.1 illustrates the different responses to the requirement for specific accreditation to undertake expert witness work.



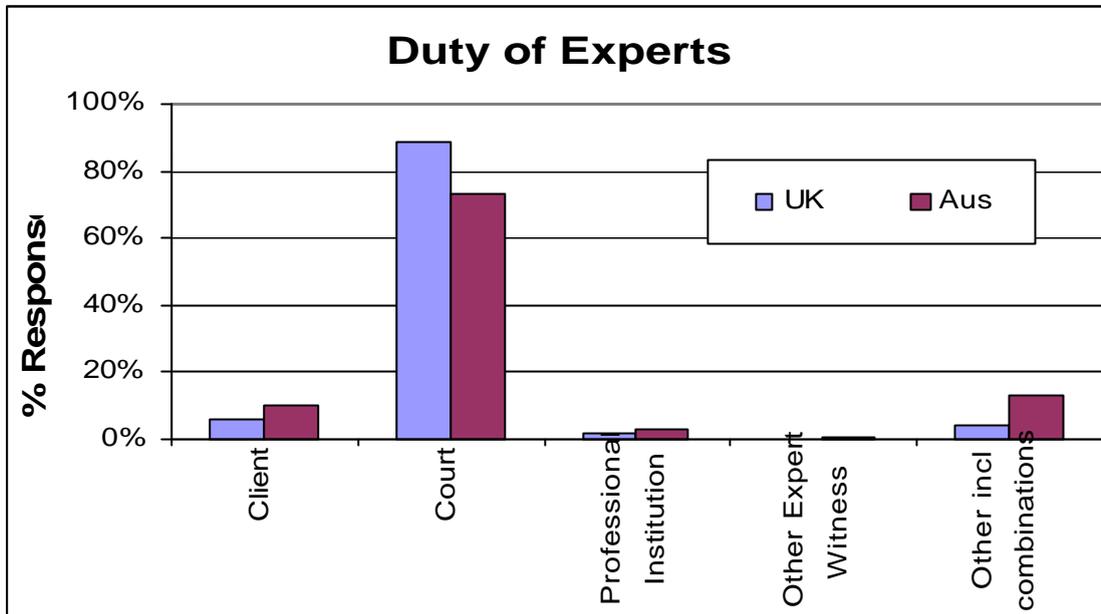
**Figure 6.1 : UK and Australian Responses to Requirement for Specific Accreditation for Expert Witnesses**

The views on preferred arrangements for organisation of expert witnesses in court were very similar in the UK and Australia. The use of multiple experts for each side had more support in Australia but respondents of both countries basically supported the view that the best arrangement is to have one expert for each side of the case.



**Figure 6.2 : UK and Australian Responses to Use of Multiple Experts**

The overwhelming majority of expert witness in both countries appeared to be well aware of their responsibilities, although the UK experts were significantly more aware that their duty lies to the court or tribunal. The increased focus on this issue because of the publishing of a guidance note for acting as an expert witness by the professional body (RICS) may explain the increased awareness in the UK.



**Figure 6.3 : UK and Australian Responses to Duty of Expert Witnesses**

The comparison of responses concerning issues of performance is more confusing. Although the Australian experts were readier than their UK counterparts to regard their opponents as honest (i.e. as believing in their own evidence), they were also stronger in their belief that their opponents advocated for the client. This apparent contradiction may relate to the previous point concerning the knowledge of the duty of experts to the court. As UK expert witnesses are more aware of their responsibilities, they are less likely to advocate openly for their client when acting as an expert, even if they are being economical with the truth when preparing their valuations. However, one would also expect to find a perception that they would fit the evidence to the client's case, but this does not come through in the questionnaire responses. Figure 6.4 illustrates the responses to the different questions concerning the performance of expert witnesses.

