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CONCURRENT EXPERT EVIDENCE

BY

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Introduction

In the preface to the fourth edition of *Expert Evidence Law, Practice, Procedure and Advocacy* published in 2009, by Ian Freckelton SC and Hugh Selby observed that the chapter entitled "Concurrent Expert Evidence" which they had added since the third edition published only four years earlier:

> "reflects an important change in practice. In New South Wales, in particular, as well in many administrative tribunals, it is becoming increasingly common for expert evidence to be taken from a number of experts at the same time ("in the hot tub"), thereby allowing experts to engage in debate with one another, issues more effectively to be crystallised for the court and new forms of cross-examination to make experts accountable for their views. A number of judicial commentators have become energetic proponents for the advantages of this approach but it remains controversial and little used outside Australia."[1]

Like the winged keel, concurrent expert evidence is an Australian invention of the early 1980s. Unlike the winged keel, however, concurrent expert evidence originated in the eastern part of the continent, in practices developed by the Australian Broadcasting Tribunal and the Trade Practices Tribunal and in judicial experiments conducted by Rogers J in the Commercial List (Common Law Division) of the Supreme Court of New South Wales.[2] However, it was not until the mid 2000s that concurrent expert evidence became a principal means of eliciting expert opinion evidence, at least in certain tribunals and courts.

Principal credit for bringing concurrent expert evidence "into the mainstream" undoubtedly goes to Justice Peter McClellan who

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[1] Freckelton I and Selby H, *Expert Evidence Law, Practice, Procedure and Advocacy* (Lawbook Co., Sydney, 4th Edition, 2009) page xxii.
[2] Freckelton and Selby note 1 pages 489 to 490; see *Spika Trading Pty Ltd v Royal Insurance Australia Limited* (1985) 3 ANZ Ins Cas 60 – 663.

introduced the practice in the New South Wales Land and Environment Court (LEC) shortly after he became Chief Judge in 2003 and adopted it in the Supreme Court of New South Wales when he was appointed Chief Judge at Common Law in 2006. His Honour has also played a key role in education of judicial officers and others about the benefits of concurrent expert evidence in articles, papers and a very useful video produced by the Judicial Commission of New South Wales and the Australian Institute of Judicial Administration.[3] Other notable judicial proponents of concurrent expert evidence in the mid to late 2000s have been Justice Michael Barker, the inaugural president of the State Administrative Tribunal of Western Australia (SAT), Judge (later Justice) John Chaney, the second and current president of SAT, and Justice Garry Downes AM, the president of the Administrative Appeals Tribunal (AAT).

In the chapter on concurrent expert evidence, Ian Freckelton wrote:

> "At present the practice of taking 'concurrent evidence' from expert witnesses has a modest number of enthusiastic proponents. Within the court system so far they have largely been confined to certain judges within the Federal Court of Australia and a number of judges within the New South Wales Supreme Court, most notably McClellan CJ at CL … It is also commonly used in the Administrative Appeals Tribunal and the State Administrative Tribunal in Western Australia." [4]

It appears that, currently, the two adjudicative bodies in which concurrent expert evidence is used most consistently are SAT and the LEC. However, whereas the jurisdiction of the LEC is limited to town planning, environmental, local government, rating, land valuation and related matters, the jurisdiction of SAT, being a so called "super tribunal"

[3] Judicial Commission of New South Wales and Australian Institute of Judicial Administration, *Concurrent Evidence – New Methods With Experts* (2006)
[4] Freckelton and Selby note 1 page 497.

is considerably broader. It would be fair to say, therefore, that at present concurrent expert evidence is used most extensively in SAT.

SAT:

- reviews the vast majority of administrative decisions made by State and local government authorities and officials, in respect of which review (administrative appeal) rights are conferred;

- exercises original jurisdiction in relation to a wide variety of civil, commercial, strata titles, land compensation, guardianship and administration, equal opportunity and other types of disputes; and

- determines review and disciplinary proceedings in relation to professions, occupations and trades that are licensed under State law.

Evidence given by expert witnesses is a feature in many areas of SAT's broad jurisdiction, such as town planning, building disputes, natural resources, land valuation, vocational regulation and guardianship and administration proceedings. As the Tribunal has said in its pamphlet *A guide for experts giving evidence in the State Administrative Tribunal* published in 2007:

> "The quality and presentation of expert evidence is important in assisting the Tribunal to make reliable and correct decisions in the many areas of its jurisdiction."[5]

[5] *A guide for experts giving evidence in the State Administrative Tribunal* http://www.sat.justice.wa.gov.au/_files/Expert_Evidence_Brochure.pdf.

