

Preparing and presenting your expert.

How can we prepare and present our authentic experts so that they say on the way out of the court building, “Thank you. I believe we made a real contribution in there” ?

Here’s a checklist (not exhaustive). *It’s all about building trust with the audience:*

- Be clear as to whether your expert will or will not go into the witness box. Some experts are retained solely to guide your cross-examination of the opponent’s expert. Their reports are not shown to the opponent. If, however, you propose to call your expert then be sure to comply with disclosure obligations before trial.
- Be sure that the expert’s report explicitly shows awareness and adoption of the Expert Witness Guidelines (See schedule to UCPR).
- The decision- making audience must find the expert trustworthy and credible. That is a precondition to accepting and applying the expert’s opinion.
- Emphasise to your expert that their role is to opine on what facts mean because the lay audience (judge and jury) lack the skills to do that.
- If your expert can’t explain it to you in a manner that makes you think, “Lay people like me will find that this expert and their message are acceptable” then they cannot persuade a decision maker (be that a judge or jury) so pay them and sack them.
- Customise the expert’s statement of qualifications and experience so that it puts the most relevant material up front. Don’t include the irrelevant–this is not a generalised job resume.
- The glossary to the report should turn the technical into something that the lay reader (you, fact finder) can comprehend. It can include web references.
- What the expert is communicating is, ‘Here is my transparent, replicable process. This is the data I had. Here is my methodology. Other credible experts can check. By the way, here is my view of ‘missing data’, along with my assessment about how that data limitation affects my opinion’.

- Check out the possibility of competing experts meeting with each other and writing down their points of agreement and disagreement. See *R v Abdallah (No 3)* [2014] NSWSC 267 as to possible complications that may arise when the experts first agree then disagree.
- Neither you nor the expert are ready until you are aware of any limitations with respect to the expert, the report, or both that will be likely matters for cross-examination.
- Rehearse with the expert so that they are comfortable listening to the questions from any lawyers - but then talking with, and looking towards the decision maker. Outside court is too late to prepare performance skills.
- Deep into your chief reduce your expert's target size on cross-examination by explicit recognition of any and all limitations; ie. confess and avoid.
- Rehearse with your expert to ensure that they can use an 'incremental build' during chief; that is, that you and they break down their explanation into such small, logical, clear segments that the decision making audience can repeatedly nod to show you and the expert that they can follow the concepts. Note that 'follow', not 'learn' is your aim.
- Be sure that you and the expert work as a team: settle them into role, show their expertness, be open about their fee (if that will be an issue), have them state their opinion, then share the agenda of topics by which they and you will substantiate that opinion to the decision maker.
- Always explain a technical term by an explanation before it is used. Lay audiences appreciate that approach. An explanation after using the term is patronising.
- Find ways, beyond just listening, to involve the decision maker in the expert's explanations. Consider whether there is scope for visuals, models, demonstrations, being careful to meet evidentiary and procedural rules.
- Your expert should signal to you during cross what can be fixed on re-examination; for example, a tag to their answer to a cross-examiner, 'Would you like me to explain? '.
- Treat an expert as you like to be treated: with respect and courtesy, coupled with such prompting and pushing as is fairly required. This applies from first engagement through to prompt payment of their final account.