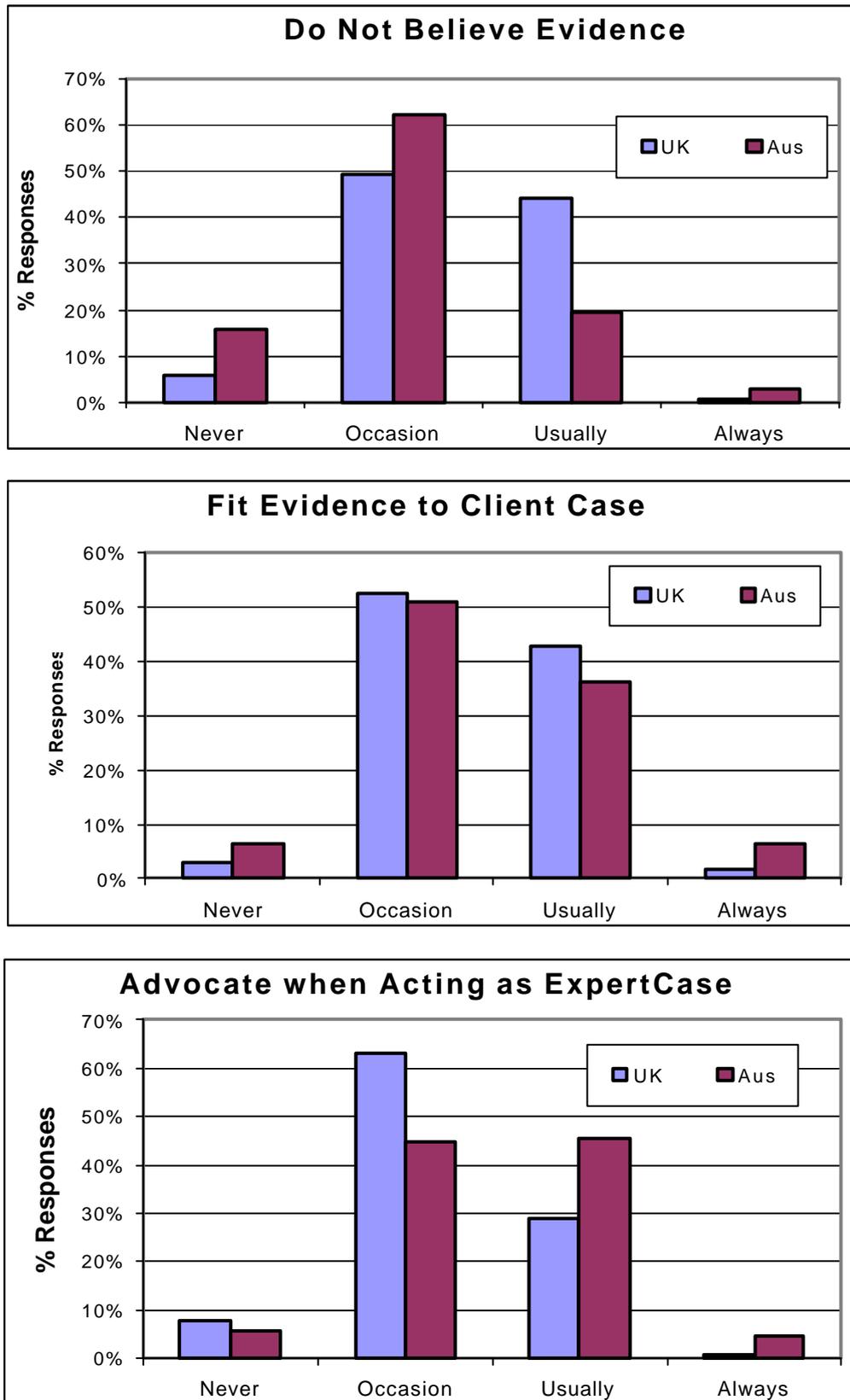
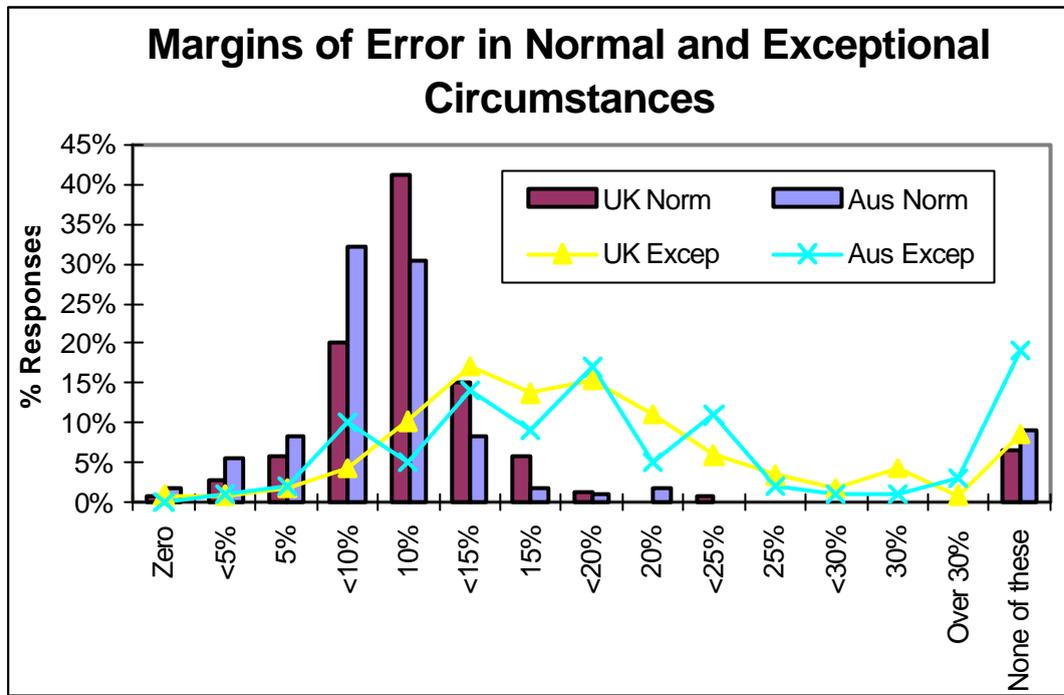


