



Subpoena

Information for people who have been served with a subpoena
FAMILY COURT OF WESTERN AUSTRALIA

This brochure will tell you

What to do if you have been served with a subpoena.

The information is set out in the following parts:

- General information.
- What to do if you are subpoenaed.
- Compliance with a subpoena.
- Return of exhibits and documents that are produced.
- Further information and your rights.

The Act, the Rules, the forms and the 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 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;
- A subpoena to give evidence;
- 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.

What to do if you are subpoenaed

If you have received a subpoena, you must follow the instructions included with it, unless Rule 15.24 applies (see *Complying with a Subpoena* on page 3).

Failing to comply with a subpoena is a serious offence.

- You may be guilty of contempt of Court.
- A warrant may issue for your arrest and you may be ordered to pay any costs caused by your non-compliance.

If you wish to object to compliance with the subpoena, or set it aside in whole or in part, you must still attend court on the court date specified, at which time your objection will be heard.

Subpoena to produce evidence

If you have been served with a Subpoena to give evidence, you must attend Court on the date and time indicated in Part C of the Subpoena.

Subpoena to give evidence and produce documents

If you have been served with a subpoena to give evidence and produce documents, you must attend Court on the date and time indicated in Part D of the Subpoena and produce the documents set out in the schedule to the subpoena.

Subpoena for production

If you have been served with a subpoena to produce documents you have a choice as to how you comply with the Subpoena:

- You may appear in Court on the date specified in Part E on page 3 of the Subpoena. Ordinarily, a person would only appear if they object to the production of the document or the inspection or copying of the document subpoenaed or is seeking some other order, such as an order for reimbursement of expenses.
- Alternatively, you may produce the document to the Subpoena Officer at the Court Registry **not less than 2 days** before the date fixed for production of the document in the Subpoena (court date).

If you do this, you will be regarded as having complied with the Subpoena, and will not have to appear in court on the date specified in the Subpoena. However, if you do not want parties to inspect or copy the documents you have produced, it is important that you read the following information.

Complying with the Subpoena prior to the court date

If you wish to produce the documents prior to the court date specified, you should:

- Complete and tear off page 5 of this brochure;
- Produce the documents to the Subpoena Officer at the Court registry stated in the Subpoena, together with a copy of the Subpoena and page 5 of this brochure.

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

Producing copies of documents instead of the original

You may choose to comply with the subpoena by producing a photocopy of the documents that you are required to produce. If you want to do this, the copies must be attached to an *Affidavit for Producing Document Required*. This affidavit complies with Rules 15.29(2) and 24.01 and is available from the Court's website or registry.

Parties' right to inspect or copy documents

If you produce the documents to the Court, the parties and the Independent Children's Lawyer (if any) may be able to inspect and copy the documents unless you object to this. **If you object** to the parties, or Independent Children's Lawyer inspecting or copying the documents, you must:

- give written notice of this to the Registry and the other parties including the Independent Children's Lawyer using Part F of the Subpoena when producing the document and appear in Court on the date specified in the subpoena; **or**
- appear in Court on the date specified in the Subpoena.

If you have no objection to the documents you have produced being inspected and copied by a party to the case, **the parties and the Independent Children's Lawyer may have an automatic right to inspect and copy the documents.**

Even if you have no objection to the documents being inspected or copied, a party or the Independent Children's Lawyer may object to this. If so, they must advise you of this in writing. However, unless you object, you do not need to do anything else.

What happens if you have filed a notice under Part F of the Subpoena?

If you object to the copying or production of documents:

- You must provide a copy of that notice to each other party including the Independent Children's Lawyer (if any).
- You and the party who requested the subpoena must attend court on the court date and time specified at the top of page 1 of the subpoena, at which time the Court will consider whether to allow the objection. (Any other party may also appear at the Court at this time, if they choose to do so.)

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.

Return of exhibits and documents that are produced

The Registry must return a document produced in compliance with a subpoena to you:

- not less than 42 days after the order finally determining the application or appeal (if any); or
- earlier, provided 7 days written notice has been given to the party who filed the subpoena of the intention to return the document to you.

If you do not need the document to be returned, you must authorise the Registry to dispose of the documents by completing page 5 of this brochure and lodging it with the subpoenaed documents. The documents will be disposed of in a secure way.

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 Family Dispute Resolution, or to find your nearest Family Relationship Centre:

- go to www.familyrelationships.gov.au; or
- call the Family Relationship Advice Line on 1800 050 321, the line is open from 8am to 8pm Monday to Friday, and 10am to 4pm on Saturdays.

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.naclc.org.au
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.
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Notice from named person

This form is to be completed and attached to the subpoenaed documents when complying with the Subpoena. Please also attach a copy of the Subpoena.

File No.: PTW _____
[INSERT FILE NUMBER]

To the Subpoena Officer:

_____ Registry
[INSERT LOCATION OF REGISTRY]

FAMILY COURT OF AUSTRALIA

FEDERAL MAGISTRATES COURT

FAMILY COURT OF
WESTERN AUSTRALIA

I am producing the attached documents in response to a subpoena 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 to destroy the documents at the appropriate time in a secure way.

These documents are to be returned to me at:

ADDRESS

SIGNATURE

FULL NAME

DATE

