



Information for a person requesting the issue of a subpoena

This brochure is for people who want a court to issue a subpoena. It provides information about the use of and compliance with, subpoenas in the Family Court of Australia.

NOTE: Subpoenas attract a filing fee. For more information see the fees section at www.familycourt.gov.au

What is a subpoena?

A subpoena is a legal document issued by a court at the request of a party to a case. A subpoena compels a person to produce documents or give evidence at a hearing or trial.

There are three types of subpoena:

- a subpoena for production
- a subpoena to give evidence, and
- a subpoena for production and to give evidence.

You can request a subpoena if a person refuses to give evidence or provide documents to a court, or is unable of their own free will, to do so.

Before you request a subpoena, you should make all attempts to get the required document or evidence. This may include asking the person to provide the document to you or prepare an affidavit in support of your case.

You should not request a subpoena for production and to give evidence if production of the documents alone would be sufficient.

How do you apply for a subpoena?

You need to complete the form titled *Subpoena* that is approved by the Family Court of Australia.

Unless a court orders otherwise, a subpoena must not be served on a person under 18 years of age.

In some situations, you will need to prepare a letter to support your request for a subpoena. For example, where there are less than seven days before the court hearing date or where the request is made by a self-represented litigant. For more information about when you need to prepare a supporting letter, speak to registry staff.

A party can request a subpoena to produce documents for the hearing of any application seeking interim, procedural, ancillary or other incidental orders.

A subpoena for the hearing or trial of an application seeking final orders or in an appeal will not be issued unless a judge or registrar gives permission.

A subpoena will not be issued:

- for a self-represented litigant, unless a registrar has given prior approval
- for a party seeking production of a document or thing in the custody of another court (for the process to make this request see Rule 15.34 of the Family Law Rules 2004), or
- if the appropriate fee has not been paid.

NOTE: there are special rules covering subpoenas to be served in New Zealand. They can be found in Chapter 26A - Cases to which the *Trans-Tasman Proceedings Act 2010* applies, of the Family Law Rules 2004.

Information for the person requesting a subpoena

STEP 1 Complete the subpoena

When completing the subpoena, keep in mind that:

- A subpoena must identify the person to whom it is directed by name or by description or office or position (the named person). If you wish to subpoena an organisation, the subpoena should be directed to a person authorised to act on behalf of the organisation, for example:

The Proper Officer
XYZ Pty Ltd
Some Street
Some Town NSW 0000

- A subpoena may be directed to two or more persons if the subpoena is to give evidence only or if the subpoena requires the production of the same documents from each named person.
- A subpoena for production must identify the specific document or thing to be produced. The document or thing should be properly described so the named person knows what to produce.
- A subpoena must always require the production of a document or thing which already exists; that is, it cannot require a person/organisation to create a document to comply with the subpoena.
- A subpoena cannot be written in a way that requires the person/organisation to form a conclusion as to whether a document or thing is relevant. For example, the subpoena should not ask for 'all documents relating to any account held by the applicant/respondent in a false name'.

STEP 2 File the subpoena

Once you have completed the subpoena, you need to file it at a family law registry. There is a filing fee for subpoenas.

You will need to file:

- the original
- a copy for each named person
- a copy for each party to your case, including the Independent Children's Lawyer (if appointed)
- a copy for each person who may be interested in the subject matter of the subpoena (interested person, namely a person with a sufficient interest), and
- a copy for yourself.

The Court will keep the original subpoena and give you back the copies, sealed with the Court's stamp. You must keep one sealed copy for yourself and serve the other sealed copies.

STEP 3 Serve the subpoena

Service of subpoenas requiring attendance

- If the subpoena requires the named person to attend **to give evidence or to produce documents and to give evidence**, you must arrange to have the subpoena and a copy of the brochure *Information for named person (served with a subpoena)* **served by hand** on the named person. You should give the named person as much notice as possible of the hearing or trial date but the person must be served not less than **seven days** before they are required to attend to give evidence. If the subpoena requires the named person to attend to produce documents and to give evidence the person must be served not less than **10 days** before the day on which production and attendance is required. If the subpoena is not served personally, the named person is not required to comply with the subpoena. The named person should also be paid 'conduct money' at the time of service. For information about conduct money, see 'Conduct money and witness fees'.

