

## update

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## Friday Facts: Expert Witness Reports explained

*Often when clients are faced with legal action that involves a complicated set of facts they look to an expert to provide them with an opinion as to whether there is a basis for the claim. The practical implications for clients of seeking an expert report need to be kept in mind if reliance on the report is anticipated.*

Quite often clients will engage an expert well before legal proceedings have been issued if they are given the opportunity to respond to the claim. That expert may spend thousands of dollars in reaching an opinion which ultimately can not be relied upon because of information which has been provided to the expert which may be prejudicial to the defence of the case.

It is a common misconception that communications between experts, clients and/or their legal advisers are subject to legal professional privilege. However that is not the case. Once an expert report is sought to be relied upon in Court any information which the expert has received or relied upon in arriving at their expert opinion will become subject to production. Essentially those documents, depending on their content, may have a profound effect upon the way in which the expert's evidence is received by the Court in the proceeding and the findings made by the Court based on that expert evidence.

There is no doubt that the obtaining of an expert report prior to the issuing of litigation or shortly thereafter can be extremely beneficial in the defence of a claim.

There are however some key issues which clients should keep in mind in doing so, including the following:

- ask the expert questions which are within the realms of their professional ability: there is no point in asking an expert questions which they are not qualified to answer
- ask the expert to review documents which are relevant to the claim but ensure those documents do not provide only one side of the issue at hand: provide the expert with documents which go to both sides of the case so that the expert can provide an opinion based on a considered view of the evidence
- ask the expert if they need further documents in order to form an expert opinion: there is no point in the expert coming to an opinion which when challenged by other information results in the opinion they have expressed being torn to shreds by opposing Counsel because they have not consider an issue central to the opinion expressed
- keep in mind that all communication which you have with the expert will ultimately become subject to production to the Court and the other party

- make sure your expert knows what he/she has been asked to express an expert opinion about
- keep in mind that at the end of the day an expert's opinion will not be accepted by the Court if they are found to be biased or expressing a view purely because it advances the interests of one party

## For more information

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