SAT's main objectives are:

"(a) to achieve the resolution of questions, complaints or disputes, and make or review decisions, fairly and according to the substantial merits of the case;

(b) to act as speedily and with as little formality and technicality as is practicable, and minimise the costs to parties; and

(c) to make appropriate use of the knowledge and experience of Tribunal members."[6]

Consistently with these objectives, and in order to maximise the value of evidence given by expert witnesses to the Tribunal, SAT has adopted a model for expert evidence comprising the following four principal elements:

1. Articulation of expert witnesses' obligations to the Tribunal.
2. Written statements of expert witnesses' evidence.
3. Conferral and joint statement of expert witnesses.
4. Concurrent evidence of expert witnesses at the final hearing.

While concurrent expert evidence is a critical part of this model, it would not operate as effectively in the absence of the other elements.

In this paper, I will at first discuss expert witnesses' obligations to the decision-maker as articulated by SAT and the conferral and joint statement process. I will then refer to the traditional method of obtaining expert evidence in tribunals and courts and describe the process of concurrent expert evidence which has been developed in response to disillusionment with the traditional approach. Finally, I will identify

[6] *State Administrative Tribunal Act 2004* (WA) s 9.

eight benefits of and five practical issues raised by concurrent expert evidence and related processes. But, first, a word about terminology.

Letting the water out of the hot tub

While some judges and commentators, and even some tribunal members, refer to the process discussed in this paper as "hot tubbing", the correct and preferable term is "concurrent expert evidence". This is the term adopted by judges and tribunal members who have developed and applied the practice most extensively and consistently. Concurrent expert evidence is also the term that is used in SAT's *Standard orders made at directions hearings, mediations and compulsory conferences* [7] and in its pamphlet *A guide for experts giving evidence in the State Administrative Tribunal* [8].

"Hot tubbing" is, in my view, an inappropriate term for several reasons. First, it demeans the process. An implication from the expression "hot tubbing" is that it is not a serious and important process, but rather is almost recreational. As discussed below, nothing could be further from the truth.

Another implication from the term "hot tubbing" is that the participants who are thrown into the "hot tub" together are subjected to an unpleasant and unprofessional experience. That is also not the case. In fact, as I will explain, one of the benefits of concurrent expert evidence is that it

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[7] *Standard orders made at directions hearings, mediations and compulsory conferences* http://www.sat.justice.wa.gov.au/_files/standard_orders.pdf standard order 44: "Subject to any further order the evidence of expert witnesses must be given concurrently at the hearing in each field of expertise. …"

[8] *A guide for experts giving evidence in the State Administrative Tribunal* note 5: "The Tribunal will usually require the evidence of expert witnesses to be given concurrently at the hearing in each field of expertise."

provides expert witnesses with a considerably more comfortable and professional experience than the traditional method of taking expert evidence. The process of concurrent expert evidence enables expert witnesses to maintain their roles as experts and seek to assist the decision-maker in their areas of expertise, rather than having to participate in a forensic battle with counsel. As Justice McClellan has explained:

> "Within a short time of the discussion commencing, you can feel the release of the tension which normally infects the evidence-gathering process. Those who might normally be shy or diffident are able to relax and contribute fully to the discussion."[9]

Finally, "hot tubbing" is inappropriate terminology, because (without naming names) the thought of some of the experts who have given evidence in SAT sitting semi-clad in a hot tub is simply too much for one's imagination to bear.

Ian Freckelton commenced his chapter with the following well known nursery rhyme:

> "Rub a dub dub,
> Three men in a tub,
> And who do you think they be?
> The butcher, the baker,
> The candlestick maker.
> Turn them out, knaves all three!"

If for no other reason, the inappropriateness of the term "hot tubbing" is apparent from the fact that the three expert witnesses referred to in the nursery rhyme, namely, the butcher, the baker and the candlestick mater, would never be called to give concurrent expert evidence as part of a

[9] Quoted in Freckelton and Selby note 1 page 491.

single panel, because their evidence would be in the three separate fields of expertise of butchering, baking and candlestick making.

I suggest that, as concurrent expert evidence is increasingly adopted by adjudicators, it is time to let the water out of the hot tub.

