

The importance of an expert

It is a reality that many building and construction projects encounter disputes at various stages.

The use of a person who is an “expert” cannot be underestimated in aiding builders and owners to resolve disputes involving defective, incomplete or non-compliant building works. An expert who has the qualifications and experience necessary to identify issues and provide factual opinions can assist parties to resolve their differences often before a dispute takes on a life of its own before the Tribunal or the Courts.

Engaging an appropriate expert can be crucial in protecting a party’s position. The right expert can be the difference between a party winning and losing a case, or at least reducing or increasing the amount to be paid.

What makes a person “an expert”? An expert can be anyone with knowledge or experience in a particular field beyond that expected of an ordinary person. An expert witness makes their knowledge and experience available to assist a Court or Tribunal understand the issues and thereby reach a sound and just decision. A person giving evidence as an expert is an exception to the fundamental common law rule that a witness must state facts not opinions. Ultimately it is for the Court or Tribunal to determine whether a person is an expert.

An expert should have a sound knowledge of their area, practical experience in the subject matter in dispute, the ability to communicate findings and a

flexibility of mind to modify an opinion in light of fresh evidence. Academic and professional qualifications are not a prerequisite.

An expert must be independent, objective and unbiased. A person who acts as a “hired gun” will be open to criticism by the Tribunal and Courts for not being independent.

An expert’s duty is to the person hearing the evidence. This duty has been codified. For example, an expert appearing in VCAT must comply with Practice Note No 2: Expert Evidence while in the Supreme Court they must adhere to Order 44 of the Supreme Court (General Civil Procedure) Rules. It is fundamental that the expert complies with the applicable ‘Guidelines’ in preparing reports.

An expert must be clear in their opinion, identify the facts upon which their opinion is based, state the assumptions and set out the analysis relied upon to form an opinion and provide this information in a concise and structured report.

Engaging an expert is a costly and time consuming process. It is therefore critical to get it right and to ensure the best evidence possible can be presented in a dispute. To do otherwise will expose an expert to criticism, risk evidence not being accepted, and leave a solid case in disarray.

This article contains general information and should not be acted upon without specific professional advice based on your own circumstances.



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