

Subpoena

Information for a person requesting the issue of a subpoena

This brochure is for people who want the Federal Magistrates Court (the court) to issue a subpoena. It provides information about the use of, and compliance with, subpoenas in the Court.

What is a subpoena?

A subpoena is a legal document issued by the 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 or is unable, of their own free will, to give evidence in your case or to provide documents to the court that are relevant to your case.

Before you request a subpoena, you should attempt to get the required document or evidence by, for example, asking the person to provide it to you.

You should not request a subpoena for production and to give evidence if production of the document/s and/or thing/s alone would be sufficient.

How do you apply for a subpoena?

You will need to complete the form titled Subpoena that is approved by the Court. This form can be downloaded from the Court's website at www.fmc.gov.au or obtained from Court registries.

Without a Court order, you cannot request a subpoena to be issued to a person under 18 years of age.

Unless you have permission from the Court, you must not request the issue of more than five subpoenas in a case.

To request the issue of a subpoena by the Court, follow the steps set out below:

STEP 1 COMPLETE THE SUBPOENA FORM

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 (person subpoenaed). 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 person subpoenaed.
- A subpoena for production must identify the specific document/s or thing/s to be produced. The document/s or thing/s should be properly described so the person subpoenaed knows what to produce.
- A subpoena must always require the production of document/s or thing/s which are known to already exist; that is, it cannot require the person subpoenaed to create a document to comply with the subpoena.
- A subpoena cannot be written in a way that requires the person subpoenaed to make a decision about whether a document or thing needs to be produced. For example, the subpoena should not ask for 'all documents relating to any account held by the person subpoenaed in a false name'.
- You cannot request the issue of a subpoena requiring the production of a document or thing in the possession of the Court or any other Court. To seek a document/s or thing/s in the possession of a Court you must give written notice to the Court.
- The date for production of documents in a subpoena requiring production only will be fixed by the Court, and will usually be two weeks from the date of filing. A subpoena requiring attendance of a person must be made returnable to court when the case is listed for a hearing.

STEP 2 FILE THE SUBPOENA

Once you have completed the subpoena, you need to file it at the Court.

You will need to file:

- the original
- a copy for each person subpoenaed
- a copy for each party to your case, including the independent children's lawyer (if appointed)
- a copy for each person who may be interested in the subject matter of the subpoena (interested person), and
- a copy for yourself.

The Court will keep the original subpoena and give you back the copies, sealed with the Court's stamp. You must keep one sealed copy for yourself and serve the other sealed copies as directed below.

STEP 3 SERVE THE SUBPOENA

Service of subpoenas requiring attendance

If the subpoena requires the person subpoenaed to attend to give evidence, you must arrange to have the subpoena **served by hand** to the person subpoenaed. See Division 6.2 of the Court Rules for rules relating to service by hand. You should give the person subpoenaed as much notice as possible of the hearing or trial date but the person must be served not less than **7 days** before they are required to attend. If the subpoena is not served personally, the person subpoenaed is not required to comply with the subpoena.

For information about conduct money, see "Conduct money and payment for loss or expense incurred in complying with the subpoena" below.

Service of subpoenas requiring production

If the subpoena requires the person subpoenaed to produce documents, you need to serve the subpoena at least **10 days** before the date they are required to attend or produce the documents.

You do not need to serve a subpoena for **production only** by hand. Subpoenas for production only may be served on the person to be subpoenaed by **ordinary service**. See Division 6.3 of the Court Rules for rules relating to ordinary service.

Service of copies of the subpoena on parties and interested persons

You must also notify the other parties involved in the proceedings, any other interested persons and the Independent Children's Lawyer (if appointed), by serving a copy of the subpoena within a reasonable time prior to the date of production or court attendance. These copies can be served by **ordinary service**. See Division 6.3 of the Court Rules for rules relating to ordinary service. If the subpoena requires production of document/s only, copies of the subpoena should be served at least **10 days** before the date for production.

NOTE: You must serve a subpoena within 3 months of it being issued by the Court. When serving the subpoena on the person subpoenaed, and when serving a copy of a subpoena on other parties or interested persons, you should also provide them with a copy of the brochure 'Information for persons served with a subpoena or copy of a subpoena'. This can be downloaded from the Court's website at www.fmc.gov.au or obtained from your nearest Court registry.