Expert witnesses' obligations

The pamphlet *A guide for experts giving evidence in the State Administrative Tribunal* states:

> "Experience shows that, when expert witnesses understand and observe their obligation to bring to proceedings an objective assessment of the issues within their expertise, their evidence is of great assistance. When expert witnesses are not objective, and assume the role of advocate for a party, their credibility suffers."

With these observations in mind, SAT has articulated expert witnesses' obligations to the Tribunal in the following terms:

- An expert witness has an overriding duty to assist the Tribunal impartially on matters relevant to the expert's area of expertise.
- An expert witness' paramount is to the Tribunal and not to the party engaging the expert.
- An expert witness is not an advocate for a party.[10]

The pamphlet recognises that an expert may have been engaged by a party before the proceedings were commenced or may have been engaged by a party in another capacity, for example, as an advocate, in addition to being engaged to give expert evidence. While noting that there is an "inherent tension in a person acting as both expert witness and advocate

[10] The obligations are stated in *A guide for experts giving evidence in the State Administrative Tribunal* and are based on expert witness' general obligations articulated by the New South Wales Land and Environment Court in its *Practice Direction: Expert Witnesses*, Sch 1.

in Tribunal proceedings", in town planning matters (where a party has a right to be represented by an agent[11]) the Tribunal "has adopted the practice of former adjudicators it has replaced by permitting a person to act both as expert witness and advocate … particularly where they relate to relatively minor developments, in order to allow the parties to minimise costs."[12] Nevertheless, as stated in the pamphlet:

> "When the expert is giving evidence in the Tribunal, he or she must appreciate and acknowledge the obligations set out above."

Where a matter that is likely to involve expert evidence is listed for final hearing or determination on documents, the Tribunal usually orders:

- each party to give any expert witness it retains a copy of the pamphlet and a copy of the programming orders;[13] and

- each expert witness to acknowledge in his or her statement of evidence that he or she has read the pamphlet and agrees to be bound by the expert's obligations stated in that document.[14]

Conferral and joint statements of expert witnesses

Parties in SAT proceedings are generally required to file and exchange experts' witness statements by a specified date, usually two weeks before the final hearing.[15]

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[11] *State Administrative Tribunal Act 2004* (WA) s 39(1)(f) and *State Administrative Tribunal Rules 2004* (WA) r 63(2).
[12] ***Dunbar and City of Stirling*** (2006) 47 SR (WA) 50; [2006] WASAT 331 at [19] and [20].
[13] *Standard orders made at directions hearings, mediations and compulsory conferences* note 7 standard order 37.
[14] *Standard orders made at directions hearings, mediations and compulsory conferences* note 7 standard order 38.
[15] *Standard orders made at directions hearings, mediations and compulsory conferences* note 7 standard order 39.

Except in cases where the expense involved would be disproportionate to the subject matter of the proceeding or where it would not be productive, in most types of proceedings[16] the Tribunal usually makes the following programming orders:

> "By [specified date usually 7 days before the hearing date] the expert witness in each field of expertise must confer with one another in the absence of the parties and their representatives and must prepare a joint statement of:
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> (a) the issues arising in the proceeding which are within their expertise;
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> (b) the matters upon which they agree in relation to those issues;
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> (c) the matters upon which they disagree in relation to those issues; and
>
> (d) the reasons for any disagreement.
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> The expert witnesses much each sign the joint statement at the conclusion of their conference. If the statement is in handwriting the expert witnesses must appoint one of them to generate a typed version of it and each must sign the typed document. The expert witnesses must file the joint statement with the Tribunal and give copies of it to the parties by [specified date usually 5 days before the hearing date]" [17]

The pamphlet states that it will "usually be desirable for the experts to meet face to face and to work through the issues together", although, "in some cases, where the issues are relatively narrow, it may be adequate for them to confer by telephone". The pamphlet also states:

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[16] The principal exception is proceedings under the *Guardianship and Administration Act 1990* (WA) in which most matters are listed for a final hearing of up to one hour within six to eight weeks of the commencement of the proceeding.

[17] *Standard orders made at directions hearings, mediations and compulsory conferences* note 7 standard orders 42 and 43.

> "It is expected that, consistently with their obligations to the Tribunal, the experts will make a genuine attempt to identify the issues, to narrow them where possible, and to clearly identify their reasons for disagreement. An expert must exercise his or her independent professional judgment in relation to the conference and joint statement and must not act on any instructions or request to withhold or avoid agreement."

