

## Witness Familiarisation Training Course

### *Overview – Witness Familiarisation & Training*

#### About this Course

The provision of evidence under cross examination is a stressful, difficult process, and foreign experience to most witnesses.

Developed out of the ongoing challenges faced by witnesses when providing evidence in court, witness familiarisation seeks to redress the imbalance which many witnesses face when giving testimony.

While a witness' legal team will invariably undertake extensive preparation with the witness on the evidence itself, there are limits to the amount of preparation the legal team can undertake. Witness familiarisation seeks to assist and complement the legal team's witness preparation by providing an additional level of preparation which the solicitors and barristers are unable to provide for ethical reasons.

In this way witnesses (and their legal team) can be assured and confident that the witness will present well in court and deliver their own evidence in the most effective manner.

#### Aim

The aim of this course is for all witnesses to develop the skills and understanding necessary to effectively deliver evidence under cross examination.

#### Learning Outcomes

- Understand the court and trial process
- Understand the role of a witness
- Knowledge of the expectations of witnesses giving evidence
- Knowledge of the characteristics of a good witness
- Recognition and awareness of common cross examination techniques
- Develop and implement strategies to effectively respond to such techniques
- Practical application and implementation of these during mock cross examinations



## Witness Familiarisation Training Course

### Course Details

#### Witnesses

Courses are available for both expert and factual (lay) witnesses.

#### Instructors

All courses are presented by practicing barristers who regularly cross examine witnesses as part of their practice. Most trainers are also advocacy instructors who teach advocacy and cross examination to trainee barristers as part of the various bar practice courses, both in Australia, and internationally.

Our barristers are specially selected for their approachability, and ability to effectively explain practical legal concepts to all witnesses. They are accessible and personable while still maintaining their incisive technical skills.

All barristers are wholly independent of the relevant case and the facts and matters before the court.

#### Preparation

Pre-prepared materials including a hypothetical fact scenario will be provided to the witness in advance of the session. Witnesses are expected to read and understand these in advance of the session.

Estimated preparation time: 1 – 2 hours.

#### Location and Delivery

- In person courses are immediately available in person in most Australian capital cities, and regionally and internationally on request.
- Remote courses via video-link are immediately available throughout Australia and worldwide.

#### Forum and Jurisdictions

Witness familiarisation courses are available for all legal forums – courts, tribunals, arbitrations, investigations, depositions, inquiries and commissions – anywhere evidence will be provided under cross examination.

Sessions can be provided for all Australian jurisdictions, and certain international jurisdictions.

#### Duration and Cost

- Full day and half day sessions available.
- Please [contact us](#) to discuss pricing options.

#### Materials

All materials have been prepared by practising solicitors and barristers, independent of any underlying proceedings.

Witness familiarisation training courses “*prevent witnesses from being disadvantaged by ignorance... As such, witness familiarisation arrangements are not only permissible; they are to be welcomed.*”

Bar Council of England and  
Wales: Guidance on Witness  
Preparation 2019

## Witness Familiarisation Training Course

### Prior Experience

It is expected that attendees will have limited to no prior experience.

### Course Structure

1. Part One – Foundations
  - a. Introduction to the court/trial process
  - b. Role of a witness
  - c. The giving of evidence
  - d. Cross examination techniques
  - e. Strategies to deliver evidence effectively
2. Part Two – Practical
  - a. Mock cross examination session
  - b. Videoed for witness, reviewed and analysed
  - c. Repeat

### Proximity to Trial

Generally, we recommend witness familiarisation sessions are conducted about 2 months before the commencement of trial, and ideally before the legal team commence their specific preparation with the witnesses on the evidence itself. This will allow the witness time to reflect on the skills learnt and more readily apply them in respect of their own evidence.

Short notice sessions are also available.

### Individual/Group Sessions

Sessions are typically conducted individually, and in some cases, in small groups.

### Benefits

Witness familiarisation by independent third-party providers offers various unique benefits, some which are often unavailable to legal teams with direct involvement in a case. These benefits include:

- Improved delivery of evidence
- Completely comprehensive “turnkey” course
- Third party instructors ensure no excessive familiarity with witness
- Preservation of lawyer-client relationship during process
- Time saving in lead up to trial
- Extra level of witness preparation unavailable to legal team
- Effective and practical techniques and evaluation
- Presentation of materials in plain English
- Reassurance that witness will present in the best way possible
- Completely independent process ensures ethical propriety
- Promotes openness of justice

Witness familiarisation training courses will ***“assist witnesses to give their best at the trial or hearing in question without any risk that their evidence may become anything other than the witnesses' own uncontaminated evidence.”***

Bar Council of England and  
Wales: Guidance on Witness  
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## Witness Familiarisation Training Course

### FAQs

#### What is witness familiarisation?

Witness familiarisation is an educational and training process which helps the witness provide their trial evidence most effectively. It does this through specially designed courses which explain the cross examination process, and provides strategies as to how to provide their own evidence more effectively under cross examination. The courses also seek to practically apply these learnings through a series of rigorous mock cross examinations. In this way witness familiarisation courses help a witness overcome the nerves, stress and pressure of cross examination, and to deliver evidence in the most effective manner.