Figure 6.4 : UK and Australian Responses to Opposing Expert Witness Performance

The Australian expert witnesses were harsher than the UK ones in respect of the standard of accuracy they would impose on their colleagues. In normal circumstances they would expect a significantly smaller margin of error, although in exceptional circumstances this difference disappears. Figure 6.5 illustrates the responses.



*Figure 6.5 : UK and Australian Responses to the Margin of Error*

## 7. Implications and conclusions

The aim of the paper was to examine the role of the expert witness in valuation disputes in Australia and compare the findings with previous work in the UK. In order to achieve the aim, the organisation, training and performance of expert valuation witnesses in Australia was investigated and compared to similar research in the UK.

Expert witnesses are subject to legal controls in both Australia and the UK, making it clear that the expert's primary duty is to the court, *not* to the client. This duty requires an expert witness to be objective and impartial and not to act as an unofficial advocate for the client.

The legal position is not only accepted, but strongly endorsed, by the professional bodies of which expert witnesses are commonly members. In the UK (though not yet in Australia) the duty of an expert valuation witness is reflected in an RICS Practice Statement, which is mandatory for its members.

There has been widespread criticism of expert witnesses as failing to meet the standards required by law. The evidence for this is found in a number of places:

- Reports of law reform committees (eg the Woolf Committee Report in the UK and the Australian Law Reform Commission);
- Court judgments;

- Previous research by members of this research team (specifically about expert valuation witnesses) involving a survey of UK arbitrators and independent experts and judges;
- The AIJA survey of Australian judges.

The survey work of Australian expert valuation witnesses for this paper reveals a widespread belief that their evidence is not completely objective. Some believe that their colleagues are deliberately fitting the evidence to the clients' case, do not believe the evidence they present and are actively advocating for the client. Australian expert witnesses perceive that generally their opponents believe the evidence they present but that this evidence is fitted to the client's case and that advocating for/representing the client occurs regularly. There is some inconsistency with these results when compared to the UK survey; for example, only around 20% of Australian expert witnesses think that their colleagues do not believe their evidence "always" or "usually", but this rises to over 50% when advocating for or representing the client is considered. The balance of responses from the UK is more similar across the three questions.