Traditional approach for expert evidence

The traditional method of obtaining expert evidence in a particular field of expertise in tribunals and courts involves the expert called by one party being examined by that party or its representative, cross-examined by the other party or its representative and re-examined by the first party or its representative and the expert called by the other party being similarly examined, cross-examined and re-examined, hours, days or even weeks later. Aspects of the evidence of the first witness may be forgotten or overlooked by the time the second witness gives evidence. Otherwise, a transcript may be required, at cost to the parties and the State. Importantly also, the traditional method of obtaining expert evidence does not allow expert witnesses in the same field to question or directly respond to one another.

Furthermore, both evidence in chief and cross-examination is given through the medium of questions posed by a party or its representative who is unlikely to have the same level of understanding of the area of expertise as the expert witness. The expert witness may not initiate a discussion even though he or she considers that the discussion would assist the decision-maker or that the line of questioning would not assist the decision-maker. Cross-examination often descends into a forensic battle between counsel and the expert witness, rather than a helpful discussion and debate of expert issues. As the expert witness can not be

directly challenged by a professional colleague, he or she may be able to deflect the attack or win the battle by a technical or incomplete response.

The nature of the process is inherently adversarial and encourages expert witnesses to adopt a partisan and defensive position. There is a tendency for expert witnesses to advocate for their client's cause, rather than seek to assist the decision-maker to properly resolve the issues touching on their area of expertise. Furthermore, the nature of the process makes it unlikely that expert witnesses will make reasonable professional concessions.

At its worst, the traditional approach transforms an expert, who enjoys the privileged position of expressing opinion evidence in order to assist in the administration of justice, into a "gun for hire". Furthermore, the nature of the process can discourage some experts, who might otherwise make a valuable contribution to the proper resolution of proceedings, from being willing to take part. It is hardly a pleasant experience for an expert to be cross-examined by an advocate and not be permitted to speak freely to the decision-maker in relation to a matter falling within their field of expertise.

Concurrent expert evidence

The limitations and nature of the traditional method of taking expert evidence has given rise to what Freckelton terms "the apparent escalating disillusionment" with that model.[18] The process of concurrent expert evidence is significantly different to the traditional method of placing

[18] Freckelton and Selby note 1 page 497.

expert opinion evidence before a decision-maker and is a response to the disillusionment with the traditional approach.

As stated in the pamphlet *A guide for experts giving evidence in the State Administrative Tribunal*, where expert witnesses have been required to confer and prepare and file a joint statement, the Tribunal's practice is that:

> "The joint statement will be admitted into evidence at the hearing and a party will not be permitted to present any evidence inconsistent with any agreement in the joint statement unless the Tribunal grants leave."

In most types of proceedings[19], expert witnesses in each field of expertise are generally required to give evidence concurrently at the hearing. Concurrent evidence involves the witnesses:

- sitting together as an expert panel;

- being asked questions by the Tribunal, generally on the basis of the joint statement;

- being given an opportunity to ask each other any questions they think might assist the Tribunal; and

- being asked questions by the parties or their representatives.[20]

[19] Again, with the principal exception of proceedings under the *Guardianship and Administration Act 1990* (WA).
[20] *Standard orders made at directions hearings, mediations and compulsory conferences* note 7 standard order 44.

Depending upon the number and complexity of issues, the Tribunal may invite expert witnesses and parties or representatives to ask questions on a particular topic or on all topics after the member or members have concluded their questions. Whereas it appears that in the LEC the judge or commissioner at first discusses with the parties or their representatives the issues to be addressed by the experts, in SAT the member or members usually nominate the topics and the order in which the topics are to be addressed by the expert panel. The presiding member then leads what has been correctly described by the New South Wales Law Reform Commission as "a structured professional discussion between peers in the relevant field."[21]

The process is far more akin to the way in which issues involving expertise are analysed and resolved in the "real world" than the traditional method of adducing expert evidence in tribunals and courts. In the real world, in order to analyse and resolve an issue involving expertise, the people who can contribute to the discussion meet with one another and work through the issue. This is essentially the process that occurs with concurrent expert evidence.

Benefits of concurrent expert evidence

There are a number of significant benefits for the administration of justice from concurrent expert evidence and the related processes of articulating experts' obligations and conferral and joint statements of expert witnesses discussed in this paper. The following are the eight principal benefits that I have observed.

