



Legal issues bulletin

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Giving evidence in court and tribunal proceedings

In what courts or tribunals could I be required to appear as a witness?

There are a variety of courts and tribunals in which staff may be required to appear as witnesses. The main ones are:

Supreme Court - this court is presided over by judges who are referred to in court as "your honour". In most cases, the presiding judge and any barristers appearing as advocates for the parties will be dressed in robes and wigs. In some cases there may be a jury. The types of cases in which staff may be involved include:

- personal injury cases arising from accidents at school or during school activities
- serious criminal offences
- administrative law cases in which the court is asked to declare invalid decisions made by departmental staff
- appeals against decisions made by other courts.

Industrial Relations Commission - this tribunal is presided over by judges and commissioners. Judges are referred to as "your honour" and commissioners as "commissioner". Formal robes are not worn by the judges, commissioners or barristers. The matters in which staff may be involved include:

- industrial disputes
- unfair dismissal claims and unfair contract claims made by employees
- promotional appeals and appeals against discipline action taken by employers.

District Court - this court is presided over by judges who are referred to as "your honour". It is similar to the Supreme Court in that the presiding judge and barristers appearing in the court will be dressed in robes and wigs and there may be a jury. Cases in which staff may be involved include:

- personal injury cases arising from accidents at school or during school activities
- criminal cases
- appeals from decisions of magistrates in local courts
- Workcover prosecutions under work, health and safety legislation.

Local Court - the vast majority of court cases are heard in the Local Court. The court is presided over by a magistrate and he or she is referred to as "your honour". No robes or wigs are worn. The Local Court also includes the Children's Court, the Coroner's Court and the Chief Industrial Magistrate's Court which are also presided over by magistrates. The types of cases involving staff may include:

- personal injury cases arising from accidents at school or during school activities
- criminal cases
- applications for apprehended personal violence orders
- coronial inquiries into deaths and fires

- school attendance action commenced by the department against parents who fail to ensure their children attend school

Federal Magistrate's Court - this court is presided over by a federal magistrate who is referred to as "your honour". The magistrate will be dressed in robes but barristers appearing before the court do not wear wigs and robes. Any claims alleging breaches of the Commonwealth discrimination laws will normally be heard in this court.

Federal Court - this court is presided over by judges who are referred to as "your honour". Depending on the nature of the matter before the court, the judge and barristers may be dressed in robes and wigs. This court hears complex cases involving alleged breaches of the Commonwealth discrimination law as well as any appeals against decisions made by the Federal Magistrate's Court.

Administrative Decisions Tribunal - this tribunal determines a wide range of matters falling within the definition of "administrative decision". The tribunal generally consists of three panel members, one of whom is legally qualified. The tribunal is divided into a number of separate jurisdictions. The types of cases most commonly involving the department include:

- discrimination cases arising under the Anti-Discrimination Act
- reviews of decisions made under the *Government Information (Public Access) Act 2009* (NSW)
- reviews of decisions made by the Vocational Education and Training Accreditation Board about the registration of training organisations.
- reviews of decisions made by departmental staff under NSW privacy legislation

In what circumstances could I be required to give evidence?

Staff may be required to appear as a witness and give evidence in the following situations:

- For the department in the defence of actions commenced against it by other persons or authorities – e.g. personal injury claims by students or prosecutions by the WorkCover Authority, workers compensation claims against the department.
- For the department in actions commenced by it against other persons – e.g. disciplinary proceedings against other staff or school attendance action against parents.
- For the State in criminal prosecutions.
- For other staff members in actions commenced by those staff members - eg workers compensation claims against the department, applications for apprehended personal violence orders.
- For other staff members in the defence of actions commenced against them by other persons or authorities – e.g. departmental disciplinary proceedings, applications for apprehended personal violence orders.

I have been asked to prepare a written statement for court proceedings – is this usual?

Yes. In many instances, prior to appearing as a witness you will be asked to prepare a statement or affidavit for use in the case. This document will set out the evidence you will be asked to give in the case. In some courts, there is a requirement for affidavits to be used rather than statements. While both a statement and an affidavit are used in the same way, an affidavit is a document which requires the maker to swear an oath or make an affirmation that its contents are true.

What steps should I take prior to giving evidence in court?

Once it has been confirmed that you will be required to appear to give evidence in a case there are a number of steps you can take to prepare for that appearance. You should make contact with the legal representative of the party who has asked you to attend as a witness as soon as possible so that you can, as appropriate:

- Confirm the time and location you are required to attend.
- Clarify the nature of the evidence you will be required to give. If you have previously provided a written statement or affidavit in respect of the case, you should confirm the material contained within that statement or affidavit will form the basis of the evidence you will be required to give. If you do not have a copy of the statement or affidavit you should ask to be provided with one prior to the date of the court proceedings.
- Arrange to meet with the legal representatives of the party who has called you as a witness prior to your appearance in court so that you clarify the evidence you will give in the proceedings and what you can expect to be asked by the other party.
- Read any statement or affidavit you have made and be familiar with its contents.
- Sit in on similar proceedings in the court or tribunal where you will give evidence to familiarise yourself with the surroundings and procedures.

