

## Lawyers' career - saving tips when instructing an Expert

By John Arneil, Group Executive of Unisearch – Master of Arts UNSW

The role of expert evidence is critical to some matters. Finding the right expert and utilising their skills most efficiently once you have found them also draws on lawyer's skills and knowledge.

At every stage of the process from selecting an expert, preparing instructions, assessing their report and going to court requires careful management.

When instructing an expert, explain the way the opinion will be used, the expert's obligations and the limit and scope of the brief.

Important tips when instructing an expert:-

1. Eliminate any potential conflict of interest before briefing a potential expert. For example, discretely ask the expert "Are you involved in a case concerning dredging? In WA? In the Port XYZ matter?"
2. Detail any deadlines, hearing dates, or expectation of timing and state if an appointment or site visit is required.
3. When instructing the expert, explain the way the opinion will be used, the expert's obligations and the limit and scope of the brief. Verbally discuss the case and the relevant issues with the expert to clarify the basis of your instruction, but always ensure you follow this up with a written Letter of Instruction.
4. The primary reference point for Expert Opinions is the Letter of Instruction and therefore the wording is important. Ensure that key issues, facts and assumptions are identified and questions for the expert are as specific as possible.
5. If you require a draft report, clearly set this out in the Letter of Instruction and verbally confirm the expert's understanding that they are preparing a draft at this stage.
6. When initially briefing the expert, explain that you will be reviewing their report for clarity of expression and format, to ensure the legal tests of admissibility are addressed. This will set expectations in advance with the expert about your role in finalising the report.
7. When briefing, if you refer to any inclusions, make sure they are relevant. Be prepared for the expert to rely on them and list them in their report. If additional information is required, clarify who is the source of that information.
8. Always include a copy of the relevant expert witness code of conduct and instruct the expert to acknowledge it.

For more briefing tips including a link to a sample 'Letter of Instruction', please visit our website <https://www.unisearch.com.au/find-expert/briefing-tips> or call our offices on 1800 676948.

*[John Arneil is Group Executive of Unisearch Expert Opinion Services. Unisearch is Australia's largest provider of Expert Opinion Services to the legal fraternity, government sector agencies and commerce & industry. Unisearch case manages over 900 expert opinion and consulting matters each year ranging from expert opinions, testing services and consulting on major projects in over 2000 discrete areas of expertise.]*