



Fact Sheet

What to expect if you are a MOP(S) Act employee and you are asked to attend court and give evidence about workplace events

The purpose of this factsheet is to provide *Members of Parliament (Staff) Act 1984* employees (MOPS employees) with guidance when called to attend court and give evidence relating to matters that have arisen in the context of their employment.

How do I know if I need to attend court?

If required to attend court, a 'summons' or 'subpoena' will usually be served on you. It will name the location and first day of the trial. Unless directed otherwise by the police, this is the date and time that attendance is required. Failure to comply with the summons or subpoena may result in a charge of contempt of court.

Upon receipt of a summons or subpoena, employees should discuss with their manager their obligation to attend court and potential absence from the office. Advice on the range of support options available can be obtained by contacting the Wellbeing Support Team, 24 hours a day, 7 days a week on 1800 747 977.

There are a range of reasons why the court may not hear evidence on the date listed on the summons or subpoena. For instance, the police may advise of delays that mean witnesses are not required until a later date. If this happens the witness is still required to attend court on the revised date. Employees are to keep their manager aware of any further absences from the office beyond what was initially discussed.

Meeting the prosecutor

The person who is prosecuting the matter may wish to speak to witnesses before they give evidence, this is called 'proofing the witness'. This could be at the court on the day of the trial, but it could also be on a day prior to the trial. Witnesses will be contacted beforehand if this is the case.

What to take to court

Be sure to take a copy of your summons or subpoena letter, and a copy of the witness statement provided to police. It is a good idea to read over the written statement.

It may also be a good idea to take something to read or do as there may be a lot of waiting around. It is recommended that employees dress in clean, neat attire with appropriate footwear.

What to do on arrival

Plan to arrive 30 minutes before the time specified on the summons or subpoena. It can take some time to enter a court building and find the right court room.

Upon arrival at the court:

- There will be security screening points.

- Find the daily court lists for the matter (often listed by the accused person's name) and corresponding court number. If you are unsure, ask the reception area or court assistant.
- Go to the court number listed and wait outside.
- Avoid speaking to anyone at court about details contained in your statement.
- Close to the start time the police investigator, the prosecutor or the court clerk will provide a rundown of how they expect the case to run.
- If not approached by anyone, ask one of the police officers or prosecutor.
- Some courts are fitted with access-controlled waiting rooms for victims and /or witnesses to use to avoid seeing the accused before giving evidence. Discuss accessing these rooms with the police investigator beforehand.

Entering the courtroom

Witnesses are not allowed in the court room prior to giving evidence. The prosecutor will formally call on witnesses when it is time to give evidence.

Before entering the courtroom:

- Turn off electronic devices including mobile phones and smart watches.
- Remove hats or sunglasses, unless worn for medical or religious reasons.

When called in:

- Enter the courtroom, pause and bow slightly to the judge.
- Follow the clerk to the witness box, enter and remain standing until invited to sit.
- Place any personal belongings under the table in the witness box.
- Do not refer to the witness statement document unless given express permission.

Making an oath or affirmation

Before giving evidence, witnesses are required to make an oath or affirmation. An oath requires swearing to God (in the way outlined by a particular religion) to tell the truth, while an affirmation is a non-religious promise to tell the truth to the court.

Giving evidence in court

- When the judge or magistrate goes into or leaves the court room, court attendees must stand up.
- The judge or magistrate should be called 'Your Honour'.
- When asked to state an address only provide a work address.
- When giving evidence, witnesses will be asked questions.

These questions can be asked by:

- The prosecution (the legal team that is responsible for proving the accused person is guilty).
- The accused person's legal team (that is responsible for defending the accused person).
- The judge or magistrate.

When giving evidence witnesses should:

- Listen closely to the question and pause before answering.
- Remain calm and speak clearly.
- Seek clarification if the question is not clear or is not understood. Witnesses may ask for the question to be repeated.
- Answer clearly and in short responses, including yes or no. Avoid volunteering information unless a shorter answer would be misleading.
- Look at the judge, or jury if there is one, when answering a question.
- It is important to answer truthfully so that the court can decide whether the accused is guilty. If you lie, you could be charged with a criminal offence.
- If you cannot remember specific details, it is ok to say that.
- Although the lawyers will have a copy of the witness statement, the judge/ jury will generally not see the written statements. All they know is what is said in the courtroom.
- If you are feeling emotional, it is ok to ask for a break.
- If there is a break, the police investigator and prosecutor cannot talk to you about the case or your evidence. This is to avoid the appearance of coaching.
- At lunchtime, or during other breaks, it is important to remain near the court. If required to leave for any reason speak to the police investigator or the prosecutor first.
- Sometimes, the lawyers need to have discussions about a matter with the judge. Witnesses will be asked to leave the courtroom during this time.
- When questioning is complete the judge will say 'you are excused' or words to that effect. Once you are excused from the court you are free to leave. You can also stay to see the rest of the hearing from the public seating area of the court.

Questioning

As a witness, questions may be asked in three stages:

1. The first stage is where the prosecutor asks questions about what happened. This is the opportunity for the witness to tell their story.
2. The second stage is cross-examination. This is where the accused's lawyer will ask questions of the witness. They might ask unexpected questions and witnesses are to answer truthfully and in the clearest way possible.
3. The third stage is where the prosecutor may ask more questions to clarify what was said in the cross-examination.

Note: The accused will usually have a lawyer who acts for them. However, in some cases they might choose to represent themselves. If this is the case, the accused may ask witnesses questions directly. In these cases, both the prosecution and the judge will keep a close eye on the line of questioning.

When the prosecutor or defence lawyer asks a question, the other side may say 'objection'. This means that they do not agree with the way a question is being asked, or what the question is about. The judge will then make the decision about whether the question is acceptable. If the question is allowed a witness must answer it.

Even if a question seems irrelevant, if no-one objects to the question, it must be answered.

The judge may also ask questions directly to the witness. Do not be concerned in this situation. They may just want to clarify something or think it is generally helpful for the court. Answer the judge clearly and precisely, just like any other question. If addressing the judge directly refer to them as 'Your Honour'.

Trial length

The length of a trial will vary depending on the circumstances of the case, the seriousness of the crime and other factors. Some trials may last several weeks, whereas others may only go for half a day or an hour. The prosecutor may be able to give an indication of how long they expect the trial to last. Witnesses are not required to attend for the whole trial and can leave after they have been excused by the judge.

The PWSS and the employing parliamentarian may consider applications for miscellaneous leave to support employees who have been called as a witness. Supporting documentation may be required such as a summons.

The police investigator will usually contact witnesses shortly after the trial to let them know the outcome of the case.

Further resources

- [Factsheet – Legal Assistance Available to MOP\(S\) Act Employees in Relation to a Workplace Incident](#)
- [Factsheet – Guidance for MOP\(S\) Act Employees Providing a Witness Statement in Relation to their Work](#)
- [Factsheet – How the PWSS Supports People after a Workplace Incident](#)

 **24/7 Support 1800 747 977**

 **Text the PWSS 0487 112 755**

www.pwss.gov.au