What should I do when I arrive at court?

When you arrive at the court you should make contact with the legal representative of the party who has asked you to appear as a witness. In the majority of cases, you will not be allowed to sit in the courtroom until you have completed giving your evidence. Once you have made contact with the legal representative, you should wait within the immediate area of the court until you are required to give evidence.

Sometimes the legal representatives of the other party in the proceedings may want to speak to you prior to you giving evidence. There is no obligation for a witness to speak to the other party in these circumstances. You should exercise your own discretion when determining whether or not you will speak to the other party.

Members of staff are expected to give all relevant assistance to the department and its legal representatives in circumstances where they are called to give evidence on behalf of the department.

What factors do I need to take into account when giving evidence in court?

When you enter the courtroom to give evidence in the proceedings you will be taken to the witness box and asked if you wish to take an oath or make an affirmation. Generally an oath will be given on the bible though it is equally possible to make an oath in accordance with the tenets of religions other than Christianity (e.g. on the Koran). An oath and affirmation have the same legal effect and it is a personal choice as to which one you take. You will be required to remain standing and face the judge, magistrate etc while you make the oath or affirmation.

You should ensure you have a copy of any statement or affidavit you have made in the proceedings with you when you give evidence. You should not refer to it unless allowed to by the court.

The legal representative of the party who has required you to be a witness will ask you a number of basic questions such as your name, address and occupation. There may then follow some further questions based on any statement or affidavit you have made. This is called evidence in chief.

Once the evidence in chief is completed, the legal representative of the other party will ask you a number of questions. This is called cross-examination. Generally the object of cross-examination is to illicit information that may be helpful to the other party and to discredit the evidence given during evidence in chief.

At the completion of cross-examination, the legal representative of the party who has called you as a witness is given an opportunity to ask questions which address any issues that may have arisen during the cross-examination. This is called re-examination.

When giving evidence at any stage, it is crucial that you:

- listen carefully to the question
- wait until the question is completed before answering
- be responsive to the question
- be succinct in your answers
- not engage in any arguments with persons asking questions even if you believe they are trying to provoke you
- ask for questions to be repeated or explained if you do not fully understand them
- tell the truth.

In relation to cross-examination you should try to give "yes" or "no" answers where possible.

Sometimes you may be asked a question that is objected to by the other party. When this occurs you should not answer the question until the court has determined whether the question can be asked. The time taken to resolve such objections may sometimes be lengthy and may even involve you being asked to leave the courtroom until the issue is resolved. In such circumstances you may forget the exact nature of the question that was asked. If this happens, ask for the question to be repeated.

During the course of giving evidence it may occur that the proceedings are adjourned for some reason – e.g. lunch or the end of the day. In these circumstances you should not speak to other witnesses about the evidence you have given. If such an adjournment occurs during the course of cross-examination, you should not speak to anyone about the case, including the legal representatives. Generally legal representatives will want to avoid any contact at all in this situation so as to ensure allegations of assistance to the witness cannot be made.

Once you have completed giving your evidence, in most instances you will be excused from further attendance by the court. You are then free to leave the court. If you go outside the court you should not speak to any future witnesses about your evidence or the questions you were asked.

Am I entitled to leave if I have to give evidence in Court?

If you are subpoenaed to give evidence about matters that arise from your official capacity (i.e. your employment) you are regarded as being on duty. If you are subpoenaed by the Crown (e.g. the Police, the Director of Public Prosecutions) to give evidence about non-employment related matters, special leave is available to cover your attendance at court. In both of these instances there is no loss of salary.

If you are subpoenaed or called as a witness by a party other than the Crown to give evidence about non-employment related matters, leave without pay or long service leave must be used to cover your absence. In these circumstances you are entitled to claim from the party requiring your attendance any lost wages or salary. If the party requiring your attendance refuses or is reluctant to reimburse you for lost wages or salary, you should raise the issue with the court at the conclusion of giving your evidence.

Depending on their employment status, staff should refer to the **Teacher's Handbook**, the **Personnel Handbook**, the **Non-teaching Staff in Schools Handbook** for further details.

Where can I get further advice and support if I need it?

Staff from Legal Services unit are available to provide general advice to staff who are required to give evidence in courts and tribunals. Specific advice about particular cases should be sought from the legal representatives of the party who will be calling you as a witness.

In workers' compensation cases, the Work Health & Safety unit will provide advice on the requirement for staff to provide evidence and arrange conferences with solicitors and barristers. Staff from the unit will confirm arrangements for relief staff, travel and accommodation where necessary.

District Staff Welfare Officers and the Staff Welfare unit are able to provide or arrange support for staff who are required to attend court as a witness. The Staff Welfare Officer will provide welfare advice but not legal advice.

In matters that involve the Employee Performance and Conduct unit, the two senior counsellors attached to the unit are available to provide support to any parties involved in court proceedings.

About Legal Services

Legal Services is here to support our government schools. **Staff can contact Legal Services by email or phone.**

Legal Services can only provide legal advice to departmental staff. It is not able to provide legal advice or assistance to parents, students or members of the public due to the potential for a conflict of interest.