



Witness Expenses

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Payment of witness expenses (other than Commonwealth investigators)

1. Where practicable, all witness costs should be agreed upfront including any loss of income. Any amounts or general principles should be included in a letter to the witness.
2. The CDPP pays witnesses expenses in relation to the following:
 - travel expenses;
 - accommodation;
 - meals and incidentals;
 - income lost by reason of attendance at court; and
 - expenses incurred by reason of attendance at court, including child care fees and carer's expenses.
3. Acknowledging that there will be instances where Commonwealth employees may be required to appear as witnesses (e.g. WHS matters; Integrity matters), where a witness is a Commonwealth

employee (and not a Commonwealth investigator), the CDPP will pay their expenses, in line with the arrangements outlined in this NLD.

4. For Australian Competition and Consumer Commission (ACCC) prosecutions, the CDPP has arrangements with the ACCC that the CDPP pays all the prosecution legal expenses – including witness expenses – and then seeks re-imburement from the ACCC.
5. Payments are made where:
 - a claim is submitted, and
 - the payment falls within the expenses payable as identified in this paper.
6. There are limits to the amount that will be paid for loss of income, travelling expenses, accommodation or meals and incidentals. Contact the Financial Services Branch to ascertain what the current rates are.
7. Those limits should be set down in forms sent or given to the witness in advance. Please refer to The Guide to Claiming Witness Expenses in the National Ribbon that contains information to help a witness understand their entitlements.

Witness travel expenses

Conduct money

8. Conduct money¹ is paid in some jurisdictions to provide the financial means to attend court. Where required to be paid in advance, conduct money is provided to witnesses with the summons or subpoena. If a witness has been paid conduct money, this amount will be subtracted from any claim made for travelling expenses, meal expenses or other incidental expenses.
9. It is the responsibility of each Office to determine the level of conduct money. In some of our jurisdictions conduct money is not paid to witnesses while the amounts in those jurisdictions where it is paid vary. Information on conduct money for a particular jurisdiction should be obtained from the relevant CDPP office in the respective jurisdiction.

Local witnesses

10. The Office will pay for reasonable travel costs from the witness' residence or place of business to the court. Where conduct money is paid, this will be taken into account in determining any amount to be paid.

Out-of-town witnesses

11. Travel for out of town witnesses:
 - will normally be by air, if available;
 - will be booked by the Office;
 - will consist of one economy class return ticket to and from the witness' usual place of residence (no upgrades to be paid for by the Office);
 - may, with the prior agreement of the Office, be by private car by the most direct route, on the following conditions:
 - a fixed per kilometre allowance applies which is in accordance with the [ATO rate](#);
 - the Office is not responsible for insurance or other costs;
 - if the cost of an economy air fare is less than the per kilometre allowance, payment will only be to the equivalent of the airfare costs, unless medical reasons exist which do not permit air travel by the witness.

¹ Conduct money usually refers to a sum of money or its equivalent sufficient to meet the reasonable expenses of a person to whom a witness summons is directed of complying with the summons in relation to the day on which the person is required by the summons to attend

12. Where conduct money is paid, this will be taken into account in determining any amount to be paid.

Accommodation for witnesses

13. The Office will:

- arrange accommodation for witnesses if an overnight stay is necessary;
- if *first* discussed with the Office, reimburse the cost of accommodation arranged by the witnesses who wish to arrange their own accommodation to an amount not exceeding the Public Service Accommodation Allowance for that City/Town.
- *not* pay for:
 - telephone calls;
 - mini-bar items; or
 - other services such as laundry.

14. Witnesses must settle such items before checking out of the accommodation. However, there is provision for payment of some incidental expenses (see below "Meals and Incidentals".)

Payments to witnesses for meals and incidental expenses

Local Witnesses

15. Witnesses who incur meal or incidental expenses as a result of attending court are entitled to receive reimbursement.

16. Reimbursement is made either on the production of receipts or a declaration stating the expenses.

17. Where conduct money is paid, this will be taken into account in determining any amount to be paid.

18. Witnesses who incur meal or incidental expenses as a result of attending pre-trial conferences may be reimbursed at the discretion of each Office. Although, as a general rule, witnesses are not entitled to reimbursement in these circumstances, there may be factors in individual matters that would support payment, such as, for example, where the witness is an expert or has travelled a long distance to attend a pre-trial conference the day before the trial is set to commence.

Out-of-town Witnesses

19. Meal expenses for out-of-town witnesses may be included in the accommodation arrangements. For example if the hotel provides breakfast the witness should not be provided a further allowance for breakfast. Other expenses, including meal expenses where meals are not included in the accommodation arrangements, should be calculated with reference to the current travel allowance rates for Non-SES staff.

20. Where conduct money is paid, this will be taken into account in determining any amount to be paid.

Payments for loss of income

21. The CDPP will, in certain circumstances, reimburse witnesses for income lost by reason of the witness attending court. The payment is limited to:

- income *actually* lost;
- at the time;
- on the date of the attendance;
- on the date of any associated travel time; and
- up to a maximum amount as set out below.

