

## Chapter 24

# Evidence

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### **Chapter summary**

The rules of evidence govern what a social worker can and cannot say – in court, and in writing reports or notes that will be used in court. A social worker risks failing to assist both their client and the court if their evidence is not allowed because it does not meet the requirements of the rules of

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Questions for consideration

1. Are current rules about confidentiality the best balance between the client's interests and the court's need to make the best informed decision? How could the rules be different?
  2. How much of a social worker's daily practice is based on 'hearsay'? Is it realistic for a court to insist on the rule against hearsay? Would it be unfair if a court relied on hearsay evidence?
  3. On what types of issues would a social worker be likely to have expertise? When might a court not recognise that expertise under the evidentiary rules about expert evidence? If a social worker's expertise is rejected, what alternative sources of expertise might there be?
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Additional reading

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- Davis, L, 2007, *See You in Court*, Jessica Kingsley Publishers, London.
- Kennedy, R and Richards, J, 2012, *Integrating Human Service Law and Practice*, 3rd edn, Oxford University Press, Melbourne (especially Ch 6 'Courts, Tribunals and the Human Services').
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- Odgers, S, 2006, *Uniform Evidence Law*, 7th edn, Thomson Lawbook Co, Sydney.
- Seymour, C and Seymour, R, 2010, *Courtroom Skills for Social Workers*, Learning Matters Ltd, Exeter, eBook, (especially Ch 8 'What to expect at court', Ch 9 'Giving evidence' and Ch 10 'Cross-examination').
- Slater, LK and Finck, KR, 2012, *Social Work Practice the Law*, Springer, New York, e-book (especially Ch 8 'Trial and Hearings: General Knowledge and Skills for Civil and Criminal Proceedings').
- Thomson, J, 1989, *Social Workers and the Law: A practical guide to courts and reports*, Redfern Legal Centre Publishing, Sydney (especially Ch 4 and Ch 7).

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## SOCIAL WORK IN THE SHADOW OF THE LAW

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- Yablonsky, L, 2005, 'Book Review: A E Barsky and J W Gould, *Clinicians in Court: A Guide to Subpoenas, Depositions, Testifying, and Everything Else you Need to Know*', 30 *Criminal Justice Review* 129-30.

### Notes

- 1 *Criminal Procedure Act 1986* (NSW) Ch 6 Pt 5 Div 2; *Evidence Act 1929* (SA) ss 67D-67F; *Evidence Act 2001* (Tas) s 127B; *Evidence (Miscellaneous Provisions) Act 1958* (Vic) Pt II Div 2A; *Evidence Act 1906* (WA) ss 19A-19L; *Evidence (Miscellaneous Provisions) Act 1991* (ACT) Pt 3 Div 4.5; *Evidence Act 1939* (NT) Pt 7.