

Responding to a subpoena

Legal information for community organisations



This fact sheet covers:

- ▣ terminology
 - ▣ what is a subpoena
 - ▣ a subpoena to produce
 - ▣ a subpoena to attend
 - ▣ how to contact the court or tribunal
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A subpoena is a court order issued by a court or tribunal in response to a request by a party to a civil or criminal proceeding.

There are many different courts and tribunals in Australia and each has its own different court or tribunal rules for dealing with subpoenas. This is therefore a general guide only.

A list of contact details for the various courts and tribunals is provided at the end of this fact sheet.

1. Terminology

Some of the terminology used in this fact sheet may be unfamiliar so we have set out these terms below.

- **Court/tribunal rules:** each court or tribunal has its own set of rules which outline the procedures required in legal proceedings. They can usually be found online at the relevant court/tribunal website. If you are having trouble locating these rules or regulations you can contact the relevant court/tribunal (see last section of this factsheet). Alternatively you can locate all Australian legislation and rules/regulations at www.austlii.edu.au.
- **Court order:** a direction from a court or tribunal requiring a person, business, organisation or corporation to do or not do something.
- **Issuer of the subpoena:** this is the party to the legal proceeding that filed the subpoena with the court and is asking the subpoena recipient to produce documents, attend court to give evidence, or both. You can find the contact details for the issuer on the subpoena document – often this will be the lawyer for the party. Where there is a lawyer listed, you should speak to them.
- **Party or parties:** the people, businesses, organisations, corporations or other legal entities directly involved in the court proceedings. Generally, the name of the parties will be used to give a title to the court proceedings (sometimes referred to as the “Title of proceedings”) which you can generally

find at the front of the subpoena document. Being issued a subpoena does not make you a party to the proceedings.

- **Proceeding(s):** a word used to describe an action taken in a court or tribunal.
- **Produce or produced:** is another word for provide or supply.
- **Subpoena recipient:** a person, business, organisation, corporation or other legal entity served with a subpoena who is required to produce documents, attend court to give evidence, or both.
- **Served or service:** a term used to describe the various methods of delivering certain legal documents to a person, business organisation, corporation or other legal entity.

2. What is a subpoena

Parties issue subpoenas to gather evidence for their case. Another way to think of this is as an information gathering activity.

A subpoena can be issued on third parties or on a party to a proceeding. As mentioned above, being issued a subpoena does not make you a party to the proceedings.

A subpoena is a court order that requires the recipient to:

- (1) produce certain documents to the court – a ‘Subpoena to Produce’
- (2) attend a trial as a witness – a ‘Subpoena to Attend’, or
- (3) both – a ‘Subpoena to Produce and to Attend’.

A ‘subpoena’ may be known as a different name depending on the court or tribunal it is issued out of such as a ‘witness summons’ or a ‘third party notice for production’. For the purpose of this factsheet the term ‘subpoena’ is used as it is the most common name, but these principles still apply to other documents with different names that operate in the same manner as a subpoena.

Since a subpoena is a court order, if you do not follow it then you could be arrested for ‘contempt of court’. You should not ignore a subpoena.



TIP

A subpoena is different from a search warrant. A search warrant is also a court order, but it lawfully permits authorities to enter and search your property or premises.

2.1 Is the subpoena valid?

Check the following details.

1. Does the subpoena have a ‘filed’ stamp showing the date it was filed?

A filed stamp or cover page is proof that the document was issued by the court/tribunal. If there is any doubt you should contact the court/tribunal and ask them to confirm that the subpoena was filed and issued. If they have no record of the subpoena you should not comply with it and contact the party that issued the subpoena to let them know that you will not be complying with the subpoena as the court/tribunal has no record of it.

2. Did you receive the subpoena before the 'last date for service'?

The last date for service will be stated in the subpoena document. If you did not receive the subpoena before this date then you have the option of asking the other party to obtain from the court an extension of the return date. Alternatively if there is no issue with you complying by the return date, you should do so.

3. Was the subpoena served in accordance with the court/tribunal rules?

Each court/tribunal has its own set of rules for service, for example rules on how the subpoena is to be delivered to the person (i.e. handed to the person personally, left at the premises, posted).

If there is an issue with the service of the subpoena you can raise this with the issuer of the subpoena. Alternatively if there is no issue with you complying by the return date, you should do so.

