



Subpoena

Information for people requesting issue of a subpoena
FAMILY COURT OF WESTERN AUSTRALIA

This brochure will tell you

- About the use of a subpoena in the Family Court.
- General information about subpoenas.
- Conduct Money & Witness Fees.
- Compliance with a subpoena.
- How to view returned documents.

The Act, the Rules, the forms and other brochures referred to in this brochure can be obtained from the Family Court website www.familycourt.wa.gov.au. The forms and brochures can also be obtained from any registry of the Court.

What is a subpoena?

A subpoena is issued by the Court at the request of a party to a case when a person refuses, or is unable of their own free will, to produce documents or give evidence at a hearing or trial.

There are three types of subpoena:

- a subpoena for production, where a document or thing needs to be produced;
- a subpoena to give evidence, where a person is needed to appear in court as a witness; and
- a subpoena for production and to give evidence.

The Court's subpoena (Form 14) is the only document the Court will issue as a subpoena.

A subpoena must not be served on a person less than 18 years of age without the Court's permission.

When can I request a subpoena?

- In parenting cases the Court **will not** issue a subpoena unless the party has permission from the judicial officer (a Judge, Magistrate or Registrar) who has the carriage of the matter.
- In financial cases the Court **will not** issue a subpoena before the Conciliation Conference or after the Readiness Hearing.

If a party seeks the issue of a subpoena to produce documents at trial, permission should be sought at the Conciliation Conference.

If you are:

- a self-represented person;
- requesting a subpoena less than 14 days before a hearing or trial; or
- requesting a subpoena for production of documents being held in another Court

you will need to write a letter to the Court explaining why you need the subpoena, before the court will issue it.

A party can only request three subpoenas for the hearing of any of the following applications:

- an application for interim or procedural orders;
- a child support application or appeal; or
- a maintenance application.

Conduct money and witness fees

You are required to pay ‘conduct money’ to the person you subpoena. If you do not provide this money, the person is not required to comply with the subpoena. The amount to be paid is set out in Schedule 4 of the Family Law Rules. 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 the Court.
- 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.

- For a subpoena for production the person served must receive conduct money in a sum 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.

Subpoena to the Department for Child Protection

A person serving a subpoena seeking the production of a Department for Child Protection file must provide to the Director-General, Department for Child Protection the following information (with the subpoena):

- the full names of the parties to the proceedings and the full name(s) of the child(ren) the subject(s) of the proceedings, including any former names or aliases;
- if the parties and child(ren) are legally represented, the names and contact details of the legal representatives;
- information as to whether the parties were or are married;
- the current address of each of the parties and the child(ren);
- the name of the person(s) with whom the child(ren) is (or are) living at the time the subpoena is issued;
- information about the knowledge each party has regarding the current address of the other party and the child(ren);
- information regarding the existence of any restraining orders or family violence orders in respect of any of the parties or the child(ren) which are relevant to the proceedings; and
- a list of persons who have sworn affidavits in respect of the proceedings.

Time limits for filing a subpoena

A Form 14 subpoena to attend Court and give evidence must be filed and served at least 7 days before the hearing date.

A Form 14 subpoena to produce documents or to produce documents and attend Court to give evidence must be filed at least 14 days before the hearing date.

If you wish to issue a subpoena outside of these time limits, you will have to satisfy the Court of the need to issue the subpoena and that you have contacted the person or organisation to be subpoenaed and they have agreed they will be able to comply with the subpoena, notwithstanding that it is out of time.

Complying with a subpoena

How long does a subpoena remains in force?

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

- the subpoena is complied with;
- the issuing party or the Court releases you from the obligation to comply with the subpoena;
- the trial or hearing is concluded.

When compliance with the subpoena is not required (Rule 15.24)

As the person named in a subpoena, you do not have to comply with the subpoena if:

- the subpoena was not served on you personally; or
- conduct money has not been provided.

The person who asked the Court to issue the subpoena may decide they no longer need you to comply with the subpoena, in which case they can write to you advising you of that.

Objections to a subpoena for production

A person may object to the production of documents required by a subpoena for reasons such as:

- the documents requested are irrelevant;
- the documents are 'privileged' (eg. documents which came into existence as a result of a lawyer/client relationship);
- the terms of the subpoena are too broad.

If you wish to object in this way you must complete, file and serve Part F of the subpoena at least 10 days before the court date, and attend court on that date.

Setting aside the subpoena or other orders

On application by a party or a named person, the Court may order that:

- a subpoena be set aside in whole or in part; and
- a party pay the loss or expense relating to the attendance of a person or production of a document in compliance with a subpoena.

Inspection of documents produced under a subpoena

If documents have been produced to the Court under a subpoena, you need permission of the Court or a Registrar to inspect or photocopy the subpoenaed material. If the documents were produced by a Government Agency, the Police or a Medical Practitioner, you must give the organisation written notice if you want permission to photocopy the documents. You should ask for permission to inspect or photocopy the documents on the return date.

You may apply to inspect material lodged with the Court prior to the hearing, but only if you have satisfied the Court or the Registrar:

- that all parties have been notified of the name and address of the party subpoenaed;
- that the documents have been subpoenaed;
- of the hearing date for the return of the subpoena (shown on the front of the subpoena);
- that the other parties have no objection to you viewing the subpoenaed material prior to the court making an order: and
- that the person or organisation subpoenaed agrees to you inspecting the documents.

If you are given permission to inspect subpoenaed material you will need to make an appointment to reserve a room by phoning the Subpoena Officer on 08 9224 8304 or 08 9224 8266.

Seek legal advice

You should get legal advice before deciding what to do. A lawyer can help you understand your legal rights and responsibilities, and explain how the law applies to your case. A lawyer can also help you reach an agreement with the other party without going to court.

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.

Personal safety

If you have any concerns about your safety while attending court, please call 08 9224 8222 before your court appointment or hearing. Options for your safety at court will be discussed and arrangements put in place. By law, people must inform a court if there is an existing or pending family violence order involving themselves or their children.

Need more information?

For more information about the Family Court of Western Australia, including access to the legislation, forms or publications listed in this brochure:

- go to www.familycourt.wa.gov.au
- call 08 9224 8222 or 1800 199 228; or
- visit the Family Court of Western Australia registry.

Who else can help?

- **Legal Aid WA**
www.legalaid.wa.gov.au
1300 650 579
- **Community Legal Centres Association of WA**
www.communitylaw.net
08 9221 9322
- **Law Society of Western Australia**
www.lawsocietywa.asn.au
08 9322 7877
- **Aboriginal Legal Service of Western Australia Family Law Unit**
www.als.org.au
08 9265 6666 or 1800 019 900
- **Law Council of Australia – Family Law Section**
www.familylawsection.org.au
02 6246 3788

This brochure provides general information only and is not provided as legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to the Court. The Family Court cannot provide legal advice. The Family Court respects your right to privacy and the security of your information.

V4- 310810