[21] New South Wales Law Reform Commission, *Expert Witnesses*, NSWLRC Report 109 (NSWLRC, Sydney, 2005) http://www.lawlink.nsw.gov.au/lawlink/lrc/ll_lrc.nsf/pages/LRC_r109toc [6.56].

First, because the process is led by the decision-maker, it emphasises to expert witnesses that their primary obligation is to the decision-maker that they have an important role to play in the administration of justice. The Australian Law Reform Commission has noted the "symbolic and practical importance of removing the experts from their positions in the camp of the party who called them".[22]

Secondly, the conferral and joint statement process, and the expectation of giving evidence concurrently, facilitates the early identification of points of professional agreement and thereby enables the decision-maker and the parties to focus on the real areas of professional disagreement and the reasons for disagreement.

Thirdly, it saves considerable time at the final hearing and costs to the parties, particularly where there are more than two expert witnesses giving evidence in relation to an issue.

Fourthly, it enables and encourages expert witnesses to maintain their role as experts and not become advocates for a cause or participants in a forensic contest. As the New South Wales Law Reform Commission recognised, the nature of the concurrent evidence process as a structured professional discussion has the consequence that "experts typically make more concessions, and state matters more frankly and reasonably, than they might have done under the traditional type of cross-examination." [23]

[22] Quoted in Freckelton and Selby note 1 page 495.
[23] New South Wales Law Reform Commission note 21 [6.56].

Fifthly, all evidence in relation to a topic is given at the same time and expert witnesses are able to directly question and respond to their colleagues' evidence.

Sixthly, concurrent expert evidence improves the quality of the evidence given, because the witnesses know that they are subject to immediate questions and responses from their colleagues on the panel.

Seventhly, the quality and utility of questions posed by parties and their representatives is also generally improved, because the process has the character of a professional discussion, rather than an adversarial contest, avoids the need to traverse non-contentious matters, enables all participants to focus on the principal issues in question, and parties and their representatives soon realise that there is little point in covering the same ground that the decision-maker has addressed in questioning the witnesses. As the New South Wales Law Reform Commission has said, based on experience in the LEC, "it seems that the [parties'] questions may tend to be more constructive and helpful than the sort of questions sometimes encountered in traditional cross-examination." [24] Therefore, rather than eliminating cross-examination, as some lawyers may have feared, concurrent expert evidence enhances the beneficial role of cross-examination to test and clarify expert evidence by ensuring or at least encouraging the cross-examination to be focussed and on point.

Finally, in consequence of the benefits identified earlier, concurrent expert evidence greatly assists prompt and reliable decision-making.

[24] New South Wales Law Reform Commission note 21 [6.56].

Having regard to these advantages, it is hardly surprising that concurrent expert evidence has been generally warmly received by participants. In 2005, the AAT carried out an analysis of the utility of concurrent evidence with 62 members and 13 expert witnesses responding to a survey. Approximately 95% of respondents reported satisfaction with the process. The study concluded that the concurrent evidence procedure assisted experts to fulfil their role as independent advisers.[25] Similarly, the New South Wales Law Reform Commission has observed that the procedure employed by the LEC has met with:

> "overwhelming support from experts and their professional organisations. They find that, not being confined to answering questions put by the advocates, they are better able to communicate their opinions to the court. They believe that there is less risk that their opinions will be distorted by the advocates' skills. It is also significantly more efficient in time." [26]

Practical issues

Concurrent expert evidence and the related processes of conferral and joint statements of expert witnesses give rise to a number of practical issues in the conduct of proceedings. Five issues in particular are worth highlighting.

First, the expert witnesses need to know the decision-maker's expectations of them and need to allocate sufficient time to meet these expectations. The SAT standard order requiring parties to provide expert witnesses with a copy of the pamphlet *A guide for experts giving evidence*

[25] Administrative Appeals Tribunal, *A evaluation of concurrent expert evidence in the Administrative Appeals Tribunal* (November 2005) http://www.aat.gov.au/SpeechesPapersAndResearch/Research/AATConcurrentEvidenceReportNovember2005.pdf2005.pdf p 5.
[26] New South Wales Law Reform Commission note 21 [6.51].