4. Were you provided with 'conduct money' (payment to cover your costs of complying with the subpoena)?

The standard is usually to cover 'reasonable expenses' and is generally between \$30 and \$50 but this varies. In some circumstances a subpoena recipient is not excused from complying just because conduct money has not been paid, so if there is any issue with the conduct money, including if it is not provided, you should raise this with the issuer of the subpoena before the return date.

If any of the above points create an issue you should seek legal advice.

3. Subpoena to Produce

3.1 When do I have to comply with the subpoena?

The date that the documents need to be produced is referred to in the subpoena as a 'return date'. The documents need to be produced to the court/tribunal for its records and not to the party that issued the subpoena. The relevant court/tribunal address will be in the subpoena.

If you require further time to produce the documents, you can contact the issuer of the subpoena so that a joint request can be made to the court/tribunal for a new return date. Alternatively you or a lawyer can appear at the court/tribunal on the return date and ask for a new return date. You may need to provide an explanation.

If you have missed the return date or a deadline you can contact the issuer of the subpoena to obtain a new return date in the same way.

NOTE

If you have only been given a short period to comply with the subpoena there may be a reason – for example there may be an upcoming trial. You can make enquiries with the issuer of the subpoena or the court/tribunal.

3.2 The subpoena schedule

A subpoena to produce will have a 'schedule' listing the documents to produce. You only need to produce documents that are in your/your organisations' possession or control.

Before producing the documents you should consider whether you need to inform anyone that you are disclosing the documents. For example you may have a contract with someone which states that you

will obtain their consent before producing documents or you may have privacy obligations under the law.

You are entitled to consult with people within your organisation about the subpoena or those whose rights or privacy may be affected by the production of the documents. You can object to providing certain information for confidentiality reasons if the information is not relevant to the subpoena.

Most legal proceedings are open to the public so unless the proceedings are subject to a non-publication order or are closed, you are permitted to discuss the subpoena with others.

If you are able to produce the requested documents by the return date at a reasonable expense and have no objections then you should do so.

You only need to produce documents that are within your control. If you have conducted all reasonable searches and have not located in your possession any documents falling within the subpoena schedule, you should still produce a copy of the subpoena and complete any subpoena declarations. You can include a covering letter to the court stating that you do not have any of the requested documents in your possession.

3.3 Objections to producing documents

Valid objections to producing documents include:

- that for you to produce all of the requested documents would be very onerous and time consuming to you – if that is the case then you can apply to the court to have the subpoena set aside or negotiate an amended schedule, and
- grounds of privilege, public interest immunity or confidentiality.

Claims for ‘privilege’ can potentially be made over documents containing communications with lawyers or content relating to past or present legal proceedings. You should speak with the lawyers referred to in the communications. If you think there may be public interest or confidentiality issues you may also have grounds for objection.

These issues can involve complex technical legal issues so you should consider seeking legal advice if you think they may be relevant. See below for information on what to do with documents that you object to producing.

3.4 Producing the documents

If you have prepared the relevant documents to be produced you can either:

- attend the court/tribunal on the return date and hand over the physical documents to the court, or
- send the documents to the court/tribunal within the timeframe indicated on the subpoena.

You should place them in an envelope labelled with the proceedings number, party details, subpoena recipient details and words such as ‘Documents produced under subpoena by [INSERT]’.

Some courts/tribunals offer the option for documents to be produced electronically. You can contact the court/tribunal for further information. If you are posting the documents to the court/tribunal you should send it by registered post, or another method providing tracking information and signature on delivery. This cost could form part of any costs you seek for compliance (see 3.5 below).

If there are documents that you object to producing such as privileged documents, they still need to be produced to the court but in a separate envelope to any documents you do not object to producing.

So that it is clear that there is an objection to the production of those documents, the envelope should be marked with:

- the proceedings number
- party details
- subpoena recipient details, and
- that the documents are privileged, by writing something such as “PRIVILEGED AND CONFIDENTIAL.”

You should also prepare a list of the documents that you object to producing and the reasons why for the parties to the proceeding. The parties are entitled to know what the documents are generally and the basis of your objections (i.e. grounds of privilege etc), and they may ask you for further information. They may consent to or oppose your objections.

Check if the subpoena is asking for original documents and if not, keep the originals and produce copies. However if you send original documents, keep a copy. If you want the documents to be returned to you after the proceedings are concluded, most subpoenas have an option for you to ask for this to happen.

Ensure that you complete any declarations contained in the subpoena.

3.5 Costs of compliance

In some circumstances a subpoena recipient may have their reasonable costs of compliance paid in addition to the conduct money. You can raise this with the issuer of the subpoena and should do so as early as possible.

