

Guide to Expert Conferences

The conduct of expert meetings is governed by the tribunal's Practice Direction 4 of 2009. The parties and the experts should all be familiar with the terms of the Practice Direction.

The expert's duty is to assist and advise the tribunal on issues in dispute within the expert's area of expertise. That duty overrides any obligation to any party to the proceeding or any person who is liable for the expert's fee or expenses.

WHAT IS AN EXPERT CONCLAVE?

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.

WHY AN EXPERT 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 short 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 – THE PARTIES

5. Have you given the expert:
 - a. reasonable notice of the conclave and the issue(s) in dispute;
and
 - b. enough information and opportunity for the expert to investigate the relevant facts adequately?
 - c. A copy of Practice Direction 4?
6. You must not give an expert instruction to adopt or reject a particular opinion in relation to an issue in dispute.

PREPARING FOR THE CONCLAVE – THE EXPERT

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

AT THE CONCLAVE

11. 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.
12. 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.
13. 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.

14. 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.