Service of subpoenas requiring production

- If the subpoena requires the named person to produce documents, you must arrange to have the subpoena and a copy of the brochure *Information for named person (served with a subpoena)* **served by ordinary service** or by manner of service agreed between the issuing party and the named person at least **10 days** before the date they are required to produce the documents.

Service of copies of the subpoena on parties and interested persons

- You must also notify the other parties involved in the proceedings, any other interested persons and the Independent Children's Lawyer (if appointed), by serving a copy of the subpoena within a reasonable time prior to the date of production or court attendance. These copies can be served by **ordinary service** or by manner of service agreed between the issuing party and the person to be served. If the subpoena requires either production of document/s only or attendance to give evidence and production of document/s, copies of the subpoena should be served at least **10 days** before the date for production or attendance and production. If the subpoena is to give evidence only a copy of the subpoena should be served at least **seven days** before the date for the court attendance.

CONDUCT MONEY AND WITNESS FEES

You are required to pay conduct money to the named person. If you do not provide this money, the named person is not required to comply with the subpoena. For a subpoena for production, you must give the named person:

- Conduct money sufficient to meet the reasonable expenses of complying with the subpoena. For example, the cost of identifying, copying and collating the documents required. This will be at least the minimum amount of \$25 or such other sum as agreed or ordered.

For a subpoena to give evidence or a subpoena to give evidence and produce documents, the conduct money covers:

- return travel by public transport from the person's place of work or residence to court, and
- a reasonable allowance for accommodation and meals during the estimated time of personal attendance at the hearing or trial.

You must also pay witness fees for each person you subpoena to attend court, as follows:

- All witnesses: \$75 for each day, or part of a day, that the person is absent from their place of employment or residence, in order to meet the requirements of your subpoena.
- Expert witnesses: such further amount as agreed or the Court allows.

NOTE: If a person incurs a substantial loss or expense greater than the set conduct money or witness fee, a court may order that the issuing party reimburse these expenses.

DOES A PERSON HAVE TO COMPLY WITH A SUBPOENA?

Yes, a person must comply with a subpoena unless:

- the subpoena was not served on the person in the manner required by the Family Law Rules 2004, or
- conduct money was not provided.

If a person does not comply with a subpoena, a court may:

- issue a warrant for the person's arrest, and
- order them to pay any costs caused by the non-compliance.

A court may also find the person guilty of contempt of court.

The rules

In the Family Court of Australia, the rules covering subpoenas are set out under Part 15.3 of the Family Law Rules 2004.

NOTE: in respect of subpoenas to be served in New Zealand, see Chapter 26A - Cases to which the *Trans-Tasman Proceedings Act 2010* applies, of the Family Law Rules 2004.

Return of exhibits and documents that are produced

The registry manager must return a document produced in compliance with a subpoena to the named person:

- not less than 28 days after the order finally determining the application or appeal, or
- earlier, provided that seven days written notice has been given to the party who filed the subpoena of the intention to return the document (this is only for documents that have not been tendered into evidence at a court hearing or trial).

CAN A PERSON OBJECT TO PRODUCING A DOCUMENT?

Yes, objection can be made to the production of documents required by a subpoena for reasons such as:

- the documents requested are irrelevant
- the documents are privileged (for example, documents which came into existence as a result of a lawyer/client relationship), or
- the terms of the subpoena are too broad.

In this case, a party (including the Independent Children's Lawyer) or a person (named or affected by a subpoena) may seek an order that a subpoena be set aside in whole or in part.

INSPECTING AND/OR COPYING DOCUMENTS PRODUCED

If the subpoena is for production only, and the issuing party has served the subpoena in compliance with the Rules and the named person has complied with the subpoena and there is no objection made to the production of the documents, the issuing party may on or after the production day file a *Notice of Request to Inspect**.