One of the major findings of the UK research was that expert witnesses routinely suggested that valuers should be able to value within a margin of error, while the valuation presented within cases came outside this margin. No expert witness has ever argued for a margin of over +/-20% and the UK survey work tended to confirm that they believe an acceptable margin of error does come within those parameters. However, the average difference between UK expert witnesses in valuation negligence cases is +22% to -22%. One interpretation of that result was that expert witnesses were either incompetent (in that they could not value to the standard suggested by them) or dishonest (in that the evidence was being fitted to the client's case). The UK research tends to suggest that there is some element of truth in the latter.

The Australian survey work suggests a slightly different outcome. First, although the expert witnesses thought that there was some lack of belief in evidence presented to the court, they appeared to think it occurred less than in the UK. Second, there appears to be an expectation that valuations will be closer than in the UK. The Australian expert witnesses suggested significantly lower margins of error than their UK counterparts. Third, the case analysis tends to suggest that the Australians actually deliver a lower valuation variation. The average difference across all the cases in Australia was around 15%.

This evidence suggests that, overall, Australians expect and receive a better performance from their expert valuation witnesses. However, this is not put forward as a definite conclusion. The different types of property and valuation create significant data difficulties which limit the observations. But it is interesting to note that the findings of valuation variation and accuracy studies in the UK, US and Australia do tend to confirm that the US and Australia exhibit less variation than in the UK. This raises a raft of interesting questions concerning valuation processes in the different countries and whether institutional and methodological differences are creating different valuation variation outcomes.

In previous research, Crosby et al (1998b) suggested that Australia might be organising its expert witnesses differently from the UK and that this impacted on the variation between expert witness valuations. However, the survey results tend to suggest there is conformity between both the current and preferred systems in both countries. Both favour the status quo in terms of how the expert witness system operates (ie one witness for each side, rather than joint experts). However, although not considered a norm, Australian expert witnesses would prefer to see multi-experts used "usually" for each side more frequently than in the UK. Australian experts appear less sure than their UK counterparts as to where their duty lies. A larger number of them answered with combinations of duty to, for example, the court and the client than in the UK. This may be because the UK Civil Procedure Rules and the RICS guidance are unequivocal, while the Australian Council for Professions indicates a threefold duty.

Finally, the Australian expert witness survey revealed a much stronger acceptance of any requirement of formal training and even specific accreditation of expert witness work. Although the UK expert witnesses were supportive of the need for formal training and agreed that they should be encouraged to receive it, they were not in favour of compulsion. Over 60% of Australians were in favour of mandatory formal training and over 40% in favour of specific accreditation for expert witness work.

The operation of the expert witness system is similar in both the UK and Australia, with one expert on each side of the case normal and some element of bias in the evidence presented to the court. However, the evidence does suggest that valuations in Australia are less variable than in the UK and that expert witnesses mirror this in both their own valuations and the expectation they have of others undertaking valuations. Despite this disparity, given the high level of awareness of the duty to the court in Australia and the UK (and especially the latter), better training would probably not have a significant effect upon the objectivity of evidence of both sides.

