

# The Benefits of Using a Construction Lawyer to Instruct Your Expert Witness

Homeowners facing construction disputes often require expert evidence. Engaging a construction lawyer to instruct an expert witness can ensure that the right expert is selected, their evidence is presented effectively, and communications are protected by legal privilege. This article explains how a construction lawyer can help resolve construction disputes and protect homeowners' interests.

## The Role of Expert Witnesses in Construction Disputes

Expert witnesses play a crucial role in construction disputes. They are professionals who have specialised training, knowledge, and experience in a field associated with the dispute. Expert witnesses are frequently requested in construction disputes to offer their views on matters like construction defects, workmanship quality, the cause of building damage, and the reasonable cost of fixing the defects.

Expert witnesses are expected to be impartial and independent. They are required to provide the court or tribunal with their expert opinion, based on their knowledge and experience, and not based on the interests of any party in the dispute. The expert witness is not an advocate for either party and their role is to assist the court or tribunal in reaching a fair and just decision.

Expert witnesses are usually instructed by lawyers acting for either the claimant or the respondent. Instructing an expert witness is an important step in a construction dispute and can have a significant impact on the outcome of the case.

## Why Engage a Construction Lawyer to Instruct an Expert Witness?

While an expert witness can be engaged by any party to a dispute, it is highly beneficial for a homeowner to engage a construction lawyer to instruct the expert witness. This is because a construction lawyer has the legal knowledge and experience to properly instruct the expert witness, ensuring that the expert evidence is presented in the most effective way possible.

A [construction lawyer](#) can assist a homeowner in several ways when it comes to engaging an expert witness.

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1. They can refer qualified and experienced independent building experts who are suitable for the defects and incomplete work at issue. A lawyer can provide guidance on the type of expert that would be best suited to the specific dispute and ensure that the expert has the necessary qualifications and experience to provide a credible and reliable opinion.
2. A construction lawyer can liaise with the expert witness on behalf of the homeowner. This is important because the lawyer can ensure that the expert witness is properly instructed on the issues that are relevant to the dispute. The lawyer can also assist the expert in understanding the legal framework within which their evidence will be used, including the rules of evidence and the specific requirements of the [Queensland Civil and Administrative Tribunal Practice Direction](#) on Expert Evidence.
3. A construction lawyer can assist the expert witness in preparing their statement of evidence. This is an important document that must comply with the requirements of Rule 428 of the Uniform Civil Procedure Rules. A lawyer can ensure that the statement of evidence is properly prepared, addresses all relevant issues, and meets the requirements of the Practice Direction.
4. Engaging a construction lawyer to instruct an expert witness can help protect communications with the expert under legal professional privilege. Legal professional privilege is a legal right that protects certain communications between a lawyer and their client from being disclosed to third parties. This means that any communications between the lawyer and the expert, including the expert's report, can be protected from disclosure to the other party to the dispute. This can be particularly important in the context of a construction dispute, where issues of liability and fault are often contested.

## Legal Professional Privilege

One of the key benefits of engaging a construction lawyer to instruct your expert witness is the protection of legal professional privilege. Legal professional privilege is a legal principle that protects the confidentiality of communications between a lawyer and their client. This principle extends to communications made for the purpose of obtaining legal advice or for use in legal proceedings.

In the context of engaging an expert witness, legal professional privilege means that any communications between the lawyer and the expert witness are protected. This includes any instructions, reports, or other communications made between the lawyer and the expert witness.

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By engaging a construction lawyer to instruct your expert witness, you can ensure that any communications between the two are protected by legal professional privilege. This can be particularly important in the event of a dispute, as it means that the other party will not have access to any of the communications between your lawyer and your expert witness.

It is important to note that legal professional privilege is not absolute, and there are exceptions to the principle. For example, the legal professional privilege may not apply if the communication is made for an illegal purpose or if the communication contains information that is not confidential. However, in most cases, legal professional privilege will apply to communications between a lawyer and their expert witness.

Overall, engaging a construction lawyer to instruct your expert witness can provide you with the benefit of legal professional privilege, which can help protect your interests in the event of a dispute.

## How We Can Help

Expert witnesses play a crucial role in construction disputes, and engaging the right expert can significantly impact the outcome of your case. While it may be tempting to instruct an expert directly, the benefits of engaging a construction lawyer to instruct an expert witness cannot be overstated. By working with a construction lawyer, you can ensure that the expert has the right qualifications and experience for your case and that their evidence is presented in a manner that is admissible in court.

Moreover, the communication between the lawyer and expert witness can be protected by legal professional privilege, which is a significant advantage in any legal dispute.

If you are currently facing a construction dispute or need advice on building defects and incomplete works, our law firm can help. As a small firm specialising in construction law and residential building disputes, we have more than 10 years of experience in this area of law. We regularly advise homeowners on contractual matters and represent them in QCAT.

We offer a free 15-minute phone consultation, during which we can discuss your case and provide guidance on the best course of action. Please feel free to contact us to schedule your consultation.

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