

FEDERAL COURT OF AUSTRALIA
WITNESSES





Witnesses

A witness is a person who has information which may be useful in a case being heard in a court. This information is called evidence. Giving evidence is also sometimes called testifying.

You may be asked to be a witness in the Federal Court of Australia if you have seen or heard about an event which is related to a case and you are able to say how it happened. This is called being a 'witness of fact'. If you have been asked to be a witness because of your specialist knowledge, this is called being an 'expert witness'.

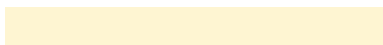
How will I be notified?

Usually the lawyer for the person who wants you to give evidence will contact you to tell you when you need to come to Court. If the person does not have a lawyer they will contact you themselves. You should let them know if you will be unable to attend because of other commitments such as medical treatment or holidays.

If you become ill or some other emergency happens on the day you are supposed to be coming to Court you should contact the person or the lawyer who wants you to give evidence as soon as possible.

If you refuse to come to the Court as a witness you may be served with a subpoena.

This is an order of the Court which tells someone that he or she must come to Court on a particular date. It is an offence to disobey a subpoena. If you do not come to Court you may be arrested. You may also be charged with contempt.



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How should I prepare for the hearing?

The people who are involved in the case are called parties.

One or more of the parties will probably want to see you before the hearing to go through your evidence. This is useful and will give you an idea of the type of questions you will be asked at the hearing. It also gives you an opportunity to ask questions. You are not legally required to do this if you do not want to.

You should make sure you have the correct details of the date, time and place of the hearing. Organise any papers about the case that you have and bring them to Court so that you can refer to them easily if necessary.

All Federal Court buildings have wheelchair access.

Each Registry also has TTY facilities and courtrooms with hearing loops to assist people who have hearing disabilities.

You may need to wait some time before being called to give evidence. You can have a friend attend Court with you to keep you company.

If you need child care, information about child care centres in Australian capital cities is available from the Court.

Many people have never been into a courtroom before.

It is a good idea to visit the Court before the case to see where the hearing will take place.

Courts are usually open to the public and you can watch other cases to get some idea of the way the Court functions.

If you have any problems with understanding or speaking English, with reading, poor eyesight or any health issue which affects your mobility, you should tell the person or the lawyer who asked you to come to Court.

Do I need a lawyer?

You do not need a lawyer to appear as a witness in the Court. However, if you are concerned that the evidence you give may cause you a legal problem, you should see a lawyer before you give evidence.

What to expect when you attend the Court

You should arrive at least half an hour before the time you are due to give your evidence.

You will find a list of cases being heard that day on a notice board at the Court. When you find the courtroom where the case will be heard, tell the court officer that you have arrived.

You should then find the person or the lawyer who asked you to come to Court. You may be told approximately what time you will be giving evidence.

You should then wait somewhere where you cannot hear what is going on in the Court. This avoids the possibility that it could be suggested that your evidence may have been influenced by what you have heard others say.

If you have to leave the Court building for any reason, let the court officer know where you can be found.

You will give your evidence from the witness box, which is near the desk of the court officer.

The Judge is referred to as 'Your Honour'.

Do I have to take an oath?

When it is time for you to give your evidence, the court officer will show you the witness box and ask you whether you prefer to take an oath to tell the truth or to make an affirmation to do so.

An oath has religious significance and an affirmation does not. Your evidence will be considered in the same way regardless of the choice you make.

You will then be handed a card which has the oath on one side and the affirmation on the other. When people give evidence in Court, they are asked to take an oath or affirmation that they will tell the truth. It is an offence to give false evidence in Court after taking this oath or affirmation.

If you would prefer to have the oath or affirmation read on your behalf because of poor eyesight or for any other reason, you need to tell the court officer this as soon as you arrive. The Court also requires at least 24 hours' notice of any other arrangements that may need to be made to enable you to take the oath or affirmation. For example, the Court must be notified if you require a holy book other than the Bible. Tell this to the person or lawyer who has called you as a witness.

What is an affidavit?

An affidavit is a written statement of evidence which the witness has sworn or affirmed to be true. You will probably be asked to make an affidavit before you attend the Court. An affidavit must include:

- your full name, address and occupation; and
- full details of your evidence.

A lawyer can help you make your affidavit but it must be in your own words. An affidavit must be sworn or affirmed before a person such as a justice of the peace or a legal practitioner.

Giving written evidence rather than orally in the witness box, saves a lot of time.

Your original affidavit will be on the Court's file and both parties will have copies. You may also have a copy.

How will I give my evidence?

If you have made an affidavit, the person or lawyer who asked you to come to Court will ask questions to confirm your name, address and the content of your affidavit.

If your evidence is not in an affidavit, you will give it by answering questions.

Sometimes, even when a witness's evidence is in affidavit form, a lawyer or person involved in a case may ask the Judge if they can ask you questions about a topic which is not covered, or covered properly, in the affidavit.