Conduct money and payment for loss or expense incurred in complying with subpoena

If the subpoena requires attendance by the person subpoenaed, the person serving the subpoena must give the person who is required to attend conduct money. This must be an amount not less than \$25, and sufficient for return travel between the subpoenaed person's place of residence or employment (whichever is appropriate) and the court.

The Court may also, by application of the subpoenaed person, make an order for the payment of any loss or expense incurred in complying with a subpoena. The amount payable is in addition to any conduct money paid.

Does a person have to comply with a subpoena?

Yes, a person must comply with a subpoena.

If a person does not have a lawful excuse for not complying with a subpoena the Court may issue a warrant for the arrest of that person and order that person to pay any costs for failure to comply.

Can a person object to attendance or producing a document?

Yes, a person can object to giving evidence and/or to the production of documents required by a subpoena.

Furthermore, another party to the proceedings or an interested person may object to a document produced pursuant to the subpoena being inspected or copied.

In any case you will receive a copy of their notice of objection, and the objection will be heard and determined by the Court.

Inspecting and/or copying of documents produced

If the subpoena is for production only and you have not been notified of any objection prior to the date for production, you must file a 'Notice of Request to Inspect', as soon as practicable after the date for production has passed. This form is attached at the end of this brochure. Alternatively, you can download it from the Court's website at www.fmc.gov.au or obtain a copy from Court registries.

After you have filed the notice above, you, or any other party to the case or interested person, may contact the registry to which the documents have been subpoenaed to make an appointment to inspect the documents produced. However, if the documents to be inspected are medical records, see 'Inspection of medical records' below. You will be allowed to take copies of documents, except if the documents are child welfare records, criminal records, medical records, or police records.

Inspection of medical records

If you have subpoenaed a person's medical records, the person whose records have been produced may give notice to the Court that they want to inspect those medical records in order to decide if they wish to object to their inspection. If they object to their records being inspected, they are allowed to file their notice of objection within 7 days after the date for production in the subpoena. In this case, you, or any other party or interested person, will not be permitted to inspect the medical records until the later of 7 days after the date for production, or the hearing and determination of any objection.

How long does a subpoena remain in force?

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

- the person subpoenaed complies with the subpoena
- you (by undertaking) or the court releases the person subpoenaed 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 any documents subpoenaed to any other person (except the lawyer representing them in the case) without the permission of the court.

The rules

The rules covering subpoenas are set out under Part 15A, of the *Federal Magistrates Court Rules 2001*.

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.

More information

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

- Go to www.fmc.gov.au
- Call 1300 352 000, or
- Visit a Court registry near you.

File number:
Date of filing...../...../.....

.....
 Applicant

.....
 Respondent

.....
 Other party (if applicable)

Repeat as necessary for additional parties

Notice of Request to Inspect in accordance with FMC Rule 15A.13(1)(c)

I (print name *and* law firm if appropriate)
 certify that:

1. (select one box only)

- I am the solicitor on record for this matter and I issued the subpoena/s in respect to this notice / or I have a letter of authorisation from the solicitor on record who issued the subpoena, or
- I am a party to these proceedings and I issued the subpoena/s in respect to this notice (*for parties, photo identification is required*).

2. The following subpoena has been issued in the FMC. Please complete the following details – one Notice of Request to Inspect Form for *each* subpoena you wish to inspect.

Person subpoenaed	Date issued	Date served	Who the subpoenaed material relates to.	Date of Production	Medical records Yes / No

3. The date for the production of the subpoena listed in point 2 above has passed.
 (Note: This form WILL NOT BE ACCEPTED for filing until after the date of production.)

4. All parties, the independent children’s lawyer (if appointed) and all interested persons have been served a copy of the subpoena listed in point 2 above. Details of that service are as follows:

Name of person served	Date and means of service

5. No notice of objection has been received by myself / the solicitor on record in respect to the above subpoenas.
 (WARNING: The information contained in this document is provided in lieu of an affidavit of service. Issuing parties MUST BE ABLE TO provide the Court with proof of service if required.)

Signed: Date:/...../.....

OFFICE USE ONLY	
Was an objection lodged in respect of this subpoena?	YES / NO
Is this person the issuing party or the solicitor on record?	YES / NO
Did you decide that the document referred to in point 2 above could be released for inspection – Rule 15A.13(1)(c). (If no, provide reason)	YES / NO View /view and copy
Name & Signature of Officer approving the Notice of request to inspect (please print)	Date of decision / /