## References

- Academy of Experts (1995). *Guidance Note on Contingency Fees*. Academy of Experts, London.
- Australian Law Reform Commission (1999a). *Experts* (Background Paper 6).
- Australian Law Reform Commission (1999b). *Review of the Federal civil justice system* (Discussion Paper 62).
- Australian Law Reform Commission (1999c). *Managing Justice - a review of the federal civil justice system* (ALRC 89).
- Crosby, N., Lavers, A. and Murdoch, J. (1998a). Property Valuation Variation and the “Margin of Error” in the UK. *Journal of Property Research*, 15(4) 305-330.
- Crosby, N., Lavers, A. and Murdoch, J. (1998b). *Property Valuation Variation and the “Margin of Error”*. Paper at the 4th Pacific Rim Real Estate Society Conference, Perth, January.
- Crosby, N., Lavers, A. and Murdoch, J (1999). *The Role and Performance of the Expert Valuation Witness*. Paper at the RICS “Cutting Edge” Conference 1999, <http://www.rics.org.uk/research/>.
- Crosby, N. (2000). Valuation Accuracy, Variation and Bias in the Context of Standards and Expectations. *Journal of Property Investment and Finance*, 18(2) 130-61.
- Freckelton, I., R. Reddy and H. Selby (1999). *Australian Judicial Perspectives on Expert Evidence: an Empirical Study* (Australian Institute of Judicial Administration).
- Freckelton, I. and H. Selby. *The Law of Expert Evidence*, LBC, (looseleaf service).
- Western Australia Law Reform Commission (2000). *Reform of the Criminal and Civil Justice System*.
- Law Society (1995). *Code of Practice on Expert Witnesses Engaged by Solicitors*. Law Society, London.
- RICS (1997). *Surveyors Acting as Expert Witnesses: Practice Statement and Guidance Notes*. Royal Institution of Chartered Surveyors, London.
- Woolf, (1995). Chapter 23: Experts in *Access to Justice: Interim Report to the Lord Chancellor on the Civil Justice System in England and Wales*. HMSO, London.
- Woolf, (1996). Chapter 13: Expert Evidence in *Access to Justice: Final Report to the Lord Chancellor on the Civil Justice System in England and Wales*. HMSO, London.

<b>VALUATION EXPERT WITNESS QUESTIONNAIRE</b>
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**PLEASE COMPLETE AND RETURN THE SURVEY BY MONDAY OCTOBER 23<sup>RD</sup> 2000.**

**We estimate that completion of the survey will take about 15 minutes.**

If you have any queries regarding the research you can contact Associate Professor Diana Kincaid on tel no 02 9852 4193, fax 02 9852 4185 or e.mail D.Kincaid@uws.edu.au.

You should not need to spend time finding any factual information, as we anticipate that all questions can be answered quickly from personal reflection on past events. Most answers require a tick box approach and very little commentary has been requested.

Individual responses to the questionnaire will remain confidential to the research team at the two universities, and no respondent will be identified in the analysis of the results, which will in any event be mainly aggregated. Moreover, you may if you wish remain entirely anonymous. However, if you wish to receive a copy of the results, please give your name and postal and/or e.mail address in the space provided at the end of the questionnaire. We are hoping that the survey results will be available by late January/early February 2001.

**Section A : Details of the Respondent**

This section aims to find out background information on the respondent, the nature of the organisation and the type of valuation work undertaken, while retaining the confidentiality of the respondent and the organisation.

- A1 Please show the location of your office (town and state) .....  
If you are not willing to give the exact location, please indicate the State above and select appropriate type of location below:

ACT	6	TAS	8
NSW	28	VIC	13
QL	11	WA	39
SA	6	NR	1

- A2 How many professionally qualified valuers are there in your office?

Please Circle:	1	2-5	6-10	11-25	25+	NR
	28	50	18	13	2	1

- A3 Please indicate:

- (a) Your status in the organisation:

Senior Partner/MD	[ 37]
Partner/Director	[ 36]
Principal	[ 27]
Other	[ 11]
NR	[ 1 ]

(b) Your years of experience in profession:

Please Circle: 1-5 6-10 1-15 16-20 21-25 26-30 31-35 36-40 40+  
 0 1 8 13 16 28 25 12 9

(c) Your professional qualifications:

FAPI [ 60 ]  
 AAPI [ 21 ]  
 Dual API/CPV [ 24 ]  
 Other [ 7 ]  
 NR [ 0 ]

(d) Your gender:

Male [ 110 ]  
 Female [ 0 ]  
 NR [ 2 ]

A4 How many times have you given or prepared expert evidence, orally or in writing, in the following types of case over the last *five* years (including cases which were settled before reaching court)? [If any category exceeds 5 in number, please give an approximation.]

