

Expert Evidence for QCAT Building Disputes: A Guide for Homeowners

Home renovations can turn into disputes when the work is substandard, incomplete or doesn't meet the homeowner's expectations. [Resolving disputes](#) often requires homeowners to pursue a resolution through the Queensland Civil and Administrative Tribunal (QCAT). This article explores the process and homeowners' responsibilities to achieve a successful outcome.

What Is Expert Evidence?

When a dispute arises between a homeowner and a contractor about defective or incomplete work, it may be necessary to call on expert evidence to help resolve the issue.

According to the [Queensland Civil and Administrative Tribunal \(QCAT\)](#) Practice Direction on Expert Evidence, expert evidence is "evidence of an opinion given by a person who is an expert in the area to which the opinion relates." This can include evidence on technical or specialised matters, such as building defects or construction practices.

In Queensland, expert evidence is regulated by the Uniform Civil Procedure Rules, which set out the requirements for a written expert report.

Under Rule 428, an expert's report must include the following:

- expert's qualifications
- all material facts on which the report is based
- references to any literature relied on
- a description of any inspections or experiments conducted
- a summary of the expert's conclusions
- a statement about whether access to any additional facts would assist the expert in reaching a more reliable conclusion

The expert must also confirm that the factual matters stated in the report are true, that they have made all appropriate enquiries, that the opinions are genuinely held, and that the report contains a reference to all significant matters.

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In a dispute over defective or incomplete work, the onus is on the homeowner to articulate why the work is defective or incomplete, the rectification method to complete the work, and the cost to rectify. The expert evidence can help to support the homeowner's position and provide an independent assessment of the issue. It can also assist the tribunal in making a fair and informed decision.

The Importance of Choosing the Right Expert

- Choosing the right expert can make or break a case. It is important to choose an expert who has the appropriate qualifications and experience to give evidence on the relevant issues. As mentioned earlier, the QCAT Practice Direction on Expert Evidence sets out the requirements for expert reports in QCAT proceedings. Rule 428 of the Uniform Civil Procedure Rules also specifies the information that must be included in an expert report.
- When it comes to [building and construction disputes](#), it is important to engage an independent building expert who is qualified and experienced in the relevant area. An independent expert is one who is not biased towards either party and can give an objective opinion on the issues in dispute.
- A construction lawyer can assist with referring qualified and experienced independent building experts who are suitable for the defects and incomplete work in question. They can also help ensure that the expert report complies with the QCAT Practice Direction on Expert Evidence and the Uniform Civil Procedure Rules.
- It is important to note that the expert's role is to provide an opinion based on their expertise, and not to act as an advocate for the party who engaged them. The expert's duty is to the court or tribunal and they must provide independent and unbiased evidence.

Different Types of Expert Witnesses for Construction Disputes

| Expert Witness | Minimum Qualifications | Typical Defects |
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| Building Expert | Trade qualification, Builder's licence or equivalent experience | Defective workmanship, construction quality issues, compliance with building codes and standards |
| Structural Engineer | Bachelor's degree in Civil or Structural Engineering, Professional Engineering License | Structural defects, foundation issues, load-bearing wall problems, subsidence |
| Hydraulic Engineer | Bachelor's degree in Civil Engineering with specialisation in hydraulics, Professional Engineering License | Water ingress, waterproofing issues, drainage problems, plumbing defects |
| Quantity Surveyor | Bachelor's degree in Quantity Surveying or related field, Member of the Royal Institution of Chartered Surveyors | Cost estimation, pricing disputes, construction contracts, variations |
| Town Planner | Bachelor's degree in Urban Planning or related field, experience in town planning | Zoning disputes, land use issues, development applications, compliance with planning regulations |

The Conclave Process

When it comes to resolving construction disputes, the conclave process is an essential part of the expert evidence procedure in Queensland. According to QCAT Practice Direction No 4 of 2009 Expert Evidence, a conclave is a meeting of all the experts involved in a dispute, convened by a member, adjudicator, or principal registrar. Its purpose is to identify and clarify areas of agreement and disagreement among the experts on any issue in dispute and the reasons for any disagreement.

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The steps involved in the conclave process are as follows:

1. A party proposing to call an expert must give reasonable notice of the conclave to the expert and any issue(s) in dispute that relates to the expert's area of expertise. The expert must be given enough information and opportunity to investigate the relevant facts adequately.
2. The conclave may be conducted in the way decided by the convenor.
3. The experts who attend the conclave must prepare a joint report. This report must identify what matters they agree upon, what matters they disagree about, and the reasons for their disagreement. It must also state that each expert understands their duty to the tribunal and that they have complied with it.
4. Before the joint report is finalised, the experts may, by agreement between them and through the convenor, request all parties to respond to a specific inquiry. Otherwise, the joint report must be prepared by the experts without further reference to or instruction from the parties.
5. The convenor is responsible for facilitating the conclave process until a joint report has been finalised.

The conclave process is a confidential process, and all parties involved are required to maintain confidentiality about anything that was done or said during the conclave.

According to QCAT Practice Direction No 4 of 2009 Expert Evidence, evidence of anything done or said or an admission made at a conclave is inadmissible at any stage of the proceeding, except for those matters included in the joint report or anything said or done that is relevant to a proceeding either for an offence relating to giving false or misleading information or for contempt.

The Written Statement of Evidence

When dealing with a defective or incomplete building work dispute, one of the most crucial steps is the written statement of evidence. As per the QCAT Practice Direction on Expert Evidence, the statement of evidence must comply with Rule 428 of the Uniform Civil Procedure Rules.

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The statement of evidence must contain all material facts, whether written or oral, upon which the expert's opinion is based. Additionally, it should also include the expert's qualifications, references to any literature or other material relied upon, and a summary of the conclusions reached by the expert.

It is important to note that the onus is on the homeowner to articulate why the work is defective or incomplete, the rectification method to complete the work, and the cost to rectify. Therefore, it is crucial to engage an experienced and qualified building expert to prepare the statement of evidence.

A construction lawyer can assist in referring qualified and experienced independent building experts who are suitable for defects and incomplete work. The right expert can make all the difference in the outcome of the dispute, so it is crucial to choose wisely.

Once the statement of evidence has been prepared, it will be provided to the other party for review. This will allow both parties to fully understand each other's positions and may lead to an opportunity for settlement prior to the hearing.

How We Can Help

Expert evidence plays a crucial role in resolving property disputes. Homeowners must ensure that they engage an independent and qualified building expert and comply with the relevant rules and practice directions. If involved in a property dispute, seeking professional legal advice is essential to achieve a fair and just outcome.

Our [construction lawyer in Brisbane](#) can provide a consultation to help guide you through the process and give you the best chance of success. Don't hesitate to contact us for assistance with your property dispute.

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