22. Depending on the circumstances, payments are made to the witness' employer or to the witness. If the witness' employer has declared or certified that they have paid the witness for their absence from work,

payment is made to the employer. If the employer has withheld the witness' wages, payment is made to the witness. Payments are made on a gross basis. The witness must be informed that it is his or her responsibility to declare the payment as income.

23. The above limits on payment are also set down in the forms given or sent to witnesses in advance.
24. The maximum amount which may be paid is based on the seasonally adjusted average weekly full-time adult ordinary time earnings, published by the Australian Bureau of Statistics (catalogue number 6302.0). The figure is updated each year on 1 April to reflect the figure in the most recent February issue of the ABS statistics. The figure is divided by 40 to obtain an hourly rate and by 5 for a maximum daily rate. The results are then rounded up or down to the nearest \$5.
25. The current figure is \$1713.90, which equates to \$42 per hour or \$342 per day. Witnesses who earn less than this amount are paid their actual loss of income. Witnesses who earn more than this amount are paid \$42 for each hour they are required to be absent from work, up to a maximum of \$342 per day.²
26. Payments above the cap may only be made in exceptional circumstances. A Branch Head may approve payments of up to \$400 per day or \$2,000 per witness. A PGL may approve payments between \$401 per day to a maximum of \$1,000 per day or a maximum of \$5,000 per witness. The Director, Chief Corporate Officer or the Solicitor for Public Prosecutions may approve payments above \$1,000 per day or in excess of \$5,000 per witness.
27. The payment is a reimbursement only and is not remunerative. Therefore no payment will be made to public servants or others who continue to receive income.
28. No payment will be made for "consequential" losses or additional entitlements such as overtime.
29. All claims must be fully substantiated. Examples of substantiating documents include:
 - a statutory declaration;
 - a letter from an employer or, in certain circumstances, pay slips;
 - where a table of fees payable for a particular profession or occupation is submitted, a statutory declaration to the effect that the claimed amount or an amount in excess of the claimed amount was forgone on the date(s) and at the time(s) of the court attendance.
30. Witnesses must mitigate losses wherever possible by rescheduling work or negotiating appearance times.
31. Where a witness is subpoenaed, regard should be had to these rules concerning witness expenses.

Self-employed witnesses

32. Payments to self-employed witnesses for loss of income are subject to the same requirements and limitations set out above in part 5 of this paper. They must mitigate their losses and are required to substantiate their claim with documents.
33. Self-employed witnesses must provide details of the method used to calculate loss of income and must provide evidence of the actual loss incurred.
34. Self-employed witnesses will not be paid for "consequential" losses or any additional entitlements such as overtime. Subject to the limited exception where a witness can only demonstrate a net loss, any payment to reimburse a witness for lost income will be made on a gross basis and the witness must be informed that it is his or her responsibility to declare the payment as income.

Expert witnesses

35. Unlike a witness of fact, experts are remunerated on the basis of their professional fees, which should be agreed and documented *before* engagement.

² Current rate as at May 2020

36. The engagement needs to comply with CDPP procurement policies, noting that expert witnesses may be directly sourced (that is, a tender process is not required).
37. Under the Decision Making Matrices, the decision to retain an expert witness must be made at branch head level or higher *before that expert is retained*. However, depending on the anticipated monetary expenditure to be approved, approval from an appropriate financial delegate under item 1.3 “legal expenses excluding counsel” in the Financial Delegations Matrix is required and should be documented *before the expert witness is engaged*.
38. Where an expert is engaged prior to a prosecution commencing, and it is anticipated that the expert will be used as a witness in a prosecution (so that after the prosecution commences the CDPP will be potentially responsible for expenses of the expert witness), there should be general agreement between the partner agency and the CDPP prior to the initial engagement of the expert as to the rate of fees at which the expert is to be engaged and the period of the engagement. Refer to Annexure of A of the [Guidelines for dealings between Investigators and the Commonwealth Director of Public Prosecutions](#) for further information.

Witnesses who attend conferences with CDPP lawyers

39. As a general rule, a prospective witness who attends the office to speak to CDPP lawyers or for conferences has no entitlement to payment of witness expenses. However, each Practice Group Leader may exercise his or her discretion in determining whether to reimburse witnesses in these circumstances.
40. A prospective witness cannot be compelled to attend conferences with the CDPP and may indicate that his or her attendance will be conditional on the payment of certain expenses incurred.
41. In such circumstances the Office will pay a witness as a consultant where the assistance required in the pre-trial period is essential to the success of the case. That will most likely occur where there is a large case and the evidence of the witness (who is giving evidence other than expert evidence) is complex or analytical, for example a conference with an accountant or auditor to analyse and explain the records of a company.
42. These matters
- must be referred to the Branch Head for approval of the payment;
 - should not be included in the notice given to witnesses (as the circumstances do not fall within the range of witness expenses);
 - must be arranged with the particular witness as to the terms on which he or she is “engaged”, following approval by the Branch Head.

Investigating agency witnesses

43. Generally, investigation agencies pay for their own officers’ witness expenses. For more information, see the [Guidelines for dealings between Investigators and the Commonwealth Director of Public Prosecutions](#).