<i>Type of CASE</i>	<i>Res</i>	<i>cases</i>	<i>Type of CASE</i>	<i>Res</i>	<i>cases</i>
<b>Professional liability case in Federal Court</b>	<b>21</b>	<b>41</b>	<b>Professional liability case in State Court</b>	<b>43</b>	<b>202</b>
<b>Land acquisition case in Federal Court</b>	<b>10</b>	<b>19</b>	<b>Land acquisition case in State Court</b>	<b>53</b>	<b>800</b>
<b>Property dispute in Family Court</b>	<b>58</b>	<b>989</b>	<b>Rating dispute in State Court</b>	<b>51</b>	<b>1206</b>
<b>Rental determination/review (commercial)</b>	<b>65</b>	<b>974</b>	<b>Rental determination/review (residential)</b>	<b>19</b>	<b>112</b>

A5 Please indicate any other *valuation* expert witness situation/s that you have experienced.

.....65 Respondents gave examples

A6 Have you ever represented a client, eg arguing a case, examining or cross-examining witnesses) in a valuation dispute?

Yes [ 62 ] No [ 47 ] NR [ 3 ] If No, please go to Question A8.

A7 Please describe below the type of cases in which you have acted as a representative during the last *five* years, and an approximate number for each type.

<i>Type of CASE</i>	<i>No.</i>	<i>Type of CASE</i>	<i>No.</i>

57 Respondents gave examples

A8 Have you had any experience of the following procedures?

- a. Being in court while other valuers in the same case gave evidence [88]
- b. Giving evidence as part of a panel of valuation expert witnesses [37]

If you have not ticked either box, please go to Section B. Otherwise please elaborate in the space below.

.....

.....

**Section B : Guidance and Training of Expert Valuation Witnesses**

This section seeks to identify the level of guidance available for the expert witness task and your views on whether valuers should be supported by informal or formal training and/or regulation

B1 Have you ever undertaken any specific training for undertaking expert witness work?

Yes [ 44 ] No [ 68] NR [2] If No, please go to question B3.

B2 Please describe the specific training you have undertaken in the space below.

.....

.....

B3 Have you read any official guidance from a court (e.g. Practice Directions, Codes of Practice) on acting as an expert witness?

Yes [ 56 ] No [ 52] NR [ 4 ] If No, please go to question B6.

B4 Please specify the court guidance in the space below.

.....

.....

B5 Please circle the appropriate answer to each of these questions:

	<b>Strongly agree (5)</b>	<b>agree (4)</b>	<b>Neither agree or disagree (3)</b>	<b>disagree (2)</b>	<b>strongly disagree (1)</b>
<b>The guidance from the court is a comprehensive guide to acting as an expert witness</b>	6	21	24	8	1
<b>The guidance from the court should be mandatory reading for any valuer acting as an expert witness</b>	37	24	1	0	0
<b>The guidance from the court informed me of issues and/or responsibilities of which I was formerly unaware</b>	2	18	24	13	4

B6 Have you read any official guidance from a professional body on acting as an expert witness?

Yes [72] No [39] NR [ 1 ] If No, please go to question B9.

B7 Please specify the professional guidance in the space below.

.....

.....

B8 Please circle the appropriate answer to each of these questions:

	<b>Strongly agree (5)</b>	<b>agree (4)</b>	<b>Neither agree or disagree (3)</b>	<b>disagree (2)</b>	<b>Strongly disagree (1)</b>
<b>The guidance from the professional body is a comprehensive guide to acting as an expert witness</b>	5	34	24	11	1
<b>The guidance from the professional body should be mandatory reading for any valuer acting as an expert witness</b>	39	28	6	1	0
<b>The guidance from the professional body informed me of issues and/or responsibilities of which I was formerly unaware</b>	7	33	20	10	3

B9 Please circle the appropriate answer to each of these questions:

	<b>strongly agree (5)</b>	<b>agree (4)</b>	<b>neither agree or disagree (3)</b>	<b>disagree (2)</b>	<b>Strongly disagree (1)</b>
<b>Valuers acting as expert witnesses should be advised to go through a formal training programme</b>	34	56	13	5	0
<b>Valuers acting as expert witnesses should be required to go through a formal training programme</b>	22	49	21	17	0
<b>Valuers acting as expert witnesses should be required to obtain specific accreditation from a relevant professional body</b>	17	30	27	28	8

### Section C: The Organisation and Role of the Expert Valuation Witness

C1 In your experience, how **is** the appointment of expert witnesses arranged in a court or tribunal hearing to resolve valuation issues? (Please circle appropriate number/s).

