



From January 2018

**FACILITATION OF EXPERT WITNESS CONCLAVE  
for the  
PREPARATION of a JOINT REPORT  
TERMS OF RETAINER**

Part 1: terms of appointment – taken as accepted unless indicated otherwise

Part 2: professional rates

**Part 1 - Terms of Appointment as Facilitator:**

1. I will confirm immediately regarding any previous knowledge or interest, (financial or otherwise) in the subject proceedings.
2. I undertake to conduct the facilitation of this expert witness conclave and production of a joint report, in accordance with the provisions and requirements of the Uniform Civil Procedure Rules 2005 NSW, namely:
  - i) Expert Witness Code of Conduct – (set out in Schedule 7 of the UCPR);
  - ii) Division 2 of Part 31 of the UCPR, (regarding expert witnesses and a joint report); and
  - iii) Practice Note No. SC Gen 11 (08/17/2005) regarding Joint Conferences of Expert Witnesses.
3. In view of clauses 6, 10, 14 & 15 of the said Practice Note, I assume that the Parties' legal teams will have agreed on the following matters and have provided the same to the experts sufficiently in advance of the conclave:
  - i) the experts to attend;
  - ii) the questions to be answered; and
  - iii) the materials to be placed before the experts.
4. I ask that the Parties' legal teams please provide me with the same information and documentation referred to at (3) above, at least three working days ahead of the date of the conclave and preferably two calendar weeks ahead.
5. I ask that the Parties' legal teams please advise whether any of the legal representatives will be in attendance at the conclave, pursuant to Court Order – as per Rule 31.24(2) - or otherwise, together with all of the relevant details.

6. Pursuant to the said Practice Note (clause 10), it is requested that the Parties' legal teams ensure that each of the experts participating in the conclave will have been provided with the same information and documentation relevant to the issues on which they are expected to confer, which I note may include:
  - i) the Expert Witness Code of Conduct;
  - ii) Practice Note No. SC Gen 11 (08/17/2005) regarding Joint Conferences of Expert Witnesses;
  - iii) An agreed chronology, if appropriate;
  - iv) Relevant witness statements or preferably, a joint statement of assumptions to be made by the experts, including any competing assumptions to be made by them in the alternative (which should be clarified as such);
  - v) Copies of all (relevant) expert opinions already exchanged between the parties and all other (relevant) expert opinions and reports upon which a party intends to rely; and
  - vi) Such records and other documents as may be agreed between the parties or ordered by the Court.
  
7. In my role as facilitator I undertake to assist the Parties' experts as follows:
  - i) To chair and facilitate the joint conclave in a neutral manner and to ensure procedural fairness to all participants;
  - ii) To oversee the process of the joint conclave and preparation of the joint report and NOT to participate in the substantive discussion;
  - iii) To ensure that the joint conclave duly addresses all issues and/or questions identified in the joint list prepared by the Parties' legal teams;
  - iv) To ensure that the joint report specifies the matters agreed and also captures accurately the basis of any difference of opinion or non-agreement of the experts with respect to any of the issues posed;
  - v) To ensure that the joint report specifies other questions which any of the experts believe would be useful for them to consider, (pursuant to clause 17 of the Practice Note);
  - vi) To remind and/or explain to the experts where necessary, their obligations under clause 1.2 of the Code, to exercise their independent, professional judgement;

- vii) To remind and/or explain to the experts where necessary, their obligations to accept as fact the matters stated in witness statements or assumptions submitted to them and that it is not their role to decide any disputed question of fact or the credibility of any witness.

Where there are competing assumptions to be made in the alternative, alternative answers may have to be provided to a question or questions, specifying which of the assumptions are adopted for each answer (pursuant to clause 19 of the Practice Note); and

- viii) To impose or keep a discipline in the conclave, or a structure which ensures the completion of the task.
8. I will take the necessary steps (including to liaise with the Parties' administrative staff designated to support the conclave) to ensure that the joint report is finalised and signed by all participating experts immediately at the conclusion of the conclave and otherwise as soon as practicable thereafter – and then provided to the Parties' legal teams. In doing so, I will in no uncertain terms seek to apply undue pressure on the experts to sign their report before they have indicated that they are ready and content to do so.
  9. I will inform the Parties' legal teams if, pursuant to UCPR Rule 31.25(2), an expert directed to confer intends to apply to the Court for further directions.
  10. I will maintain confidentiality in all documents and information to which I am privy in this matter, having regard to Rule 31.24(6) and Rule 31.26(3) & (4) UCPR.
  11. I assume that the Parties' legal teams will provide a signed copy of the joint report to the Court and perform any other role directed by the Court in relation to the conclave.
  12. Irrespective of the outcome of the Expert Witness Conclave, the Parties will pay the Facilitator's fees and disbursements as specified at Part 2 (over the page).

**FACILITATOR FEE AGREEMENT RE EXPERT WITNESS CONCLAVE**

**Part 2 - In respect of my professional fees, the following provisions apply:**

1. Hourly rate: \$300.00 plus GST, applicable in respect of:
  - i) reading time;
  - ii) facilitation of the conclave on the day; and
  - iii) any follow-up attendance required in respect of an adjourned conclave, confirmation or finalisation of the joint report, signature by the experts and provision to the parties, etc - exceeding 1 hour.
  
2. I will not charge for the following:
  - i) administrative time in preparing for the conclave, such as liaising with the parties;
  - ii) travel time to and from the venue if conducted in the Sydney CBD;
  - iii) any follow-up attendance required in respect of confirmation or finalisation of the joint report, signature by the experts and provision to the parties, if this is less than 1 hour in total.
  
3. Any disbursements incurred over \$50.00 will be charged at cost.
  
4. **Note re cancellation:** the parties will be liable for their respective shares of the facilitator's costs if cancellation occurs less than 24 hours before the conclave date – unless it is re-scheduled.
  
5. Costs and any disbursements to be shared equally between the parties and will be billed accordingly. Payment terms are generally 30 days but of course in co-operation with the respective billing cycles applicable with respect to your clients.

Please don't hesitate to contact me if you require any additional information or clarification. Unless I hear from you to the contrary, I will assume that you and your clients accept the terms of this retainer.

**Yours Faithfully,**



**Karen Stott,**

BA.LLB, Solicitor and Nationally Accredited Mediator