



Subpoena in an Arbitration

Information for named person or other person (served with a subpoena in an arbitration or copy of a subpoena in an arbitration)

This brochure is for people who have been served with:

- a subpoena in an arbitration, and who are required to comply with the subpoena (named person), or
- a copy of a subpoena in an arbitration as a party or interested person, and who may want to object to the inspecting or copying of a document/s to be produced in compliance with the subpoena.

It provides information about the use of, and compliance with, subpoenas in an arbitration in the Family Court of Australia (the Court).

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.

What is a subpoena in an arbitration?

A subpoena in an arbitration is a legal document issued by the Court at the request of a party to an arbitration. A subpoena compels a person to produce documents or give evidence at an arbitration.

There are three types of subpoena in an arbitration:

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

A party to an arbitration can request a subpoena if a person refuses or is unable, of their own free will, to give evidence in the arbitration or to provide documents to the court, that are relevant to the arbitration. However, the party should make attempts to get the required document or evidence by, for example, asking the person to provide it before requesting the Court to issue a subpoena.

A subpoena for production and to give evidence should not be sought if production of the document/s alone would be sufficient.

Information for the named person

When served with a subpoena in an arbitration and you are the named person, you must comply with it unless you were not served correctly under the Court rules or were not provided with proper conduct money to attend court or arbitration – see Rule 26B.18(1) of the Family Law Rules 2004.

If you incur a substantial loss or expense greater than the set conduct money or witness fee, a court may order that the issuing party reimburse you for these expenses.

Any claim for costs in attending an arbitration to give evidence and/or to produce documents to the court in relation to an arbitration must be met by the party issuing the subpoena and not the Court.

If you do not comply with a subpoena, a court may:

- issue a warrant for your arrest, and
- order you to pay any costs caused by your non-compliance.

A court may also find you guilty of contempt of court.

If you want to object to a subpoena in an arbitration, or have it set aside in whole or in part, you must file the *Notice of Objection – Subpoena in an Arbitration* and still attend court on the date specified on the subpoena, at which time your objection will be heard. See Rule 26B.21

Are there any situations where I do not have to comply?

You are not required to comply with a subpoena in an arbitration if:

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

The person who asked the Court to issue the subpoena in an arbitration may decide they no longer need you to comply with the subpoena, in which case they will advise you in writing.

Conduct money and payment for loss or expense incurred in complying with subpoena in an arbitration

If a subpoena requires you to attend arbitration to give evidence, the person serving the subpoena must give you conduct money sufficient for return travel between your place of residence or employment (as appropriate) and the arbitration. The amount of conduct money must be at least \$25.

If you are not a party in the arbitration and you will incur substantial loss or expense in properly complying with the subpoena, you may apply to the Court (in writing) for an order that the party who has issued the subpoena pay you an amount (in addition to the conduct money) in respect of the loss or expense. If you wish to make such an application, you must, before complying with the subpoena, 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.

Any claim for costs in attending arbitration or producing a document under the subpoena must be met by the party issuing the subpoena and not the Court.

How long does a subpoena in an arbitration remain in force?

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

- you comply with the subpoena
- the issuing party or a court release you from the obligation to comply with the subpoena, or
- the arbitration ends.

Complying with the subpoena in an arbitration

Subpoena to give evidence

If the subpoena requires you to give evidence, you must attend the arbitration on the date specified on the subpoena.

If you object to the subpoena you may make an application to the Court to have the subpoena set aside in whole or in part.

Subpoena to give evidence and produce documents

If the subpoena requires you to give evidence and produce documents, you must attend the arbitration on the date specified on the subpoena and produce the documents set out in the schedule to the subpoena.

If you object to the subpoena, you may make an application to the Court to have the subpoena set aside in whole or in part.

Subpoena for production of documents only

If the subpoena requires you to produce documents only, you (or an agent on your behalf) must produce the document/s set out in the schedule to the subpoena (together with a copy of the subpoena). You can do this by completing and tearing off the notice on page 5 and:

- attending the registry on or before the date and time for production, as set out in the subpoena, or
- posting or delivering the document/s not less than two days before the date fixed for production in the subpoena.

If you wish to object to producing the document/s subpoenaed see 'objecting to the production or inspection or copying of subpoenaed documents' below.

You can object 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.

If you do not object to producing the documents, the parties and interested persons may have an automatic right to inspect the documents. If the documents are not child welfare records, criminal records, medical records, or police records, they may also be copied.

Even if you have no objection to the documents being inspected or copied, a party or interested person may object. If so, you will be advised in writing.

