

Subpoena in an Arbitration

Family Law Rules ~ RULE 26B.14

Please type or print clearly and mark [X] all boxes that apply. Attach extra pages if you need more space to answer any question/s.

Filed in:

- Family Court of Australia
 Federal Circuit Court of Australia
 Family Court of Western Australia
 Other (specify) _____

Filed on behalf of:

Full name: _____

MARK [X] IN THE BOX THAT APPLIES TO YOU

- Applicant
 Respondent
 Other (specify) _____

COURT USE ONLY

Client ID _____

File number _____

Filed at _____

Filed on _____

Court location _____

The last date for service of this subpoena is (refer to Notes 2, 3 & 4 on page 4)

Documents must be produced to registry by: _____

TO

NAME

Address

State

Postcode

YOU ARE ORDERED TO: (select one box only)

- Attend an arbitration to give evidence (see Part C for details of order).
 Produce documents to the Court in relation to an arbitration and attend the arbitration to give evidence (see Part D for details of order).
 Produce documents to the Court in relation to an arbitration (see Part E for details of order).

TAKE NOTICE: if you fail to obey this subpoena

- a warrant may be issued for your arrest
- you may be liable to pay any costs occasioned by your failure to comply, and
- the Court may impose a penalty under s.112AD of the *Family Law Act 1975*.

Date: _____ / _____ / _____ Registrar: _____

The last date for service of this subpoena is _____ / _____ / _____ (See Notes 2, 3 & 4)

Please read Notes 1 to 18 at the end of this *Subpoena in an Arbitration*.

Filed on behalf of _____

Prepared by _____

Lawyer's code _____

Name of law firm _____

Address for service in Australia

Street _____

State _____

Postcode _____

Email _____

Telephone _____

Fax _____

Part A About the parties to the Arbitration

APPLICANT 1

Family name as used now

Given names

RESPONDENT 1

Family name as used now

Given names

Part B About the Arbitrator

Arbitrator family name

Given names

The contact address (address for service) in Australia for the Arbitrator is:

	State	Postcode
Phone	Fax*	
DX	Email*	
Lawyer's code (if applicable)		

* Please do not include email or fax addresses unless you are willing to receive documents from the Court and other parties in that way.

Part C Details of order to attend arbitration to give evidence

Date you must attend the arbitration: _____/_____/_____

Time you must attend the arbitration: _____ AM PM

Place you must attend the arbitration: _____

You must continue to attend from day to day unless excused by the Arbitrator or Court or until the arbitration is completed.

Part D Details of order to produce documents to the Court in relation to an arbitration and attend the arbitration to give evidence

Date you must attend the arbitration: _____/_____/_____

Time you must attend the arbitration: _____ AM PM

Place you must attend the arbitration: _____

You must continue to attend from day-to-day unless excused by the Arbitrator or the Court, or until the arbitration is completed.

When you attend to produce documents in relation to the arbitration, you must produce the books, documents and things described in the Schedule (see Part F).

Part E Details of order to produce documents to the Court in relation to an arbitration

You must produce the books, documents and things described in the Schedule at Part F:

Date and time for production: On or before _____ PM on _____/_____/_____

Place: You must produce the books, documents and things described in the Schedule to an officer of the Court, _____ registry, (address of court)

State: _____ Postcode: _____

Instead of attending the Court you may post or deliver the books, documents and things described in the Schedule to the registry at the 'address of court' specified above at least two days before the date for production specified above.

See Notes 13 and 14 for automatic release of documents.

This Subpoena in an Arbitration was issued at the request of the issuing party named in the footer on page 1.

DO NOT send subpoenaed documents to this person.

Subpoenaed documents must be produced to the Court, notwithstanding any objection being made.

The Registrar will issue a receipt to the person producing the documents or things.

Part F Schedule

(if insufficient space attach list)

Books, documents and things you must produce from your possession, custody or control

1. a copy of this subpoena
- 2.

NOTE: You may, with the consent of the issuing party, produce a copy, instead of the original of a document.

Family Law Rules 2004 — Rule 26B.14

Limitations — Subpoenas in an Arbitration

1. Self-represented parties must obtain permission to request the issue of a subpoena in an arbitration. See Rule 26B.15.

Service of Subpoena in an Arbitration

2. Where this subpoena requires the person to **attend an arbitration to give evidence**, the issuing party must serve this subpoena **personally** on the person subpoenaed at least **seven days** before the date for attending court.
3. Where this subpoena requires the person to **produce documents to the Court in relation to an arbitration and attend the arbitration to give evidence**, the issuing party must serve this subpoena **personally** on the person subpoenaed at least **10 days** before the date for attending the arbitration to give evidence.
4. Where this subpoena requires the person to **produce documents to the Court in relation to an arbitration**, the issuing party must serve this subpoena by **ordinary service** on the person subpoenaed at least **10 days** before the date for producing documents.
5. The named person may reach an agreement with the issuing party in relation to a different **manner of service** of a subpoena to produce documents only.

Service of copy of Subpoena in an Arbitration

6. The issuing party must serve by **ordinary service** a copy of this subpoena on each other party and any interested person in the proceeding within a reasonable time before attendance or production under the subpoena is required.
7. An 'interested person' means a person who has a sufficient interest in the subpoena.
8. The **issuing party** may reach an agreement with each other party and any interested person in relation to a different **manner of service**.

