

## Giving evidence in court



### Quick guide

- Understand what your role is (a factual witness or an expert) and the reason you are giving evidence.
- Before going to court, prepare thoroughly by going over the medical notes and any previous statement.
- Only answer the question you are being asked. If you don't understand the question, ask for it to be repeated.
- If you don't know the answer, or don't remember, just say so.
- Try to stay calm.

Giving evidence can be a stressful experience. Courts are unfamiliar environments for most of us and we don't always know what to expect. This factsheet outlines the types of proceedings you could be involved in, what your involvement might be and gives you some steps on how to prepare.

### What sort of matter are you involved in?

It will help you prepare if you understand the type of matter you will be involved in. Different rules apply to different types of matters – including how you will need to give evidence and whether you can have a lawyer with you in the court or tribunal.

Some matters will involve a trial with two parties (and their lawyers) arguing in front of a judge and jury. Others can be in front of a judge, coroner, or one or more investigators. Some are more formal than others.

Avant lawyers will explain all this to you in detail if you are involved in a matter. For an overview refer to the glossary at the end of this factsheet.

### Why are you giving evidence?

It's important to understand whether you are being asked to provide:

- the facts within your knowledge, if you are a witness of fact. You will be asked to describe what you saw, heard or did, including when you were providing treatment.
- your professional opinion, if you are there as an expert witness. You will be asked to help the court determine the cause of an injury or condition on the basis of the information you have been provided, the level of impairment of an individual, or whether treatment was appropriate.

In other cases, you might be involved as a **party** – for example, if there is a complaint or claim about your treatment, or if you are involved in an employment dispute or defamation claim. You may be involved as a person of interest in a coronial matter and potentially the subject of adverse comments or findings by the coroner.

### How do you prepare?

#### Contact Avant for advice and assistance

Never ignore a letter or correspondence from a lawyer, court, or regulator such as Ahpra.

Contact us as soon as you are told you will need to give evidence or go to court, so we can start helping you to prepare and protect your interests. For example, in some situations we may advise you not to discuss the case with anyone other than your legal advisors until it has finished.

We will help explain your involvement, what information you are being asked to provide, and the potential consequences. Then you will meet with the lawyers to prepare.

Ask as many questions as you need to throughout the process to make sure you understand your role and what is required of you.

#### Review your records and any material you are given to refer to

If you were involved in the care of a patient you may be asked about an event that occurred some time ago and need to refer to your records. When you are reviewing your records, never alter or add to them in any way.

You might also be given material to refer to when writing a report and you will be expected to be across this.

If there are other documents which may be relevant, make sure you talk to your lawyers about these (either your lawyers or the lawyers who are asking you to give evidence).

Also check any reports and any prior statement you have made.

### Giving evidence

In some cases you will be asked for a written statement or report. You may be asked to give oral evidence – either in person or by telephone or video link. Sometimes you will write a report then give oral evidence.

#### Giving evidence in person in the court or other hearing room

Usually your lawyers will ask you to arrive at least 15 minutes before the time you have been asked to attend. Ensure that you have clear instructions about the name of the court or tribunal, the address, level and number of the relevant court room.

If you are a witness of fact, once the proceedings begin, usually you will need to wait outside the courtroom until the court officer calls you in. In most types of case (except coronial inquiries), you may not hear the evidence of other witnesses before you give yours.

If you are an expert witness you can be present in court to hear the evidence of the other witnesses.

You will be called into the courtroom to give evidence and directed to the witness box.

You should not take any documents into the witness box with you, as you may be required to hand them over and these will become evidence. You will be provided with any documents the court requires you to review and comment on.

### **Giving evidence by audio-visual link**

This would usually need to be agreed by the parties and organised in advance.

Make sure you have copies of your statement, medical records, or other relevant documents with you.

If you are an expert witness, have your report and any other witness reports with you.

The legal team who called you to give evidence will advise you about the documents you should have with you when giving evidence.

Remember when you are called you are being dialled directly into the courtroom so allocate time prior to the scheduled time to ensure you are available, prepared and in an appropriate environment free of distractions.

### **Oath or affirmation**

You will be required to swear to tell the truth. Usually you will be asked whether you wish to:

- swear on the Bible the truth of your evidence. If you are giving phone evidence ensure you have a Bible available or
- make an affirmation, a promise to tell the truth.

### **Examination in chief, cross-examination and re-examination**

There are slightly different processes depending on the type of proceedings you are involved in.

Usually the lawyer for the party who called you to give evidence will ask you questions first. This is called evidence-in-chief.

The lawyer(s) for other parties may then ask you questions. This is called cross-examination. This can be a bit more confronting as the other party may want to challenge your evidence or try to undermine your credibility.

The party who called you can then re-examine you. This stage can be used to clear up ambiguities or uncertainties arising during the cross-examination.

At any stage in the proceedings, the judge may also ask you questions.