In this case, your evidence will also be presented through questions and answers.

Sometimes, the lawyer or person who first called you to give evidence may ask to re-examine you to clarify the evidence which you gave.

What happens during cross-examination?

Cross-examination is when a witness is asked questions by the other person or lawyer in the case. One reason for cross-examination is to test the witness' evidence. Another reason is to obtain evidence which the witness did not give and which may favour the other person.

There are a number of useful points to remember as a witness:

You should listen carefully to the whole question, think about it and answer it by saying no more than what is necessary to answer it.

It is important not to answer other questions which you think that you might be asked and not to use the opportunity to offer an opinion about the case.

If you do not hear the whole question or are not sure that you did, ask for it to be repeated.

If you cannot understand a question, say so, and the person or lawyer will try to express it better.

Try to answer each question truthfully and to the best of your recollection.

If you do not remember something or your memory is not good, do not be afraid to say so.

You should never argue with or try to question the cross-examiner.

If a question can be answered simply by 'yes' or 'no', answer it in that way. You should only say more if the question cannot be answered in this way.

If you have a copy of your affidavit, take it with you into the witness box but do not read it or even open it in front of you unless you are asked to do so.

If you are feeling ill, tired or distressed and would like a break for a few minutes, ask the Judge.

All your evidence will be recorded through the microphone in front of you.

Gestures, such as nodding of the head are not recorded. Try to speak clearly and audibly at all times so that everything you say will be clearly recorded.

Do I have to stay in Court after giving evidence?

Once your evidence is finished, the person or lawyer who called you to give evidence will ask the Judge to excuse you from staying at Court. Once the Judge gives permission, you are free to leave the Court or to stay in the public gallery.

The evidence that you have given is publicly available (except in rare situations) and you can tell others what evidence you have given.

However, it is important not to discuss your evidence with someone who has not given their evidence yet so that there is no suggestion that that person's evidence has been influenced by discussions with you.

Can I claim my expenses?

You are entitled to be compensated for costs and loss of earnings which you have incurred as a result of coming to Court. This is the responsibility of the person or lawyer who has called you to give evidence and should include:

- any cost of travelling to and from the Court;
- the cost of overnight accommodation (if necessary);
- a reasonable amount to compensate you for any wages or income you may lose when you attend the Court; and
- if you are an expert witness, payment for the time you have spent preparing a report.

What other information can the Court provide?

The Court can give you more information about Court procedures.

You can also find this information on the internet at www.fedcourt.gov.au

FEDERAL COURT REGISTRIES

ACT Registry

Nigel Bowen Commonwealth Law
Courts Building
Childers Street
Canberra ACT 2600
Phone: (02) 6267 0566
Fax: (02) 6267 0625
Email: actman@fedcourt.gov.au

NSW Registry

Level 17 Law Courts Building
Queens Square
Sydney NSW 2000
Phone: (02) 9230 8567
Fax: (02) 9230 8535
Email: nswdr@fedcourt.gov.au

NT Registry

Level 3 Supreme Court Building
State Square
Darwin NT 0800
Phone: (08) 8941 2333
Fax: (08) 8941 4941
Email: ntreg@fedcourt.gov.au

QLD Registry

Level 6 Harry Gibbs Commonwealth
Law Courts Building
119 North Quay
Brisbane QLD 4000
Phone: (07) 3248 1100
Fax: (07) 3248 1260
Email: qldreg@fedcourt.gov.au

SA Registry

Level 5 Roma Mitchell Commonwealth
Law Courts Building
3 Angas Street
Adelaide SA 5000
Phone: (08) 8219 1000
Fax: (08) 8219 1001
Email: sareg@fedcourt.gov.au

TAS Registry

Edward Braddon Commonwealth Law
Courts Building
39-41 Davey St
Hobart TAS 7000
Phone: (03) 6232 1715
Fax: (03) 6232 1701
Email: tasreg@fedcourt.gov.au

VIC Registry

Level 7 Owen Dixon Commonwealth
Law Courts Building
305 William Street
Melbourne VIC 3000
Phone: (03) 8600 3333
Fax: (03) 8600 3281
Email: vicreg@fedcourt.gov.au

WA Registry

Level 6 Peter Durack Commonwealth
Law Courts Building
1 Victoria Avenue
Perth WA 6000
Phone: (08) 9268 7100
Fax: (08) 9221 3261
Email: waregistry@fedcourt.gov.au

Principal Registry

Law Courts Building
Queens Square Sydney NSW 2000
Phone: (02) 9230 8473
Fax: (02) 9223 1906
Email: query@fedcourt.gov.au

If you have a hearing or speech impairment, contact the Court through the National Relay Service:

- TTY users phone 133 677 then ask for your local registry's phone number as listed above
- Speak and Listen users phone 1300 555 727 then ask for your local registry's phone number as listed above
- Internet relay users connect to the NRS (www.relayservice.com.au) and then ask for your local registry's phone number as listed above