Each party to the proceedings, including the Independent Children's Lawyer, may then make an appointment with the registry to inspect the documents produced and take copies of documents other than a child welfare record, a criminal record, medical record or police record.

*Available under 'forms' at www.familycourt.gov.au

Fees

In some cases an exemption from the fee payable for issue of a subpoena may be sought if you hold certain government concession cards or you can demonstrate financial hardship.

For more information see the fees section at www.familycourt.gov.au

INSPECTION OF MEDICAL RECORDS

If you have subpoenaed a person's medical records, the person whose records have been produced may give notice to the Court that they want to inspect those medical records in order to decide if they wish to object to their inspection. If they object to their records being inspected, they are allowed to file their notice of objection within seven days after the date for production in the subpoena. In this case, you, or any other party or interested person, will not be permitted to inspect the medical records until the later of seven days after the date for production, or the hearing and determination of any objection.

HOW LONG DOES A SUBPOENA REMAIN IN FORCE?

A subpoena remains in force until the first of the following events occurs:

- the person complies with the subpoena
- the issuing party or a court release the person from the obligation to comply with the subpoena, or
- the hearing or trial is concluded.

ARE THERE ANY RESTRICTIONS IN USING A SUBPOENAED DOCUMENT?

A person must only use documents obtained by subpoena for the purposes of the case and must not disclose the contents or give a copy of a document to any other person without the permission of a court.

Legal advice

If you have any legal questions about subpoenas, you should get legal advice. You can get legal advice from a:

- legal aid office
- community legal centre, or
- private law firm.

Court staff can help you with questions about court forms and the court process, but cannot give you legal advice.

More information

For more information, including access to the Family Law Act, the Rules of the Court and any of the forms or publications listed in this brochure:

- go to www.familycourt.gov.au
-  **LIVE CHAT** at www.familycourt.gov.au
- call 1300 352 000, or
- visit a family law registry near you.

Family law registries

AUSTRALIAN CAPITAL TERRITORY

Canberra ~ Cnr University Ave and Childers St
Canberra ACT 2600

NEW SOUTH WALES

Albury ~ Level 1, 463 Kiewa St Albury NSW 2640

Dubbo ~ Cnr Macquarie and Wingewarra Sts Dubbo NSW 2830

Lismore ~ Level 2, 29-31 Molesworth St Lismore NSW 2480

Newcastle ~ 61 Bolton St Newcastle NSW 2300

Parramatta ~ 1-3 George St Parramatta NSW 2150

Sydney ~ 97-99 Goulburn St Sydney NSW 2000

Wollongong ~ Level 1, 43 Burelli St, Wollongong NSW 2500

NORTHERN TERRITORY

Alice Springs ~ Westpoint Building, Cnr Railway Terrace and Stott Terrace, Alice Springs NT 0870

Darwin ~ Supreme Court Building, State Square, Darwin NT 0800

QUEENSLAND

Brisbane ~ 119 North Quay Brisbane Qld 4000

Cairns ~ Level 3 and 4, 104 Grafton St Cairns Qld 4870

Rockhampton ~ 46 East St (Cnr Fitzroy St)
Rockhampton Qld 4700

Townsville ~ Level 2, Commonwealth Centre
143 Walker St Townsville Qld 4810

SOUTH AUSTRALIA

Adelaide ~ 3 Angas St Adelaide SA 5000

TASMANIA

Hobart ~ 39-41 Davey St Hobart Tas 7000

Launceston ~ Level 3, ANZ Building
Cnr Brisbane and George Sts Launceston Tas 7250

VICTORIA

Dandenong ~ 53-55 Robinson St Dandenong Vic 3175

Melbourne ~ 305 William St Melbourne Vic 3000

WESTERN AUSTRALIA

Perth ~ Family Court of Western Australia
150 Terrace Rd Perth WA 6000
08 9224 8222

The Family Court of Australia respect your right to privacy and the security of your information. You can read more about the courts' commitments and legal obligations in the fact sheet *The courts and your privacy*. This fact sheet includes details about information protection under the privacy laws and where laws do not apply.