



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.

Note: Subpoenas attract a filing fee. For more information see the Family Law Courts fee flyer.

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.

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, or
- 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*).

NOTE: there are special rules covering subpoenas to be served in New Zealand. They can be found in Division 15.3.4 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 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 and at least two copies. The Court keeps the original subpoena. The first copy is sealed (stamped) and must then be served on the person or organisation being subpoenaed. The second copy is for you.

If it is a subpoena for production, you will need enough copies to make sure that there is a copy for service on each other party, including the independent children's lawyer (if appointed).

STEP 3 Serve the subpoena

As the person who requested the subpoena to be issued, you must arrange for the subpoena to be personally handed to the named person. You should give the named person as much notice as possible of the hearing or trial date.

If the subpoena is not served personally, the named person is not required to comply with the subpoena.

At the time of service of a subpoena, the following must also be served:

- conduct money (page 3)
- if a subpoena for production – a copy of the brochure 'Subpoena – information for named person (served with a subpoena)'; and
- a written notice if you seek to inspect and copy without the need to attend the court date (see the notice on page 5).

Subpoena for production only

In some cases, all parties and the independent children's lawyer (if appointed) may be automatically permitted to inspect and copy any documents produced under a subpoena without the need to attend on the court date. This situation can only occur if:

- The subpoena is issued more than 21 days before the court date.
- The named person, all parties and the independent children's lawyer (if appointed) are served with:
 - ~ the subpoena, and
 - ~ a written notice* that the person requesting the subpoena intends to rely on this provision at least 21 days before the court date.
- You file an affidavit of such service, at least seven days before the court date.
- The named person produces the documents more than seven days before the court date and does not object to any party inspecting or copying the documents.
- No party or independent children's lawyer (if appointed) objects to any party inspecting or copying the documents by ten days prior to the court date.

If a person objects to the inspection or copying of the documents that person and the party issuing the subpoena must attend the court date. At the court hearing the judge or registrar to decide whether to allow inspection or copying.

* You may use the notice on page 5.

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 \$10 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 by hand, 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.

Fees

In some cases a reduced fee may be sought for a divorce application, or decree of nullity, or in respect of other fees, an exemption if you hold certain government concession cards or you can demonstrate financial hardship. For more information see the fees section at www.familylawcourts.gov.au

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 42 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, a person 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.

In this case, a party or a person (named or affected by a subpoena) may seek an order that a subpoena be set aside in whole or in part.

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.

The rules

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

More information

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

- go to www.familylawcourts.gov.au
- 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 ~ Level 1, Centrepoin Building
Hartley St Alice Springs NT 0870
Darwin ~ 80 Mitchell St 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

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.

The Family Law Courts 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 Family Law Courts and your privacy'. The fact sheet includes details about information protection under the privacy laws and where privacy laws do not apply.

Notice to the named person

To _____

(print name of person being subpoenaed)

With this notice you have been served with a subpoena to produce documents. If:

- 1 you comply with the subpoena and lodge the documents required by the subpoena at the Court specified in the subpoena at least seven days before the court date, and
- 2 you do not object to a party or independent children's lawyer inspecting or copying the document, and
- 3 no other party or person objects to the document being inspected and copied by the parties or the independent children's lawyer then each party and independent children's lawyer is entitled, without a court order, to inspect and take copies of the documents from seven days before the court date until the documents are returned to you, destroyed or the Court orders otherwise.

A person who inspects or copies the document must:

- a) use the document for the purpose of the case only, and
- b) not disclose the contents of the document or give a copy of it to any other person without permission of the Court.