### **Conclave/joint experts**

Sometimes expert witnesses of the same or similar specialties may be required to meet and prepare a report and then give evidence together

(sometimes called a 'hot tub' or expert witness conclave). This assists the court in determining the issues in dispute and those where the experts agree.

Different jurisdictions have different requirements but in large matters the meeting of experts can be facilitated by an independent senior legal practitioner.

### **Practical tips on giving evidence**

#### **Attending in person**

Be clear about the date, time, and location of the court you are required to attend. You may not be required to attend on every day of the hearing. Speak with the lawyer who has called you if you are uncertain.

Check you have the lawyers' mobile phone numbers so you can contact them if there is an issue on the day.

If you have not been to court before, ask the lawyer to either show you or talk to you about layout of the courtroom before the court proceedings begin, so you can familiarise yourself with the surroundings.

It is customary to bow to the judge or magistrate sitting at the bench when you enter the courtroom. If you need to address the judge, they are referred to as 'Your Honour'.

Remember to turn off your phone or other device before entering the courtroom.

#### **Evidence by audio-visual link**

There are different processes for giving evidence remotely, so make sure you know whether you need to telephone the court, log into a conference, or whether the court will call you.

#### **Oath or affirmation**

Decide beforehand which one you will do and tell your lawyers so that these preliminaries go smoothly.

#### **Conclave / joint experts**

Be sure to allow the other witnesses to express their views without interruption.

Be measured in your response no matter how much you disagree with what is being said.

#### **Answering questions**

Answer each question in turn.

Only answer the question you are asked. You can just answer 'yes' or 'no' if that is all the question requires.

Don't worry about what the question is getting at or where it is going. Trust in the lawyers to protect your interests; your job is to answer the questions as

clearly and calmly as you can. If you are trying to anticipate the next question you will be distracted.

You don't need to volunteer additional information outside the scope of the question. It is up to the person asking the question to clarify or request additional information.

If you don't understand a question, say so. Ask for it to be rephrased and don't answer it until you understand it.

Don't write or say anything you are not sure of.

If you are a witness of fact, limit your answers to issues of fact.

If you are an expert witness, only offer your opinion within your area of expertise and/or level of experience. If you are asked to give an opinion on something outside of these, just explain it is outside your scope.

#### **If you don't remember**

Don't worry, just say so. It is quite normal not to remember a particular examination or consultation. Don't guess or reconstruct what you think happened.

If you need to look at your statement or report, the medical record or another document to refresh your memory, you can ask for it to be provided. Take your time in reviewing the document so you can answer the question properly.

#### **Try to stay calm**

Attending court can be a daunting experience.

Try to relax, be measured and respectful of the court and other witnesses – even if you disagree with what is being said. Never argue with the lawyers or judge.

This will give you the best chance of a positive outcome, no matter what your involvement.

**Keep these guidelines confidential and do not take them into the courtroom with you.**

#### **Additional resources**

You can find more information about appearing as a witness on the specific court's website.

For more information or immediate medico-legal advice, call us on **1800 128 268, 24/7 in emergencies.**  
[avant.org.au/mlas](http://avant.org.au/mlas)



[avant.org.au/avant-learning-centre](http://avant.org.au/avant-learning-centre)

# Glossary

Giving evidence in court Factsheet

**Matter** or proceedings mean the court case itself. Each matter might have one or more hearing dates.

**Civil matters** – these are where individuals or organisations bring claims against each other (as opposed to criminal matters). Different types of civil proceedings include:

- Medical negligence matters – for example where patient claims compensation against a doctor or hospital, usually for personal injury from allegedly negligent treatment.
- Employment disputes and discrimination matters
- Defamation matters
- Workers compensation matters
- Custody disputes in family law matters
- Disputes about capacity to make wills or make other decisions

**Coronial inquiries** (also known as inquests) – where a coroner investigates the manner and cause of a person's death. This might involve a death arising out of or during medical treatment, or where the cause of death is unknown. The coroner reviews all the evidence from individuals and organisations who were involved in the circumstances leading up to the death, and then makes findings about the manner and cause of death. The coroner can also make recommendations with a view to preventing the circumstances that gave rise to the death from happening again in the future.

**Criminal matters** – these are where lawyers acting for the state argue that someone has committed a crime. Doctors might give evidence in a criminal matter because they treated a victim of an assault or murder.

**Disciplinary matters** – where doctors or other health practitioners are accused of inappropriate or unsatisfactory behaviour or treatment. These could include:

- Committee and panel hearings under the National Law, such as hearings by professional standards committees, immediate action committees, impairment panels and performance assessment panels
- Hearing in disciplinary tribunals including state and territory civil and administrative tribunals

**Parties** – the individuals or organisations who are involved in the dispute. Parties could be known as "plaintiff" and "defendant" or "applicant" and "respondent".