Most courts/tribunals also give you the option of making an application to the court for your costs to be reimbursed.

4. Subpoena to Attend

4.1 When do I have to comply with the subpoena?

For this kind of subpoena the ‘return date’ is when the person named in the subpoena is required to attend the court/tribunal to give evidence as a witness under oath or affirmation (a legally binding promise to tell the truth). The witness will be required to answer questions asked by the parties’ lawyers about issues relevant to the proceeding.

On average a witness will not be required for longer than a day or two but it can take longer depending on the particular case. The witness will need to be available to attend court for the duration of the hearing or until they are excused by the court.

You can contact the party that requested the subpoena about which days you will need to attend.

A witness attending a hearing should ensure that they are punctual and dress professionally. Keep a copy of any expenses incurred in attending court for reimbursement. When giving evidence ensure that you listen carefully to the questions you are asked. If you do not understand a question or a word you should say so. Evidence given in a court/tribunal is recorded and provided to the parties. You can be subject to a penalty if you lie under oath or affirmation. The lawyer for the party that requested the subpoena can provide you with any further information you need.

If there are circumstances preventing your attendance (i.e. if you are going to be overseas or are unwell), you should contact the party that requested the subpoena as a first step. You can contact the court/tribunal for further information but you should not ignore the subpoena.

4.2 Costs of compliance

The witness may be entitled to have their reasonable costs of compliance paid (for example transport and accommodation expenses) in addition to the conduct money. You can raise this with the issuer of the subpoena and should do so as early as possible.

5. Court and Tribunal contact details

5.1 Federal

High Court of Australia

<http://www.hcourt.gov.au/contact/contact-us>

Federal Court of Australia

<http://www.fedcourt.gov.au/contact>

Family Court of Australia

<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/contact-us/national-enquiry-centre/fl-nec>

Federal Circuit Court

<http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/contact-us/nec/fl-nec>

Administrative Appeals Tribunal (AAT)

<http://www.aat.gov.au/contact-us>

5.2 New South Wales

Children's Court of New South Wales

http://www.childrenscourt.justice.nsw.gov.au/Pages/childrenscourt_contactus/childrenscourt_contactus.aspx

District Court of New South Wales

<http://www.districtcourt.justice.nsw.gov.au/Pages/contactus/contactus.aspx>

Drug Court of New South Wales

http://www.drugcourt.justice.nsw.gov.au/Pages/dc_contactus.aspx

Dust Diseases Tribunal

http://www.dustdiseasestribunal.justice.nsw.gov.au/Pages/ddt_contactus.aspx

Independent Commission Against Corruption NSW

<http://www.icac.nsw.gov.au/contact-us>

Land and Environment Court of New South Wales

http://www.lec.justice.nsw.gov.au/Pages/contact_us/contact_us.aspx

Local Court of New South Wales

<http://www.localcourt.justice.nsw.gov.au/>

New South Wales Coroners Court

http://www.coroners.justice.nsw.gov.au/Pages/coroner_role/coroner_role.aspx

NSW Civil and Administrative Tribunal (NCAT)

http://www.ncat.nsw.gov.au/Pages/contact_ncat.aspx

NSW Industrial Relations Commission

http://www.irc.justice.nsw.gov.au/Pages/IRC_contact_us/IRC_contact_us.aspx

Supreme Court of New South Wales

http://www.supremecourt.justice.nsw.gov.au/Pages/SC02_contactus/SC02_contactus.aspx

Workers Compensation Commission

<http://www.wcc.nsw.gov.au/Pages/site-contact-us.aspx>

5.3 Victoria

Childrens Court of Victoria

<https://www.childrenscourt.vic.gov.au/contact-us>

Coroners Court of Victoria

<http://www.coronerscourt.vic.gov.au/utility/contact+us/>

County Court of Victoria

<https://www.countycourt.vic.gov.au/contact-us>

Magistrates' Court of Victoria

<https://www.magistratescourt.vic.gov.au/contact-us>

Supreme Court of Victoria

<https://www.supremecourt.vic.gov.au/contact-us>

Victorian Civil and Administrative Tribunal (VCAT)

<https://www.vcat.vic.gov.au/contact-us>

Victims of Crime Assistance Tribunal (VOCAT)

