

## Conclaves and expert evidence

**NCAT may order that any experts meet in a conclave. Experts are knowledgeable specialists in a specific field who come together to discuss issues.**

### What is a conclave?

A conclave is a meeting held between the experts to identify and discuss the issues in dispute. The conclave is exclusively attended only by the experts and a facilitator (if one has been appointed). Parties or their representatives will receive a copy of any joint report.

### What is the conclave process?

The timing and location of the conclave will be decided by the facilitator (if one has been appointed) who will consider the location and availability of the experts, or by the experts (if no facilitator has been appointed).

The conclave will usually be conducted in person. If required, the conclave may also be conducted by visual or audio technology (such as video link and/or by telephone).

### Roles and responsibilities at a conclave

Experts should prepare for a conclave by ensuring that they are familiar with the material provided to them. Where expert reports have been exchanged prior to the conclave, experts should attend the conclave familiar with the reports of the other experts.

Prior to the conclave, experts should also consider where they believe the differences of opinion lie between them and what processes and discussions may assist to identify and refine those areas of difference.

At the end of the conclave, unless NCAT considers it unnecessary to do so, it is expected that the experts will have narrowed the issues in respect of which they agree, partly agree or disagree in a joint report. The joint report should be clear, plain and concise and should summarise the views of the experts on the identified issues, including a succinct explanation with any differences of opinion.

The joint report may be received at the hearing as evidence of any matters agreed.

Except by leave of the Tribunal, an expert may not, whether in a statement of evidence or in oral evidence:

- contradict, depart from or qualify an opinion about an issue the subject of agreement in the joint report, or
- raise a matter not already mentioned in the joint report.

Except by leave of the Tribunal, a party affected may not present evidence from any other expert witness on the issues dealt with in the joint report.

### Expert evidence at a hearing

In all proceedings, the Tribunal may regulate the conduct of a hearing and, in doing so and subject to the principles of procedural fairness, may:

- decide the order of presentation of expert witness evidence;
- regulate cross-examination, and/or
- limit the time to be taken in presenting the evidence of an expert witness, or the time for cross-examination or re-examination of that witness.

### Expert witness reports in complex cases

In more complex cases, the usual practice of the Tribunal is that the report of an expert witness will be taken “as read” (i.e. it will be assumed that the Tribunal and parties have read the report before the hearing). The expert may be given an opportunity to draw NCAT’s attention to key elements of it.

A party may call a witness to give evidence at a hearing. Any other party seeking to cross-examine that expert witness should be present when the expert evidence is presented.



## Experts providing evidence

NCAT might ask all expert witnesses in the same or related fields to come together and give their evidence at the same time. NCAT will decide how this process will work based on the specifics of the case and the type of evidence being presented. The parties should expect that when experts give evidence together:

- NCAT will explain to the experts the procedure that will be followed;
- experts in the same field will be grouped together and asked to give their evidence at the same time;
- each expert may be given the opportunity to provide a summary of their current opinions and explain what they consider to be the main issues of disagreement between the experts.
- NCAT will guide the process where evidence is given, including, where appropriate:
  - using any joint report or list of issues as a guide for all the experts to be asked questions by the Tribunal and parties (or their representatives), about each issue on an issue by issue basis;
  - allowing each expert to address each issue and respond to what other experts say. This may include allowing experts to ask each other questions or add to the evidence provided by others when appropriate;
  - inviting the parties (or their representatives) to identify the topics they will cross-examine about;
  - ensuring that the parties (or their representatives) have an opportunity to ask all experts questions about each issue. The parties (or their representatives) may also seek responses or contributions from one or more experts in response to the evidence given by a different expert; and
  - allowing the experts an opportunity to summarise their views at the end of the process where opinions may have been changed or clarifications are needed.

Experts may have received a list of issues for consideration in giving evidence in a concurrent session. The Tribunal has full control over the cross-examination process.

During the concurrent evidence process, NCAT will:

- ensure the process is fair for parties and the experts
- maintain a balance during discussions, ensuring an expert does not take over the discussions
- prevent the process from becoming inefficient.

The concurrent session should allow for clear and organised discussions between expert and expert, and between expert and a party (or their representative).

If required, the Tribunal may let a party (or their representative) question one expert directly on a specific issue. Other experts may be asked to comment on the evidence given.

## Contact NCAT

**1300 006 228 | [www.ncat.nsw.gov.au](http://www.ncat.nsw.gov.au)**

**Interpreter Service (TIS) 13 14 50**

**National Relay Service for TTY users 13 36 77**

For more information and assistance visit the NCAT website [www.ncat.nsw.gov.au](http://www.ncat.nsw.gov.au) or contact NCAT on **1300 006 228**.