

## GUIDELINES FOR EXPERTS IN BUILDING DISPUTES

### A. GENERAL REQUIREMENTS

1. Parties and experts are reminded of the requirements of [Practice Direction 4 of 2009](#):
  - a. A party who proposes to call expert evidence at a hearing must give each other party to the tribunal notice of each expert's name, area of expertise and the issues that the expert will address.
  - b. An expert's primary duty is to assist the tribunal.
  - c. An expert is not a party's advocate.

### B. REPORTS

1. In addition to complying with Rule 428 of the Uniform Civil Procedure Rules (attached), so far as is possible, the report must comply with the following format:
  - a. The report must state:
    - i. The address of the subject property;
    - ii. The party for whom the report has been prepared;
    - iii. The person from whom the expert received instructions;
    - iv. The date of any inspection.
  - b. The report must distinguish between defective work and incomplete work.
  - c. Each item should be separately numbered using consecutive numbering. The report must identify items systematically, location by location (e.g. roof – bedroom 1 – lounge etc). If a supplementary report refers to new items, the numbering for those items should start where the numbering left off in the previous report.
  - d. If an expert is responding to another report, the same numbering must be used.

- e. Each item should be referred to only once and in the same terminology. If the same item occurs in a number of locations, it is enough to identify the item once and then list the locations.
  - f. The report should include a colour photograph of each item.
  - g. The report must give an accurate description of the item and why the expert believes it to be a defect/incomplete.
  - h. The expert should provide a recommendation as to the work required, why it is required and the cost of the recommended work. The expert should also state whether any alternative solutions are available.
  - i. The report must include a schedule in the attached format (“the schedule”).
2. The expert must forward an electronic copy of the schedule to the party who engaged the expert.
  3. When filing and serving the expert’s report, the party must also file and serve an electronic copy of the schedule. A party may serve an electronic copy on the tribunal by emailing it to [cad@qcat.qld.gov.au](mailto:cad@qcat.qld.gov.au).

## **C. CONCLAVES**

1. An expert conclave is a private meeting between experts in the same field of expertise, chaired by a member of the tribunal. Lawyers, advisers and clients are not permitted to attend the conclave.
2. The objects of QCAT are to deal with matters in a way that is accessible, fair, just, economical, informal and quick. Engaging experts for a hearing can be a significant cost to parties.
3. The purpose of the conclave is to maximise the benefit of the experts’ involvement in a cost effective way. At the end of the conclave, the experts should be able to produce a joint report that lists and summarises:
  - a. The technical background of the dispute, including the assumptions upon which the parties have relied in the conclave.
  - b. Any areas of agreement.
  - c. Any areas of disagreement and the reasons for the disagreement.

4. If the joint report properly identifies the issues in dispute, and the reasons why there is a dispute, the experts may not have to attend the hearing.

## **PREPARING FOR THE CONCLAVE**

1. Do you have all the information you need to give an opinion? List further information you will need.
2. What facts or opinions do you think you can agree upon? What facts or opinions are likely to be matters of disagreement?
3. Are there any issues where there is an alternative view that might be acceptable to all experts?
4. Have you articulated the issues clearly and concisely? Will the tribunal member be able to understand what you are saying?

## **AT THE CONCLAVE**

5. All discussions tabled at the conclave are treated as confidential and “without prejudice”. What is said at the conclave cannot be used in the proceedings unless the parties otherwise agree.
6. The member remains impartial throughout the process and is not an advisor to any of the experts. A member might tell the experts, in private session what that member would decide if the dispute went to a hearing as a means of progressing the discussion.
7. During the conclave, the member may meet privately with each expert to discuss the problem confidentially. Whatever occurs in the private meeting is subject to the same rules of confidentiality as the full conclave. It gives experts the opportunity to tell the member something about the dispute that they may not want communicated to the other side or to have a realistic look at their opinion in private, without fear that any weaknesses discussed will be communicated to other expert. The member may also suggest alternative views or solutions suggested by the experts’ material.
8. If the conclave results in a joint report, the member may document that report. The experts and the member will sign the joint report and it will be placed on the tribunal file. If the joint report has not been finalised at the end of the conclave, the member will maintain responsibility for finalising the report with the experts.

9. Consistent with their obligations to the tribunal, the experts are expected to make a genuine attempt to resolve or narrow the issues in dispute.

## **D. THE JOINT REPORT**

1. It is not necessary that the experts agree on all issues but they must identify areas of agreement and disagreement. In respect of the areas of disagreement, the experts should state their respective views and why they hold that view.
2. If there are incomplete or defective works, the joint report should include a proposed scope of works and the cost of such works. If the experts are unable to agree on the scope of works then each expert should state their preferred scope of works, the costing and why they prefer that scope of works.
3. If the disagreement relates to a point of law, the experts should provide an opinion and proposed scope of works for each possible solution as if the tribunal had determined that the party is liable to rectify or complete the works.
4. The joint report must be signed by all experts and filed with the tribunal. Until the report is filed, no expert may discuss the contents of the report with any party
5. The experts may jointly agree to refer an issue to the parties for advice or comment. The experts must agree on the terms of the referral and confer only on receipt of a response from all parties.
6. Except with the leave of the tribunal, an expert may not contradict, depart from, or qualify an opinion about an issue that has been the subject of a joint report. If an expert wants to change an opinion contained in a joint report, the experts must reconvene the conclave and produce a complementary report that identifies and explains the change.