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EXPERT WITNESS EXPENSES

Updated March 2024

Explanatory Notes

Doctors are often requested to appear in courts and tribunals as witnesses or expert witnesses.

Some courts and tribunals publish scales of fees for witnesses. Whilst these scales are not binding, they serve as a useful point of reference.

Where scales of fees are published, we suggest doctors propose fees to the instructing solicitors or the relevant court or tribunal, in accordance with the published scale.

Where scales of fees are not published, we recommend doctors charge a reasonable fee for their attendance. It is arguable that a doctor's reasonable fee is the amount he or she would earn consulting patients or an amount that reflects the time the doctor is away from his or her practice. The fee should also include reasonable travel, accommodation and meal expenses, if applicable.

A doctor can negotiate fees with the instructing solicitor. We recommend that negotiation take place well in advance of the date the evidence is required. If an agreement is reached, the doctor should confirm the agreement by letter.

Doctors should be aware that in civil proceedings, the unsuccessful party usually pays the costs of the successful party. Accordingly, if your patient's claim fails, he or she may have to pay your witness fees. Doctors should bear this possibility in mind when negotiating fees.

In the event that the doctor and instructing solicitor are unable to agree on a fee, or the issue of fees is not discussed, before giving evidence the doctor can ask the judge, magistrate or tribunal member whether arrangements can be made for payment of witness fees.

In our experience, the witness fees paid to doctors do not adequately compensate for loss of income.

The invoice for witness fees should be sent to the party that required the doctor to attend the court or tribunal.

The following table sets out publicly available information from the various courts and tribunals.

As these scales of fees are updated from time to time, doctors are reminded to consult instructing solicitors, the relevant court or tribunal, or AMA Victoria for the most up to date information.

Expert Witness Expenses

(GST is payable)

COURT	EXPERT WITNESS FEE	ADDITIONAL CLAIMABLE AMOUNTS
Supreme Court of Victoria¹	<u>Expert Witnesses</u> <i>Fees for preparing and giving evidence as an expert or as a witness of fact</i> \$332.60 - \$663.90 per hour (or part thereof) reasonably absent from professional rooms or place of business. Maximum of \$3,981.70 per day. <u>Conduct money²</u> An addressee is entitled to conduct money sufficient to meet the reasonable expenses of attending and returning from court as required by a subpoena.	The Costs Court may allow, in addition: • any appropriate reasonable expense incurred by the witness, eg – child minding expenses; and • Expert witnesses living 50km or more from the court may receive a reasonable sum for actual travel expenses to and from the Court and for maintenance or sustenance (i.e. accommodation and meal expenses) In addition to conduct money and witness expenses: • The Court may order the issuing party to pay the amount of any reasonable loss or expense incurred in complying with the subpoena.

¹ Supreme Court (General Civil Procedure) Rules 2015 S.R. No. 103/2015 (29 Feb 2024) – Appendix B.

² Supreme Court (General Civil Procedure) Rules 2015 S.R. No. 103/2015 (29 Feb 2024) rr 42.01, 42.11

County Court of Victoria³	\$228.00 - \$457.00 per hour (or part thereof) for witness giving evidence in an expert capacity. Maximum of \$2,840.00 per day.	Expert witness may claim, in addition: • A reasonable sum for time necessarily occupied in qualifying to give evidence (as was necessarily and properly incurred). (For example, preparation of an expert report) • reasonable travelling expenses if residence or place of business is more than 7km from court; and • reasonable meal and accommodation expenses (in an amount to be fixed by the Costs Court)
Magistrates Court of Victoria⁴	The civil division of the Magistrates Court does not publish a unique scale of costs. Doctors should discuss any fees (in addition to the entitlement to conduct money for each day of attendance at Court) with the instructing solicitor or the Court prior to appearance.	

³ County Court Civil Procedure Rules 2018 – S.R. No. 170/2018 (1 Jan 2024) - Schedule 2.

⁴ Magistrates Court Act 1989 (Vic), No.51 of 1989 (1 Sep 2023) ss.43(6)-(8)

**Coroners Court of
Victoria⁵**

Expert
Witnesses

Up to **\$340**
per hour (or
part thereof)

Maximum of
\$2,040 per
day, for loss
of income in
attending the
court.

When away from home overnight to attend
court, the expert witness may also claim
the following amounts:

	<i>Capital City</i>	<i>Any other location</i>
Breakfast	\$17.70	\$15.75
Lunch	\$19.75	\$18.05
Dinner	\$34.05	\$31.15
Total	\$71.50	\$64.95

If away from home for part of the day only,
the witness may claim the following
amounts:

Breakfast	\$12.40
Lunch	\$12.40
Dinner	\$16.50
Total	\$41.30

A witness is only entitled to an allowance
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- (a) for breakfast, if away from home
between 7.00 am and 9.30 am;
- (b) for lunch, if away from home
between 12.00 pm and 3.00 pm;
- (c) for dinner, away from home between
5.00 pm and 7.00 pm.

An expert witness may also claim:

- Travel expenses of the amount of the
most economical form of transport to and
from the court, or, if using their own
vehicle, 18c per km.
- Accommodation costs actually incurred
for each night the witness is away from
home due to giving evidence, to a
maximum of \$150 per night.

Evidence of costs (receipts) must be
provided.

⁵ Coroners Court Rules 2019 - S.R. No. 97/2019 (28 Oct 2019) - ss 72 - 77

Children's Court of Victoria	The Children's Court does not publish a unique scale of costs. Doctors should discuss any fees with the instructing solicitor or the Court prior to appearance.
Family Court of Australia⁶	The <i>Family Law Rules 2004</i> provide for the conduct payment of money and witness fees. <u>Conduct Money</u> The minimum amount is \$25. <u>Travel</u> The amount to be paid for fares on public transport for return travel between the place of employment or residence and the court, or; If no public transport is available, the amount calculated at 80 cents/km required to be travelled between the place of employment or residence and the court. <u>Accommodation/Meals</u> A reasonable allowance for accommodation and meals to be incurred during the estimated time of the hearing or trial. <u>All witnesses</u> \$75 per day or part thereof. <u>Expert Witnesses</u> Such further amount as the court allows for the preparation of a report and absence from the expert witness's place of employment. Doctors should discuss any fees with the instructing solicitor or the Court prior to appearance.
Federal Circuit Court of Australia⁷	The Federal Circuit Court does not publish a unique scale of costs. Doctors should discuss any fees with the instructing solicitor or the Court prior to appearance. <u>Conduct Money</u> The minimum amount is \$25.

⁶ *Family Law Rules 2004* (Cth) S.R. No. 375/2003 – (1 Sep 2021) – Sch 4 Parts 1 & 2

⁷ *Federal Circuit Court Rules 2001* (Cth) S.R. No. 195/ 2001 (4 Nov 2020) rr 15A.07, 21.12

Victorian Civil and Administrative Tribunal (VCAT)⁸	VCAT does not publish a unique scale of costs. Doctors should discuss any fees with the instructing solicitor or VCAT prior to appearance. <u>Conduct Money</u> When a summons is served, a sufficient sum is to be provided as conduct money.
Victims of Crime Assistance Tribunal (VOCAT)	VOCAT does not publish a unique scale of costs, as claims for witness fees vary depending on which court you attend. More information can be obtained by contacting VOCAT directly on 1800 882 752 or help@vocat.vic.gov.au Doctors should discuss any fees with the instructing solicitor or VOCAT prior to appearance.

⁸ *Victorian Civil and Administrative Tribunal Rules 2018 (Vic)* - S.R. No. 77/2018 – (16 Feb 2024) – s 4.20(3)