



# Expert Determination

The Office of the NSW Small Business Commissioner (OSBC) is approved under the *Motor Vehicle Insurance and Repair Industry Code of Conduct* to conduct Expert Determination.

The mediation process must have concluded and failed to resolve a dispute before an application is made for Expert Determination. It is compulsory for repairers and insurers in NSW to participate in the Expert Determination process and the decisions are binding.

An application for Expert Determination must be lodged with the Code Administration Committee (CAC) **within 28 business days** of the conclusion of mediation through the online portal at:

<http://www.abrcode.com.au/>

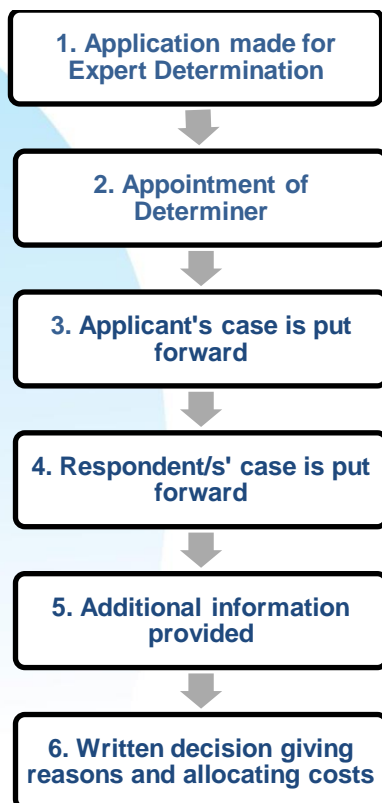
Following lodgement with the CAC, you must make an application to the OSBC **within 2 business days**. Application forms are available at:

<https://www.smallbusiness.nsw.gov.au/resources/forms>

*Tip: The Determination process can only proceed after the internal dispute resolution (IDR) and mediation processes under the Code have been concluded and failed to resolve the issues in dispute.*

*Tip: You must provide a certificate or letter from a mediator to certify the mediation process has concluded.*

## THE EXPERT DETERMINATION PROCESS



- 1. Application** - Strict deadlines apply for making an application. Once received by OSBC, an Expert Determiner will be appointed.
- 2. Appointment** - Once appointed, the Expert Determiner will contact each party and discuss the process and rules which are described in the Expert Determination Agreement. All parties will need to sign the agreement.
- 3. Applicant's case** - The applicant will have 28 days to submit information about the dispute including the amount claimed (and how it has been calculated) and any supporting documents, witness statements and reports.
- 4. Respondent/s' case** - The respondent will have 28 days after the applicant's information has been provided, to submit information about the dispute and any supporting documents, witness statements and reports.
- 5. Additional information** - Either party may need to provide additional information before a decision can be made.
- 6. Decision** - A written decision giving reasons will be provided to the parties as soon as possible after all the information has been provided.

*Tip: STRICT DEADLINES APPLY. You will need to get your application to the CAC and OSBC as soon as you have a certificate that the mediation process has concluded.*

*Tip: Expert Determination decisions are largely made 'on the papers' by evaluating the facts, the law and evidence provided by each party. OSBC can provide you with a guidance kit to help you prepare your information.*

## APPOINTMENT OF A PROVIDER

### What is an Expert Determination?

Expert Determination is an alternative dispute resolution process where a binding decision is made to resolve a dispute without having to go to court or arbitration.

It is a quick and effective way of resolving disputes where there are one or two simple issues, or where the subject matter is technical.

The Expert Determiner is not an arbitrator, but will conduct the process according to the Determination Rules of the Code unless the parties agree to change them.

The Expert Determiner is an 'expert' in the process and has sufficient subject matter expertise. The Expert is an independent and neutral third party who will ensure that each party has a fair and reasonable opportunity to put their case forward.

The Expert Determiner will use procedures and process to make sure that the process is quick, cost-effective and fair, and as informal as possible.

### THE EXPERT DETERMINATION DECISION?

The Expert Determiner will determine the dispute by considering the written material and oral evidence provided by the parties, unless otherwise agreed.

The decision will be made as soon as possible after all information has been supplied and considered. The decision will be a final and binding written decision giving reasons.

The decision will not include the names or any identifying information of the parties or any customers associated with the dispute.

Decisions made under the Expert Determination Scheme will be published in an anonymised form to avoid the identification of either party or any customers associated with the dispute.

### What is the process?

Once an application has been received, the OSBC will notify the other party and appoint an Expert Determiner.

The OSBC will contact the parties and provide guidance on the preparation of information and explain:

- The Expert Determination Rules and procedure
- An estimate of the Expert Determiner's fees and costs of the process (excluding the venue) and payment schedule
- Information required from each party and time-frames
- Whether additional technical reports will be necessary
- The parties will be required to agree to sign an Expert Determination Agreement which includes a schedule of the Expert Determination Provider's fees and costs.

### Who pays the cost?

Parties will be required to pay their own costs including any costs for obtaining further technical reports where applicable.

The Expert Determiner's Fees will be payable in 2 stages. Stage One fees, a total of \$1650.00 (inclusive of GST) covers the first four hours and will be payable by the applicant within 7 days of being notified of the appointment of an Expert.

Stage 2 fees, a total of \$770.00 (inclusive of GST) will be paid according to the Determination Decision and within 7 days of the Expert issuing a determination decision. Stage 2 fees will be charged as a flat rate for any number of hours required by the Expert Determiner over and above the four hours.

Any variation to the Experts fees for complex matters or multiple issues will be discussed with the parties and agreed to in the Determination Agreement.

The balance of the costs and a determination, of which party will pay, will be dealt with in the Determination Decision. Costs may be allocated to the unsuccessful party or shared between both parties which will mean that the respondent will be required to reimburse the applicant for any fees paid.

*Tip: To assist with the Expert Determination, both parties will be required to make written submissions and supply supporting documents within the timeframes specified.*

*Tip: A Submission template can be downloaded from the OSBC website.*

*Tip: The Determiner may seek further information (written or oral) from either party, or a third party.*

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