Cost of complying with Subpoena in an Arbitration

9. The person serving the subpoena must give the person subpoenaed conduct money sufficient to meet the reasonable expenses of compliance. The amount of conduct money must be at least \$25. See Rule 26B.18(1) Family Law Rules 2004.
10. If you are the person subpoenaed and you are not a party to the arbitration and you will incur substantial loss or expense in properly complying with the subpoena, you may apply to the Court for an order that the issuing party pay you an amount in respect of the loss or expense. Before making such an application, you may wish to give notice to the issuing party that substantial loss or expense would be incurred in properly complying with the subpoena, including an estimate of the loss or expense.

Objection to production, inspection or copying of documents

11. The person required by this subpoena to produce documents or things in relation to an arbitration may object to producing a document by completing, filing and serving the attached *Notice of Objection – Subpoena in an Arbitration* before the date specified in this subpoena for production. The documents or things identified in the subpoena must be provided to the registry before the date of production, even if the person required to comply with the subpoena lodges a *Notice of Objection – Subpoena in an Arbitration*.
12. Any party or any interested person may object to inspection or copying of a document described in this subpoena by completing, filing and serving the attached *Notice of Objection – Subpoena in an Arbitration* before the date specified in this subpoena for production.

NOTE: Family Law Rules 2004 — Rule 26B.25.

Automatic release of documents for inspection or copying (Part E)

13. Subject to any objection being upheld or an order of the Court and subject to the issuing party filing a notice of request to inspect in the approved form, each party may, by appointment, inspect all documents produced in response to this subpoena and may take copies of all documents produced in response to this subpoena (other than a child welfare record, medical record, criminal record or police record).
14. A person who inspects or copies a document produced in response to this subpoena must:
 - (a) use the document for the purpose of the arbitration only, and
 - (b) not disclose the contents of the document or give a copy of it to any other person without the Court's permission.

Child welfare, medical, criminal and police records

15. Child welfare records, medical records, criminal records and police records produced in response to this subpoena will be available for inspection by each party and any independent children's lawyer, but these records will not be available for copying without an order of the Court.

Child welfare records are records relating to child welfare held by a State or Territory agency mentioned in Schedule 9 to the Family Law Regulations 1984.

Note: For child welfare records, there may be restrictions on inspection imposed by protocols entered into between the Court and the relevant child welfare department.

Objection by person to inspection of medical records

16. If the documents to be produced under this subpoena include a person's medical records, that person may, **before** the date stated for production, notify the Registrar in writing that he or she wants to inspect the records for the purpose of determining whether to object to the inspection or copying of the document by any other party.
17. If such notice is given:
 - (a) that person may inspect the medical records and may, within seven days after the date stated in the subpoena for production, object to inspection or copying of a document described in this subpoena by completing, filing and serving the attached *Notice of Objection – Subpoena in an Arbitration*, and
 - (b) unless otherwise ordered, no other person may inspect the medical records until the later of seven days after the date stated in the subpoena for production or the hearing and determination of the objection.

Time and date for hearing an objection

18. Any objection in relation to this subpoena will be heard before a judge or registrar. The Registrar will advise the parties and the objector of the time and date when they will be required to attend court for the hearing and determination of the objection.

Notice of Objection – Subpoena in an Arbitration

Any person named in this *Subpoena in an Arbitration* or affected by this subpoena who objects to the production or inspection or copying of documents described in this subpoena must:

TO BE COMPLETED BY THE PERSON FILING THIS NOTICE

File number _____

Court date _____

Filed at _____

Filed on _____

Court location _____

1. **Complete and sign** this *Notice of Objection – Subpoena in an Arbitration*.
2. **File** this *Notice of Objection – Subpoena in an Arbitration* together with a copy of the subpoena at the Court registry before the date for the production of documents required by the subpoena. If you are the person required in the subpoena to provide the documents or things, you are still required to provide these to the Court registry prior to the date of production.
3. Serve a copy of this *Notice of Objection – Subpoena in an Arbitration* together with a copy of the subpoena on the issuing party and all other parties.
4. **Attend court** on the date set by the Registrar for consideration and determination of this objection.

Part A Details of objection

TO the Registrar, at (registry) _____

AND TO the issuing party

AND TO all other parties in the arbitration

(Name of person objecting): _____

(select **one** box only)

I am the person subpoenaed in the attached *Subpoena in an Arbitration*

I have been given a copy of the attached *Subpoena in an Arbitration* directed to

(Name of person subpoenaed): _____

Filed on behalf of _____

Prepared by _____

Lawyer's code _____

Name of law firm _____

Address for service
in Australia

Street _____

State _____

Postcode _____

Email _____

Telephone _____

Fax _____

Details of objection continued... (select *box or boxes*)

I give notice that I object to the production of some or all of the documents to the Court for the following reasons: (*attach extra page if insufficient space*)

1.

I give notice that I object to the inspection / copying of some or all of the documents produced for the following reasons: (*attach extra page if insufficient space*)

1.

Part B Signature

Signature

Signed by (print full name):

- the applicant
- lawyer for the applicant
- the person objecting
- lawyer for the person objecting

Date: _____/_____/_____