

Concurrent Expert Evidence (Hot Tub) in NCAT Home Building Disputes

In home building disputes, expert evidence can play a crucial role in helping to determine the issues in dispute. One process that is increasingly being used in the New South Wales Civil and Administrative Tribunal (NCAT) to assist with the resolution of these disputes is concurrent expert evidence, also known as "hot tubbing". In this article, we will provide an overview of this process, its benefits and limitations, and the expert witness code of conduct that applies to it in NCAT home building disputes.

The Role of Expert Evidence in NCAT Home Building Disputes

Expert evidence is evidence given in court or a tribunal by a person who has specialised knowledge, skill, training, or experience in a particular field. In NCAT home building disputes, expert evidence is often used to assist the tribunal in understanding the technical aspects of the dispute. For example, an expert in construction may be called upon to give evidence on the quality of workmanship or compliance with relevant building standards.

Expert evidence is important in NCAT home building disputes because it can help to identify the real issues in dispute and provide a basis for a fair and just outcome. However, it is important to note that expert evidence is not the only type of evidence that is considered by the tribunal. The tribunal may also consider other types of evidence, such as witness testimony, photographs, and documents, in making its decision.

The Concept of Concurrent Expert Evidence in NCAT Home Building Disputes

Concurrent expert evidence, also known as "hot tubbing", is a process where expert witnesses give evidence simultaneously, and are able to discuss and challenge each other's opinions in front of the tribunal. The purpose of concurrent expert evidence is to assist the tribunal in understanding complex technical issues and to promote a more efficient and effective resolution of disputes.

Compared to traditional expert evidence, where each expert presents their opinion separately, concurrent expert evidence allows the tribunal to evaluate the experts' opinions in a more dynamic and interactive manner. This can help to identify areas of agreement and disagreement between the experts, and may result in a more accurate and nuanced understanding of the technical issues.

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One advantage of concurrent expert evidence is that it can save time and costs, as the tribunal can resolve disputes more efficiently by hearing from all the experts at once. However, there are also some potential disadvantages, such as the risk that the discussion between experts may become adversarial, or that the tribunal may become overwhelmed by the technical discussion. Overall, the use of concurrent expert evidence in NCAT home building disputes is still relatively new, and its effectiveness will depend on the particular circumstances of each case.

The Process of Concurrent Expert Evidence in NCAT Home Building Disputes

Initiating the concurrent expert evidence process involves the parties agreeing to the process or the Tribunal ordering it. Once the process is initiated, each party must provide a list of proposed experts, and the Tribunal will select experts to participate in the hot tub.

The experts then prepare reports that identify areas of agreement and disagreement, and they exchange their reports before the conclave or conference. During the conclave or conference, the experts discuss their reports and attempt to reach agreement on any disputed issues. If agreement is not possible, the experts must identify the areas of disagreement and explain their reasons for it in a joint report.

At the hearing, the experts give evidence concurrently, meaning they are questioned at the same time on the same issues. The Tribunal member may also ask questions and participate in the discussion. After the experts have been questioned, they may be cross-examined and re-examined in the traditional manner.

The benefits of concurrent expert evidence include the potential for a faster and more efficient resolution of disputes, as well as the opportunity for the experts to identify and discuss areas of agreement and disagreement. The process also allows for a more thorough exploration of the issues, and the participation of the Tribunal member ensures that the evidence is properly tested. However, the process can also be more expensive and time-consuming than traditional expert evidence, and there is the risk that the experts may become entrenched in their positions and not be willing to compromise.

Overall, concurrent expert evidence is a useful tool for resolving complex disputes involving technical or scientific issues, but it is not suitable for all cases and must be carefully considered before being implemented.

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The Expert Witness Code of Conduct and Concurrent Expert Evidence in NCAT Home Building Disputes

Expert evidence is an integral part of NCAT home building disputes. Expert witnesses provide evidence to assist the tribunal in making informed decisions based on their specialised knowledge and experience. However, it is essential that expert witnesses maintain impartiality, integrity and comply with the Expert Witness Code of Conduct.

The Expert Witness Code of Conduct applies to all expert witnesses engaged or appointed in NCAT home building disputes, including those providing concurrent expert evidence (hot tub). The code sets out the standards of professional conduct and requires expert witnesses to be truthful, unbiased and provide independent evidence. It also requires expert witnesses to comply with any direction given by the tribunal, participate in any conferences or conclave and endeavour to reach an agreement on issues in dispute with other expert witnesses.

Expert witnesses have an important role to play in NCAT home building disputes, and their duties and responsibilities are critical in ensuring the credibility of the evidence provided. The code of conduct aims to ensure that expert witnesses provide reliable and credible evidence, and that the concurrent expert evidence process (hot tub) is conducted fairly, justly and in accordance with the principles of the Civil and Administrative Tribunal Act 2013 (NSW).

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