#### Is witness familiarisation ethical?

Witness coaching is influencing a witness' evidence – telling a witness what to say in order to answer a question posed. It is objectionable and unethical.

Conversely, witness familiarisation is conducted wholly without reference to the underlying proceedings and thus does not impact on the evidence itself. Courses are conducted by experienced, independent barristers, who are fully aware of, and subject to, the relevant regulatory and ethical obligations. In this way witness familiarisation allows a deeper and more effective preparation of witnesses without any suggestion of unethical coaching.

#### How does this differ from the witness preparation the legal team conducts?

Witness familiarisation is complementary to, but distinct and separate from, the witness preparation the legal team conducts.

Witness familiarisation cannot and does not replace the preparation the solicitors and barristers undertake as part of their trial preparation. As an independent training provider Loquitur cannot have any knowledge of the facts and matters of the matter in hand. This (and the relevant preparation arising) is the sole preserve of the legal team.

Rather, witness familiarisation is a separate service designed to complement and assist the legal team's broader ongoing preparation of witnesses. It allows a level of preparation which the party's lawyers cannot in fact do for ethical reasons, such as ongoing mock cross examinations on hypothetical sets of facts. It allows a witness to practice and prepare for the process of the delivery of evidence, in a structured and effective manner, and to understand and experience the pressures of cross examination in an applied and practical way.

#### Can the legal team conduct their own witness familiarisation sessions?

This is not recommended. It is important that a distinct separation is maintained to ensure that there is no risk of unethical coaching. Analogous guidance from the UK suggests that none of those involved in teaching the witness familiarisation course should have any personal knowledge of the matters in issue (see, for example, *R v Momodou [2005] EWCA Crim 177*, at 64, and the England and Wales Bar Council Guidance on Witness Preparation, 2019).

#### Is it available for both experts and factual witnesses?

Yes.

## Witness Familiarisation Training Course

### *Judicial and Other Consideration*

As a relatively novel concept in Australia, witness familiarisation has not been extensively judicially considered here.

However, consideration in England & Wales where the practice is more developed has favourably considered the role of independent, third-party witness familiarisation. For example, in the criminal case, *R v Momodou* [2005] EWCA Crim 177, Lord Justice Judge noted (at para 62):

*“Sensible preparation for the experience of giving evidence, which assists the witness to give of his or her best at the forthcoming trial is permissible. Such experience can also be provided by out of court familiarisation techniques. The process may improve the manner in which the witness gives evidence by, for example, reducing the nervous tension arising from inexperience of the process. Nevertheless the evidence remains the witness’s own uncontaminated evidence.”*



In the civil context, the issue of witness familiarisation was considered in *R v Salisbury* [2005] EWCA Crim 3107 at 60:

*“What they would have received was knowledge of the process involved. It was lack of knowledge and understanding which created demand for support in the first place. Acquisition of knowledge and understanding has probably prepared them better for the experience of giving evidence. They will be better able to give a sequential and coherent account. None of this gives them an unfair advantage over any other witness.”*

These cases have generally been considered favourably in Australia, for example in a Speech by Justice John Griffiths, 5 March 2014: *“Some Ethical Issues for Legal Practitioners”*

The England and Wales 2019 Bar Council Guidance on witness preparation also gives similarly favourable support.

Loquitur’s courses have been prepared in accordance with this judicial guidance, and in compliance with the relevant Australian rules and professional obligations. While witness familiarisation is a relatively new concept in Australia, Loquitur anticipates similarly favourable acceptance by the Australian courts.

## Witness Familiarisation Training Course

### *About Loquitur*

Loquitur is Australia's premier witness familiarisation and evidence support and training organisation.

Loquitur offers specialist witness familiarisation courses (often referred to as witness training courses) and other evidence support and training services to both witnesses of fact (lay witnesses) and expert witnesses.

Training courses are available throughout Australia for the provision of evidence under cross examination by experts and lay witnesses in all legal forums, including at court, arbitrations, depositions, investigations and commissions.

### **Other Courses**

Loquitur offers a variety of [other courses](#) to assist both experts and lay witnesses. These include:

- Expert Witness Training – the Basics
- Expert Witness Training – Report Writing
- Expert Witness Training – Cross Examination Foundations
- Expert Witness Training – Cross Examination Practical

Please [contact us](#) to find out more.