<https://www.vocat.vic.gov.au/contact-us>

5.4 Queensland

Anti-Discrimination Commission Queensland

<http://www.adcq.qld.gov.au/contact-us>

Childrens Court of Queensland

<https://www.courts.qld.gov.au/contacts/childrens-court>

Civil and Administrative Tribunal

<https://www.qcat.qld.gov.au/about-qcat/contact-us>

Coroners Court of Queensland

<https://www.courts.qld.gov.au/contacts/coroners-court>

Crime & Corruption Commission

<http://www.ccc.qld.gov.au/about-the-ccc/contact-us>

Industrial Relations Commission

<http://www.qirc.qld.gov.au/qirc/contact/index.htm>

Mental Health Court

<https://www.courts.qld.gov.au/contacts/mental-health-court>

Murri Court

<https://www.courts.qld.gov.au/contacts/murri-court>

Planning and Environment Court

<https://www.courts.qld.gov.au/contacts/planning-and-environment-court>

Queensland Drug and Alcohol Court

<https://www.courts.qld.gov.au/contacts/drug-and-alcohol-court>

Residential Tenancies Authority

<https://www.rta.qld.gov.au/Contact>

5.5 Western Australia

Children's Court of Western Australia

<https://www.childrenscourt.wa.gov.au/misc/contactus.aspx>

Coroner's Court of Western Australia

<https://www.coronerscourt.wa.gov.au/misc/contactus.aspx>

District Court of Western Australia

<https://www.districtcourt.wa.gov.au/apps/contacts/default.aspx>

Industrial Magistrates Court

<http://www.imc.wa.gov.au/index.php/contactmenu>

Magistrates Court of Western Australia

https://www.magistratescourt.wa.gov.au/_misc/contactus.aspx

Supreme Court of Western Australia

https://www.supremecourt.wa.gov.au/C/contact_us.aspx?uid=1043-9716-5510-2235

Western Australia Industrial Relations Commission

<http://www.wairc.wa.gov.au/index.php/en/contact>

State Administrative Tribunal of Western Australia

<https://www.sat.justice.wa.gov.au/apps/contacts/default.aspx>

5.6 Northern Territory

Northern Territory Local Court

<https://localcourt.nt.gov.au/contact-us#>

Supreme Court of the Northern Territory

<http://www.supremecourt.nt.gov.au/contact/index.htm>

Northern Territory Civil and Administrative Tribunal (NTCAT)

<https://ntcat.nt.gov.au/contact-us#>

5.7 Australian Capital Territory

ACT Civil and Administrative Tribunal

https://www.acat.act.gov.au/about_acat/contact_us

Magistrates Court of the ACT

https://www.courts.act.gov.au/magistrates/corporate/contact_us

Supreme Court of the ACT

https://www.courts.act.gov.au/supreme/corporate/contact_us

5.8 Tasmania

Supreme Court of Tasmania

https://www.supremecourt.tas.gov.au/home/contact_us

Magistrates Court of Tasmania

<https://www.magistratescourt.tas.gov.au/contact>

Tribunals

<https://www.justice.tas.gov.au/tribunals>

5.9 South Australia

Supreme Court of South Australia

<http://www.courts.sa.gov.au/OurCourts/SupremeCourt/Pages/default.aspx>

District Court of South Australia

<http://www.courts.sa.gov.au/OurCourts/DistrictCourt/Pages/default.aspx>

Magistrates Court of South Australia

<http://www.courts.sa.gov.au/OurCourts/MagistratesCourt/Pages/default.aspx>

Environment, Resources and Development Court

<http://www.courts.sa.gov.au/OurCourts/ERDCourt/Pages/default.aspx>

Youth Court of South Australia

<http://www.courts.sa.gov.au/OurCourts/YouthCourt/Pages/default.aspx>

Warden's Court

<http://www.courts.sa.gov.au/OurCourts/WardensCourt/Pages/default.aspx>

Coroners Court

<http://www.courts.sa.gov.au/OurCourts/CoronersCourt/Pages/default.aspx>

South Australia Civil and Administrative Tribunal

<http://www.sacat.sa.gov.au/contact-us>

South Australian Employment Tribunal

<https://www.saet.sa.gov.au/about-saet-3/contact-us/>

Independent Commissioner against Corruption SA

<https://icac.sa.gov.au/contact-us>

Resources

Related Resources

▀ [New South Wales Subpoena Survival Guide](#), developed by Women's Legal Service NSW and Legal Aid NSW

The guide has a focus on the Sexual Assault Communications Privilege but it also covers other protections relevant to subpoenas such as challenging the validity of subpoenas and tips on using the confidential professional relationship privilege.

▀ [County Court of Victoria Information on Subpoenas](#)

For answers to FAQs, checklists and template subpoena documents. Keep in mind this information only relates to the County Court of Victoria.

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