Overseas witnesses

44. The maximum amount for loss of income set out above does not apply to overseas witnesses.
45. Approval should be sought for:
- overseas witness travel related to sensitive or high profile matters;
 - matters where multiple overseas witnesses will be required; or
 - where the total cost of overseas witness travel, accommodation, allowances and daily fees is greater than \$15,000 per witness or \$20,000 per matter for each phase of the prosecution.

46. Branch heads may approve travel for overseas witnesses where the total cost of travel, accommodation, allowances and daily fees is up to \$15,000 per witness or \$20,000 per matter. Practice Group Leaders may approve travel for overseas witnesses where the total cost of travel, accommodation, allowances and daily fees is up to \$25,000 per witness or \$50,000 per matter. Travel arrangements should be made on the basis of the most direct route and the cheapest fare of the day.
47. The policy for overseas witnesses also includes overseas expert witnesses.
48. As the background of each overseas witness is different, so to are their needs and requirements.
49. Overseas witnesses should normally travel economy class. Practice Group Leaders may, however, approve the upgrade to premium economy or business class in exceptional circumstances where the total cost of the travel, including the upgrade, does not exceed \$25,000 per witness or \$50,000 per matter for each phase of a prosecution. Factors to be considered when approving premium economy or business class travel include, (but are not limited to):
- the health and medical condition of the witness;
 - the length and time of the travel (including unavoidable transit time); and
 - where an upgraded airfare can assist in negotiating a witness' attendance at court.
50. Where possible, the basis for payment of all expenses should be agreed prior to the witness commencing travel to Australia.
51. Witness expenses while in Australia are the same as for an Australian witness. Any reasonable travel expenses incurred prior to arriving in Australia will be paid. Meal and incidental allowances should be based on a notional start time as the estimated arrival time and the notional trip end time as the estimated departure time.
52. Any claim for loss of wages (usually to be paid in another currency) should, where possible, be negotiated prior to commencing the trip.
53. Through the Office's insurance cover with Comcover, an overseas witness has insurance for personal effects for the duration of the trip and also health insurance while in Australia.
54. Note that overseas travel for witnesses can be approved by Branch heads up to \$15,000 per witness or \$20,000 per matter for each phase of the prosecution and Practice Group Leaders up to \$25,000 per witness or \$50,000 per matter for each phase of the prosecution. Only the Director, Chief Corporate Officer (CCO), or the Solicitor for Public Prosecutions, can approve higher amounts.³

Subsistence payments to witnesses

55. Subsistence payments are paid to non-Australian witnesses and defendants:
- who hold a Criminal Justice Visa;
 - are not entitled to Australian social security and Medicare coverage; and
 - are without means of support.
56. As a general rule, fortnightly payments are based on the rate of unemployment benefits which may include rental assistance. Payments are also made for appropriate medical and dental treatment.
57. Note subsistence is not to be paid without approval of the Practice Group Leader and requires a statutory declaration that the applicant is without means of support.
58. For detailed advice refer to the [Criminal Justice Certificates and Visas Legal Practice and Procedure](#) resource on e-hub.

Arrangements for providing witness expenses to ASIO Officers

³ CDPD Financial Delegations Matrix issued 28 October 2019

59. ASIO has identified an issue, with which the CDPP agrees, that the protection of the identities of present and former ASIO officers is essential to ensuring that ASIO is able to fulfil its statutory responsibilities under the *Australian Security Intelligence Organisation Act 1979*. Whilst certain CDPP officers will at times learn the identity of various ASIO officers, the use of the standard CDPP witness expense procedures could compromise that protection. Accordingly, the following arrangements have been agreed between ASIO and the CDPP:

Current ASIO Officers

60. ASIO will fund and arrange all travel, accommodation and other expenses relating to current ASIO officers attending Court to give evidence in prosecutions conducted by the CDPP.

Former ASIO Officers

61. In relation to former ASIO officers attending Court to give evidence in prosecutions conducted by the CDPP, the following arrangements should apply:

- a. ASIO, through its TLA Branch, will arrange for the booking and payment of any required air travel and accommodation, and for the payment to the former officer of meal allowances. All will be in accordance with levels payable to non-SES officers.
- b. ASIO will seek reimbursement from the CDPP for the expenses incurred above, and for any other travel – equivalent to the cost of public transport, by way of tax invoices. Those invoices should be accompanied by enough information to identify the matter, the witnesses' assumed names and the nature and quantum of the expenses.
- c. In relation to claims for loss of earnings or other expenses, ASIO, through its TLA Branch, will facilitate the provisions to the CDPP of redacted CDPP witness expense claims, for the CDPP's consideration. Upon request ASIO will make available to the CDPP, for viewing, un-redacted versions of those claims. Payment will then be made by the CDPP to ASIO. ASIO will then arrange payment of the funds to the former officer.
- d. Before ASIO expends funds in reliance of reimbursement by the CDPP, there should be an exchange of letters between ASIO and the CDPP, which include estimations of the quantum and nature of the witness expenses likely to be incurred. Where appropriate, the CDPP will accept documentation in former ASIO officers' assumed names. CDPP case officers will be responsible for certifying payments to be made by the CDPP.