in the State Administrative Tribunal and of the programming orders greatly assist in this regard. Generally, programming orders for experts' conferral and joint statements have been complied with without the need for any intervention by the Tribunal. However, in some cases, expert witnesses have not complied with the Tribunal's programming orders (sometimes despite the efforts of the parties' representatives to keep them to the timetable), and the member conducting the hearing has had to send the experts out of the hearing room to confer and prepare a joint statement during the parties' openings or to put the experts into the witness box without the benefit of the joint statement. Anticipating, as best it can, the type of situation in which this may occur, the Tribunal may schedule a directions hearing around the time when witness statements are due to be filed and served to ensure that experts are able to meet the timetable. Another idea that is presently being trialed in appropriate cases is for the Tribunal to schedule a compulsory conference involving the expert witnesses without the parties, after they have produced their witness statements and read each other's statements, chaired by a member who will not be involved in the determination of the matter, in order to discuss and narrow the areas of professional disagreement and to draft and settle the joint statement. It will be interesting to see whether, in addition to ensuring that the timetable is complied with, this process may result in further professional agreement prior to hearing and improve the quality of joint statements, particularly in relation to the explanation of the reasons for disagreement. If this is the case, it may be an appropriate use of resources to utilise this procedure more frequently where the nature of the issues and the scope of the proceedings warrants it.

Secondly, the processes of conferral and joint statement and concurrent expert evidence require a high level of professional courtesy and cooperation between the expert witnesses. The Tribunal's experience is that this does occur. Only once in five years can I recall an expert witness being disrespectful to a colleague on a panel or trying to speak over another witness (the same witness in both cases). As a reflection of the professional and collegial quality of the process, I have even seen an expert witness defend their colleague's answer to their own client's legal representative and explain that the legal representative, rather than their colleague, is in error. One often sees a real sense of professional comradery in an expert panel's discussion and debate about issues falling within their expertise.

Thirdly, concurrent expert evidence requires thorough preparation and careful management of the process by the decision-maker.

Fourthly, in order for concurrent expert evidence to be effectively transcribed if necessary, questions should be addressed to witnesses by name and if a witness wishes to ask a question of a colleague or respond to the evidence of a colleague without being asked, he or she should announce their name.

Finally, concurrent expert evidence requires the appropriate configuration of hearing rooms. Even in jurisdictions which now regularly receive concurrent expert evidence, the hearing rooms were not fitted out with this process in mind. In SAT, the witness box in some hearing rooms can comfortably seat two witnesses and, uncomfortably, three witnesses. However, there is only one microphone in the witness box to record the proceeding. One option is to seat the witnesses at the parties' table and

the parties or their representatives in the witness box. Another option is to add a further desk or desks to the witness box. While both options have been used in SAT, neither is desirable.

The first option has the consequence that the parties or their representatives do not have sufficient space in which to work. The second option has the consequence that some witnesses will be seated behind the parties' table and there is a need to commandeer and use microphones from the members' or parties' tables in a way that they were not designed for. It is, therefore, essential that a sufficient number of hearing rooms be redesigned or built to appropriately accommodate panels of expert witnesses.

Conclusion

It is noteworthy that in 2005, the same year that SAT was established, the previous edition of Ian Freckelton and Hugh Selby's comprehensive textbook on expert evidence did not include a chapter on concurrent expert evidence, whereas the current edition published in 2009 contains such a chapter. This development reflects the adoption of concurrent evidence and related processes involving expert witnesses by at least some tribunals and courts as a mainstream component of dispute resolution over this period. SAT and to some extent the AAT have been at the forefront of this change in practice.

Concurrent expert evidence and related processes have significant benefits over the traditional method of adducing expert evidence. In particular, these processes:

- emphasise to expert witnesses that their primary obligation is to the decision-maker and that they have an important role to play;

- enable all participants to focus on the real issues of professional disagreement and the reasons for disagreement;

- save considerable time at the final hearing and costs to the parties;

- enable and encourage expert witnesses to maintain their role as experts, rather than to become advocates for a cause or participants in a forensic contest;

- enable all evidence in relation to a topic given at the same time, with expert witnesses able to directly question and respond to each other;

- aid the quality of expert evidence;

- improve the utility of questions by parties or their representatives; and

- in consequence of the foregoing, greatly assist prompt and reliable decision-making.

Ian Freckelton has described the proponents of concurrent evidence as, on occasions, "evangelistic about its benefits".[27] It therefore seems that, no doubt to the surprise of some, I am now a practicing evangelist.

[27] Freckelton and Selby note 1 page 494.