	<b>Always (3)</b>	<b>Usually (2)</b>	<b>Occasionally (1)</b>	<b>Never (0)</b>
<b>Single court appointed expert</b>	0	7	45	44
<b>Single expert agreed between parties</b>	2	19	62	14
<b>Each party appointing own expert</b>	28	72	7	1
<b>Each party appointing multiple experts</b>	2	15	66	20
<b>Experts from opposing parties giving evidence in panel format</b>	0	7	36	54

C2 In your opinion, how **should** the appointment of expert witnesses be arranged in a court or tribunal hearing to resolve valuation issues? (Please circle appropriate number/s).

	<b>Always (3)</b>	<b>Usually (2)</b>	<b>Occasionally (1)</b>	<b>Never (0)</b>
<b>Single court appointed expert</b>	5	15	53	20
<b>Single expert agreed between parties</b>	12	36	41	5
<b>Each party appointing own expert</b>	19	64	17	5
<b>Each party appointing multiple experts</b>	0	18	46	27
<b>Experts from opposing parties giving evidence in panel format</b>	4	14	46	28

C3 The primary duty of an expert witness is owed to:

The instructing client	[ 11 ]
The court/tribunal	[ 82 ]
The professional institution	[ 3 ]
The other expert witness/es	[ 1 ]
Other	[ 2 ]
NR	[ 3 ]

C4 When acting as an expert witness, do you consider that expert witnesses instructed by the other party do any or all of the following? (Please circle appropriate number).

	Always (3)	Usually (2)	Occasionally (1)	Never (0)
<b>Put forward evidence of value which they do not honestly believe</b>	3	21	67	17
<b>Fit the evidence to their client's case to produce a valuation to support their client</b>	7	39	55	7
<b>Act as advocate for their client during hearings when appearing as an expert witness</b>	5	50	49	6

C5 When acting as an expert witness, do you consider that your instructions from the client's legal advisers are adequate?

Always [ 4 ] Usually [ 65 ] Occasionally [ 38 ] Never [ 2 ]

C6 If, when acting as an expert witness in a valuation dispute, you were asked by a judge to identify the maximum acceptable 'margin of error' (ie the divergence between an allegedly negligent valuation and the true value), what would your answer be?

	In normal circumstances	In exceptional circumstances
<b>Zero (ie valuation should be exactly on true value)</b>	2	0
<b>Less than +/- 5%</b>	6	1
<b>Equal to +/- 5%</b>	9	2
<b>More than +/- 5% but less than +/- 10%</b>	35	10
<b>Equal to +/- 10%</b>	33	5
<b>More than +/- 10% but less than +/- 15%</b>	9	14
<b>Equal to +/- 15%</b>	2	9
<b>More than +/- 15% but less than +/- 20%</b>	1	17
<b>Equal to +/- 20%</b>	2	5
<b>More than +/- 20% but less than +/- 25%</b>	0	11
<b>Equal to +/- 25%</b>	0	2
<b>More than +/- 25% but less than +/- 30%</b>	0	1
<b>Equal to +/- 30%</b>	0	1
<b>More than +/- 30%</b>	0	3
<b>None of these (Please comment below)</b>	10	19

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C7 In your experience, do valuations put forward by other expert witnesses come within the margin identified by you above? (Please Tick).

Always [ 2 ] Usually [47] Occasionally [ 52 ] Never [ 4 ] NR [ 7 ]

**Section D: General Comments**

Please add any other comments below (continuing on a separate sheet if necessary) addressing additional issues you consider appropriate and/or any further comments on the answers above which you think will aid our examination of the role of the expert valuation witness.

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*Thank you for taking the time to fill out the questionnaire. If you require a copy of the survey results, please print your name and postal and/or email address here.*

*Please return the questionnaire in the stamped addressed envelope to:*

*Associate Professor Diana Kincaid, Faculty of Management, University of Western Sydney  
Hawkesbury, Locked Bag 1, Richmond NSW 2753*