



# Office of the NSW Small Business Commissioner

## Expert Determination Agreement

The parties appoint the Expert Determination Provider to appoint an Expert to determine the issues between the parties in accordance with the terms of this agreement.

Applicant:

Respondent:

Expert:

### Procedure for Determination

1. The parties enter into this agreement which:
  - a. Identifies the Office of the NSW Small Business Commissioner (OSBC) as the Expert Determination Provider
  - b. Entitles the OSBC to appoint an Expert to determine the matter;
  - c. Describes the procedure by which the Expert will determine the matter;
  - d. Entitles each party to lodge with the OSBC a written submission setting out the party's position as to how the matter should be determined;
  - e. Does not preclude the Expert determining the matter in a manner other than one submitted by one of the parties; and
  - f. Requires each party to release the OSBC and the Expert from and against all claims, except in the case of fraud on the part of the Expert.

### Costs

2. The costs of the Expert Determination are to be initially borne by the applicant pursuant to the Determination Rules of the Motor Vehicle Insurance and Repair Industry Code of Conduct.
3. The cost of the Expert Determination Process are agreed between the parties as per the attached Schedule 1 to this agreement.

### Determination of the Expert

4. The determination of the Expert will be in writing, will provide reasons, and be final and binding upon the parties:

### **Rules for Expert Determination**

5. The Expert Determination will commence with the Expert's acceptance of the appointment to make a determination in accordance with the Determination Rules prescribed by Schedule 1 of the Motor Vehicle Insurance and Repair Industry Code of Conduct.
6. Within fourteen days of the date of the appointment to conduct the Expert Determination, the Expert may arrange a preliminary conference with each party to discuss the issues.
7. Within 28 days of the application form being submitted to the OSBC, the applicant will submit to the OSBC information specifying the nature and basis of the claim, the amount claimed (and how it has been calculated) and any other remedy sought, and shall enclose copies of all documents and any witness statements or expert reports relied upon in support of the claim.
8. This information will be provided by the OSBC to the respondent.
9. Within 28 days of the respondent's receipt of the applicant's claim, the respondent/s shall submit to the OSBC its response, setting out what it says as to the nature and basis of the claim, and shall enclose copies of all documents and any witness statements or expert reports relied upon by the respondent in response to the claim.
10. This information will be provided by the OSBC to the applicant.
11. Both sets of submissions and statements will be provided to the Expert by the OSBC.
12. After receiving information from the applicant and/or respondent, the Expert may decide that either party is invited or required to provide further information.
13. If either party has not met the timeframes for the provision of information to support their case, the Expert may rely upon any available written material, industry standards and relevant legislation to make a determination, or terminate the process.

### **Determination**

14. As expeditiously as possible and as soon as practicably after receiving all the information from the OSBC, the Expert must advise the parties in writing of the determination of the issues giving reasons for the decision.
15. The decision of the Expert will be binding on the parties.

### **Procedural Rules**

16. The Expert Determination will supersede all prior agreements in relation to how the issues are to be determined between the parties.
17. If the Expert Determination is not provided in accordance with these rules, an alternative Expert

will be appointed.

### **Conduct of the Expert**

18. The function of the Expert is to make a determination on the issues between the parties in accordance with these rules.
19. The Expert must conduct the Expert Determination in accordance with the requirements of procedural fairness.
20. The Expert must make the determination on the basis of information received from the parties and the Expert's own expertise. The determination will be made as an expert and not as an arbitrator.
21. The Expert is not bound by the rules of evidence.
22. If the Expert becomes aware of circumstances that might reasonably be considered to adversely affect their capacity to act independently or impartially they must immediately inform the parties.

### **Mediation**

#### **Background**

23. The parties confirm that mediation was not able to resolve the dispute.

### **Contact details**

**Applicant**

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Address

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Primary contact

.....

Tel / Mobile

.....

Email

.....

**Respondent**

Address

Primary contact

Tel / Mobile

Email

**Signing of the Determination Agreement**

The parties and the Expert Determiner sign this Determination Agreement as follows:

Name of party

Signature

Print name

Date

Name of party

Signature

Print name

Date

Name of Expert

Signature

Date

## Schedule 1 Expert's Fees

**Stage 1 fees** for the first 4 hours, are payable by the Applicant at the commencement: \$1670.00 (inclusive of GST)

**Stage 2 fees** for the balance of time used, are payable by the party nominated in the Expert's Decision: \$770.00 (inclusive of GST)

Total Due: **\$2,420.00** (inclusive of GST)

Date Due: Within 7 days of the issue of the invoice by the OSBC.