

## Engaging an expert

In some complex matters, parties may want to engage an expert to provide an expert report or give evidence in support of their case. For those who are considering using an expert, the following information outlines the role of an expert during CTTT proceedings.

### What is an 'expert'?

An 'expert' is any professional person who has specialised knowledge, skills or qualifications and the ability to provide their expert opinion.

An expert is generally engaged by a party to proceedings to provide expert evidence in support of their case. The expert may provide a written report for use as evidence in the proceedings and may appear as a witness at a hearing.

There are different types of experts that may be used during CTTT proceedings. For example, an architect may be engaged as an expert witness in a home building dispute, or a mechanic may be engaged to provide a report for a motor vehicle dispute.

**Note:** An expert witness is not an advocate for the party. Experts must be neutral and independent.

#### CTTT Tip

The Chairperson's Directions '*Expert Witness Code of Conduct*' sets out the CTTT's expectations of an expert when giving evidence in the form of an expert report or appearing at a hearing as an expert witness.

### When is an expert used?

Experts may be used whenever evidence is necessary to establish a matter which is the subject of specialist knowledge. Experts are often called upon in matters of a technical nature, most commonly in home building or motor vehicle disputes. However, experts may be used in any type of application.

A report from a qualified expert will usually address the particular facts of a case that are within their area of expertise, and most importantly, give an opinion about matters such as the cause of the event, the need for repair, the method of repair and cost to repair.

The Tribunal will consider the expert's qualifications, skills and experience, the manner in which the report is prepared and evidence presented in deciding what weight to place on the evidence.

### Before engaging an expert

Before engaging an expert you need to be clear on the issues you want the expert to address. You also need to think about whether the cost associated with engaging an expert is worth the expense, having regard to the value of the dispute.

You will also need to consider whether you need the expert to appear as a witness in proceedings or provide an expert report to verify certain facts. Experts who appear as a witness to give evidence at a hearing can do so in person or, in some circumstances, by telephone.

### Cost of engaging an expert

The cost of engaging an expert will vary depending on the nature of the dispute, the type of expert needed and the skills and knowledge of the expert. The expert's costs are usually paid by the party who has engaged the expert.

Expert reports can be quite expensive as they are time consuming to prepare. Before requesting an expert report you may want to ask the expert to give you an estimated cost of preparing the report. There may also be additional costs if you want your expert to comment on other expert reports filed by other parties and appear as a witness at your hearing.

The costs of retaining an expert may in some cases be recoverable from the other party if you are successful before the Tribunal, but not in all cases.

### Finding an expert

If you are unsure where to find an expert in the relevant field, contact the professional or trade association, for example the 'Institute of Building Consultants', and ask them to provide a list of their members.

Alternatively you could approach people in the field and ask them for references, or approach teaching institutes or university affiliated organisations. Before engaging the expert, make sure your expert is highly qualified in the field or discipline required.

## Expert report requirements

When an expert is engaged to prepare a report to be used as evidence in a hearing, the report structure should include:

- A table of contents
- The expert's formal qualifications and relevant experience
- The field of expertise in which they are giving evidence
- Verification that the expert has read the Chairperson's Direction '*Expert Witness Code of Conduct*'
- A statement of what issues they were asked to report on
- The facts, matters and assumptions on which the opinions in the report are based (a letter of instruction may be annexed)
- Reasons for each opinion expressed
- A disclaimer if any particular question or issue falls outside their field of expertise
- Any literature or materials used in support of the opinions
- Any examinations, tests or other investigations on which he or she has relied
- Any examinations, tests or other investigations, who carried them out, and their qualifications
- A statement regarding reservations about a fact or opinion

**Note:** Any issue or question falling outside the expert's field of expertise should be clearly identified in the report.

## Use of the report

You will need to provide a copy of the expert's report and any other supporting documents to the Tribunal and the other party. The CTTT will set a timetable for doing this.

It is likely that the other party will also provide a report from an expert whose opinion may differ from that of the expert engaged by you.

If your expert gives oral evidence, he or she may be cross-examined by the other party. If your expert does not attend the hearing, you can still rely upon your expert report. It is possible, however, some difficulties may arise if your expert is not present to answer any questions.

The Tribunal Member will decide which expert opinion carries more weight and is preferred.

### CTTT Tip

Compliance with the Chairperson's Direction '*Expert Witness Code of Conduct*' is taken into account by the Tribunal Member when assessing an expert's evidence.

## Expert conclaves

In home building disputes, the CTTT may direct a meeting be held between parties' experts, known as an 'expert conclave'. The experts meet on-site with a Tribunal Member to discuss the issues on which they have prepared their reports with a view to narrowing points of difference between them. The points of agreement and difference are then identified in writing and filed with the CTTT before the hearing, usually in the form of a Scott Schedule.

### CTTT Tip

Read the '*Conclaves*' fact sheet for information about conclaves and how they are used to resolve home building disputes. This fact sheet and Scott Schedules can be downloaded from the CTTT website [www.cttt.nsw.gov.au](http://www.cttt.nsw.gov.au)

## Conflict of interest

Experts are engaged to provide an independent and impartial source of expert advice to the CTTT. A conflict of interest may arise when an expert may be influenced, or could be seen to be influenced, by a personal interest in carrying out the assigned work, such as where the expert has:

- a financial interest in or with the party in dispute
- accepted a gift or benefit that may be seen to influence the impartiality of their expert opinion
- a personal, philosophical, religious, moral or political belief or attitude that could influence the impartiality of their expert opinion
- a personal (non-professional) relationship with a party, or relative or associate of a party
- used the influence of their position as an independent expert to seek employment opportunities for themselves, friends, family or associates.

Any matter which gives rise to an actual or perceived conflict of interest should be disclosed to the Tribunal promptly.

## CTTT Registries

Telephone: 1300 135 399

Facsimile: 1300 135 247

TTY: 02 9641 6521

[www.cttt.nsw.gov.au](http://www.cttt.nsw.gov.au)

## Fair Trading Centres

General enquiries: 13 32 20

[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)