

## Home Building Division

# Conclaves

In home building matters where there are a number of complex technical issues in dispute, the CTTT may order that the parties' experts meet in a conclave. This fact sheet explains what a conclave is and how it assists in the resolution of home building disputes.

### Resolving home building disputes

The CTTT's home building division deals with disputes between consumers, traders and insurers about residential building work up to the value of \$500,000.

Where it is claimed there are a large number of defective or incomplete works, and/or there are complex technical issues in dispute, the CTTT may direct that a conclave be conducted.

### What is a conclave?

A conclave is a joint meeting between experts engaged by the applicant and the respondent. The conclave is usually held on-site and is facilitated by a Tribunal Member.

The experts discuss the issues on which they have prepared reports, with a view to clarifying matters in dispute, and to reduce as far as possible the issues to be determined at the final hearing.

The results of the conclave are either signed off by the experts at the conclave or combined into a final report. The parties are then bound by the outcome of the conclave, unless it can be shown there are exceptional circumstances which demonstrate they should not be so bound.

### Who is present at the conclave?

Generally only the Tribunal Member and experts attend the conclave.

### When does a matter get referred for a conclave?

A home building matter may be referred for a conclave when:

- Multiple items are in dispute which may be possible to resolve prior to the hearing
- Both parties have briefed experts
- Experts Reports and Scott Schedules have been exchanged
- A conclave is considered to be cost-effective.

### Why does the CTTT use conclaves?

The purpose of the conclave is to limit or eliminate the need for expert evidence at hearing. The conclave is conducted by a Tribunal Member with extensive experience and expertise in the industry and in home building matters.

As a result, a conclave can save costs to the parties and expedite the hearing process in complex home building matters.

### What is the conclave process?

The conclave process involves three steps: the directions hearing, the conclave and the conclave outcome.

#### *Directions hearing*

A matter is referred for a conclave at a Directions Hearing. The Hearing will confirm what is to occur before and after the conclave, such as:

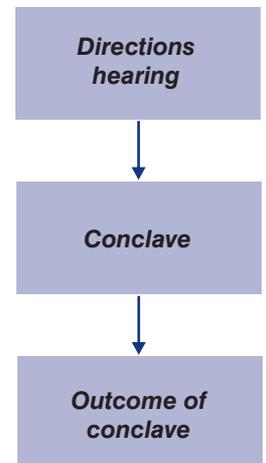
- Providing information of availability of experts for the conclave
- Preparation of experts' written reports on alleged defective work
- Timetable for filing of experts' reports and Scott Schedules.

#### *At the conclave*

The Tribunal Member explains the process and rules for the experts before the conclave starts. The experts then discuss the issues between themselves in a non-adversarial manner, with the Tribunal Member leading the discussion.

The experts analyse the reports and identify any areas of agreement. Proposed solutions are agreed upon and any remaining areas of disagreement are identified. If possible, a joint Scott Schedule is drafted and signed off.

During the conclave, if the need arises, an expert may seek brief advice or instructions from lawyers or a party to proceedings.



## Outcome of conclave

The Tribunal Member prepares a report on the outcomes from the conclave called a 'Memorandum of Outcome', which includes an agreed list of items and a notation as to any matters still in dispute on the Scott Schedule.

The experts who attended the conclave sign the Memorandum of Outcome and a revised joint Scott Schedule reflecting the positions reached at the conclave. The documents are then sent back to the CTTT.

In the event of settlement during the conclave, the matter is listed for hearing to determine if the agreement finalises all issues. Orders are then made in accordance with the terms of settlement.

In the event of a non-settlement, the matter is listed for directions as to the further hearing of the outstanding issues.

## What are the roles and responsibilities at the conclave?

The Tribunal Member's role is only to facilitate discussions between the experts. The Member will not make orders or directions. Things said or done at a conclave are not admissible as evidence in the hearing unless all parties agree.

The experts are to be independent and provide advice accordingly. The obligation of the experts is to the CTTT and to assist the Tribunal Member, not to the party instructing them.

Experts are to comply with the Chairperson's Directions - Expert Witness Code of Conduct.

## Common terms used in home building disputes

### Expert Report

A technical report prepared by an expert engaged by a party to proceedings

### Party to proceedings

A person involved in the dispute before the CTTT (ie. the applicant or respondent)

### Scott Schedule

The form which allows parties to itemise the defects which are the subject of a home building dispute.

## Further information

- Visit [www.cttt.nsw.gov.au](http://www.cttt.nsw.gov.au) for more information about the CTTT's home building division
- Chairperson's Directions - Home building disputes over \$30,000
- Chairperson's Directions - Expert Witness Code of Conduct.

### CTTT Registries

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### Fair Trading Centres

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