



Subpoena

Information for people requesting the 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 the Court Registry.

What is a subpoena?

A subpoena is issued by the Court at the request of a party to a case (the issuing party) 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 without additional permission.

If a party seeks the issue of a subpoena to produce documents at trial in financial cases, 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.

Additional requirements for certain organisations

A subpoena directed to:-

- (a) a family dispute resolution practitioner
- (b) a family counsellor
- (c) employees of Anglicare, Centrecare or Relationships Australia

will not be issued unless certain requirements are met. See [Practice Direction No. 2 of 2011](#) for details.

There are additional requirements when requesting a subpoena issue to the Department of Communities. You have to provide the Court with certain information before the Court will permit a subpoena to issue. See [Practice Direction No. 1 of 2014](#) for details.

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 and attend Court to give evidence must be filed at least 10 days before the hearing date.

A Form 14 subpoena to produce documents will be given a production date no earlier than 21 days after filing and must be served on the named person and all parties at least 10 days before the production 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.

Conduct money and witness fees

You are required to pay *conduct money* to the person you subpoena, which needs to cover the cost of complying with the subpoena. If you do not provide this money, the person is not required to comply with the subpoena.

The minimum amount of conduct money is \$25.

The cost of complying with a subpoena for production needs to cover costs such as identifying, copying and collating the documents required.

The cost of complying with a subpoena to give evidence (or give evidence and provide documents) needs to cover:

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

A witness is also entitled to be paid a witness fee immediately after attending court in compliance with the subpoena. The witness fee is:

- **all witnesses** – \$75 for each day, or part of a day
- **Expert witnesses** – an amount as the court allows for the preparation of a report and absence from their place of employment.

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.

Serving the subpoena

As the issuing party, you must arrange for the subpoena to be served on the named person.

At the time of service of a subpoena on the named person the following must also be served:

- conduct money of no less than \$25; and
- a copy of the brochure 'Subpoena – information for people who have been served with a subpoena'.

There are specific rules relating to the service of subpoenas. If necessary, you should read the Court's 'Service Kit', or visit the Court's website www.familycourt.wa.gov.au as it may help you carry out service correctly. If the subpoena is not served according to the Court's Rules, the person you are asking the Court to subpoena is not required to comply with the Subpoena.

You will also need to serve a copy of the subpoena and a copy of the brochure on:

- each other party to the proceedings, or their lawyer;

- the independent children’s lawyer, if one has been appointed; and
- each interested person (meaning a person who has a sufficient interest in the subpoena). An example of an interested person is a person whose information (including criminal or police records, or bank records) may be contained in the subpoenaed documents.

Serving a Subpoena on the Department of Communities

A person seeking the production of a Department of Communities file must provide to the Director-General, Department of Communities the following information (when serving 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.

Objections to a subpoena for production

A named 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.

The named person objecting must complete, file and serve Part F of the subpoena before the production date. The parties will be advised of a hearing date where the court will hear and determine the objection.

Setting aside the subpoena or other orders

On application by a party, the independent children’s lawyer 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

All parties and an Independent Children’s Lawyer (if any) may be automatically permitted to inspect and copy documents (other than child welfare, medical, police and criminal records) produced under a subpoena for production, only if the following **all** occur:

- the named person is properly served with the subpoena, the required Information brochure and conduct money at least 10 days before the production date;
- all other parties to the proceedings and the Independent Children’s Lawyer (if any), and any interested person are properly served with the subpoena and the required Information brochure at least 10 days before the production date;

- the named person produces the documents on or before the production date and does not object to any party inspecting or copying the documents.
- no party or Independent Children’s Lawyer (if any) or any interested person objects to any party inspecting or copying the documents on or before the production date.
- the issuing party files a Notice of Request to Inspect on or after the production date.
- you make an appointment to inspect by phoning the Subpoena Officer on 08 9224 8304/8238.

If a person objects to the inspection or copying of the documents that person and the issuing party must attend a court hearing for a judicial officer to decide whether to allow inspection or copying.

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.

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.
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