Note: Do not send the documents to the person who asked for the subpoena to be issued. The documents must be produced to the Court.

Can I produce copies of documents?

You may choose to comply with the subpoena by producing a copy of the documents.

Return of exhibits and documents that are produced

When producing subpoenaed documents you may inform the Court that any document produced need not be returned and may be destroyed. In this case the Court will destroy the document instead of returning it to you.

Otherwise, the Court must return the documents produced in compliance with the subpoena to you at least 28 days, and no later than 42 days, after the end of the arbitration.

Information for persons receiving a copy of the subpoena

The party issuing the subpoena in an arbitration is required to provide a copy of the subpoena to all other parties to the arbitration and all persons who may be interested in the subject matter of the subpoena.

If you have received a copy of the subpoena and are not the person subpoenaed, you do not have to do anything unless you want to object to the documents listed in the schedule of the subpoena being inspected or copied by another party or interested person. If you want to object, see 'objecting to the production or inspection or copying of subpoenaed document' below.

You may have a right to inspect or copy the documents subpoenaed. See 'parties right to inspect or copy documents' on page 4.

Objecting to the production or inspection or copying of subpoenaed documents

As the named person subpoenaed to produce documents, you may object to producing the documents. As a person receiving a copy of a subpoena to produce documents, you may object to the documents subpoenaed being inspected or copied.

If you wish to object, you must complete the *Notice of Objection – Subpoena in an Arbitration* form attached to the subpoena. This notice needs to be filed at the Court registry before the date for production set out in the subpoena, together with a copy of the subpoena. You need to file:

- the original
- a copy for the party issuing the subpoena
- a copy for each party to the arbitration, and
- a copy for yourself.

The Court will keep the original notice and give you back the copies, sealed with the Court's stamp. You must keep one sealed copy for yourself and give the other sealed copies, together with a copy of the subpoena, to the issuing party, and all other parties to the arbitration.

You must attend Court on the date assigned to have your objection heard and determined.

Information for people whose medical records have been subpoenaed

If your medical records have been subpoenaed, you may seek to view your records before making a decision about whether you want to object to them being inspected. In this case, you need to notify the Registry Manager in writing before the date for production set out in the subpoena. If you then wish to object to your records being inspected, you must file your *Notice of Objection – Subpoena in an Arbitration* within seven days after the date for production in the subpoena. If you have not given notice to the Registry Manager that you wish to inspect your records, you must file any notice of objection before the date for production. The notice of objection is required to be served, see 'objecting to the production or inspection or copying a subpoenaed documents' on page 3.

Parties' right to inspect or copy documents

If there is no objection to the production of the subpoenaed documents, and no Court order has been made to set aside the subpoena, after the date for production set out in the subpoena has passed, you can make an appointment with the Court registry at which the documents have been subpoenaed to inspect those documents. Documents, other than child welfare records, criminal records, medical records, and police records, may also be copied. To make an appointment to inspect and copy documents, contact the registry to which the documents have been subpoenaed after the date for production has passed. You can obtain registry contact details from the Court's website at www.familycourt.gov.au

If the documents subpoenaed are medical records, the person whose records have been subpoenaed may give notice to the Court that they wish to inspect their records before deciding whether they wish to object to their inspection by other parties or interested persons. In this case, you will not be allowed to inspect the documents until seven days after the date for production has passed or, if an objection has been made, until the objection has been determined by the Court.

Are there any restrictions in using a subpoenaed document?

A person must only use documents obtained by subpoena for the purposes of the arbitration and must not disclose the contents or give a copy of any documents subpoenaed to any other person (except the lawyer representing them in the arbitration) without the permission of the Court.

The rules

In the Family Court of Australia, the rules covering subpoenas in an arbitration are set out under Part 26B.2, of the Family Law Rules 2004.

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

Legal advice

If you have any legal questions about subpoenas in an arbitration, 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** on the website
- call **1300 352 000**, or
- Visit a family law registry near you.

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

This notice is to be completed and attached to the subpoenaed documents when complying with the subpoena in an arbitration. Please also attach a copy of the subpoena.

File number _____

To the subpoena clerk

Registry address _____

I am producing the attached documents in response to a subpoena in an arbitration which is also attached.

Please tick the box which applies:

I do not require these documents to be returned to me when they are no longer required by the Court. I authorise the registry manager to destroy the documents at the appropriate time in a secure way.

The documents are to be return to me at:

State _____ Postcode _____

Signed _____

Print your name _____

Date _____

