

Subpoena

Information for persons served with a subpoena or copy of a subpoena

This brochure is for people who have been served with:

- a subpoena, and who are required to comply with the subpoena (person subpoenaed), and
- a copy of a subpoena, and who may want to object to the inspection or copying of a document/s or thing/s to be produced in compliance with the subpoena.

It provides information about the use of, and compliance with, subpoenas in the Federal Magistrates Court of Australia (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.

A party to a case can request a subpoena if a person refuses or is unable, of their own free will, to give evidence in the case or to provide documents to the Court that are relevant to the case. However, the party should make attempts to get the required document or evidence by, for example, asking the person to provide it before requesting the Court to issue a subpoena.

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

Information for the person subpoenaed

When served with a subpoena, you must comply with it. If you do not comply with a subpoena, a court may issue a warrant for your arrest, and order you to pay any costs caused by your non-compliance. A court may also find you guilty of contempt of court.

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

If a subpoena requires you to attend court to give evidence, the person serving the subpoena must give you conduct money sufficient for return travel between your place of residence or employment (as appropriate) and the Court. The amount of conduct money must be at least \$25.

If you are not a party in the proceeding and you will incur substantial loss or expense in properly complying with the subpoena, you may apply to the Court (in writing) for an order that the party who has issued the subpoena pay you an amount (in addition to the conduct money) in respect of the loss or expense. If you wish to make such an application, you must, before complying with the subpoena, give notice to the issuing party that substantial loss or expense would be incurred in properly complying with the subpoena, including an estimate of the loss or expense.

Any claim for costs in attending court or producing a document under the subpoena must be met by the party issuing the subpoena and not the Court.

How long does a subpoena remain in force?

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

- you comply with the subpoena
- the issuing party or the Court release you from the obligation to comply with the subpoena, or
- the hearing or trial is concluded.

Complying with the subpoena

SUBPOENA TO GIVE EVIDENCE

If the subpoena requires you to give evidence, you must attend court on the date specified on the subpoena.

If you object to the subpoena you may make an application to the Court to have the subpoena set aside in whole or in part.

SUBPOENA TO GIVE EVIDENCE AND PRODUCE DOCUMENTS

If the subpoena requires you to give evidence and produce documents, you must attend court on the date specified on subpoena and produce the documents set out in the schedule to the subpoena.

If you object to the subpoena, you may make an application to the Court to have the subpoena set aside in whole or in part.

SUBPOENA FOR PRODUCTION OF DOCUMENTS ONLY

If the subpoena requires you to produce documents only, you (or an agent on your behalf) must produce the document/s or thing/s set out in the schedule to the subpoena (together with a copy of the subpoena). You can do this by:

- attending the registry on or before the date and time for production, as set out in the subpoena, or
- posting or delivering the document/s or thing/s not less than two days before the date fixed for production in the subpoena.

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

If you wish to object to producing the document/s or thing/s subpoenaed see 'objecting to the production or inspection or copying of subpoenaed documents' below.

You can object to the production of documents required by a subpoena for reasons such as:

- the documents requested are irrelevant
- the documents are privileged; for example, documents which came into existence as a result of a lawyer/client relationship, or
- the terms of the subpoena are too broad.

If you do not object to producing the documents, the parties, interested persons, and the independent children's lawyer may have an automatic right to inspect the documents. If the documents are not child welfare records, criminal records, medical records, and police records, they may also be copied.

Even if you have no objection to the documents being inspected or copied, a party, interested person, or the independent children's lawyer may object. If so, you will be advised in writing.

Can I produce copies of documents?

You may, with the consent of the party issuing the subpoena, comply with the subpoena by producing a copy of the documents. In this case, you should attach the documents to an affidavit.

Return of exhibits and documents that are produced

When producing subpoenaed documents you may inform the Court that any document produced need not be returned and may be destroyed. In this case the Court will destroy the document instead of returning it to you.

Otherwise, the Court must return documents produced in compliance with the subpoena to you:

- not less than 42 days after the order finally determining the application or appeal, or
- earlier, provided that seven days' written notice has been given to the party who filed the subpoena of the intention to return the document (this is only for documents that have not been tendered into evidence at a court hearing or trial).

Are there any situations where I don't have to comply?

You are not required to comply with a subpoena if:

- the subpoena was not served on you in accordance with the Court's rules
- conduct money was not provided
- the party issuing the subpoena has undertaken that they no longer need you to comply with the subpoena, or
- the Court has made an order.

Information for persons receiving a copy of the subpoena

The party issuing the subpoena is required to provide a copy of the subpoena to all other parties to the proceeding, the Independent Children's Lawyer (if appointed), and all persons who may be interested in the subject matter of the subpoena.

If you have received a copy of the subpoena and are not the person subpoenaed, you do not have to do anything unless you want to object to the documents listed in the schedule of the subpoena being inspected or copied by another party or interested person. If you want to object, see 'objecting to the production or inspection or copying of subpoenaed documents' below.

You may have a right to inspect or copy the documents subpoenaed. See 'right to inspect or copy documents' on page 4.

Objecting to the production or inspection or copying of subpoenaed documents

As the person subpoenaed to produce documents, you may object to producing the documents. As a person receiving a copy of a subpoena to produce documents, you may object to the documents subpoenaed being inspected or copied.

If you wish to object, you must complete the 'Notice of objection' form attached to the subpoena. This notice needs to be filed at the Court registry before the date for production set out in the subpoena, together with a copy of the subpoena. You need to file:

- the original
- a copy for the party issuing the subpoena
- a copy for each party to your case, including the Independent Children's Lawyer (if appointed), and
- a copy for yourself

The Court will keep the original notice and give you back the copies, sealed with the Court's stamp. You must keep one sealed copy for yourself and give the other sealed copies, together with a copy of the subpoena, to the issuing party, and all other parties to the case.

You must attend Court on the court date assigned to have your objection heard and determined.

Information for people whose medical records have been subpoenaed

If your medical records have been subpoenaed, you may seek to view your records before making a decision about whether you want to object to them being inspected. In this case, you need to notify the Court in writing before the date for production set out in the subpoena. If you object to your records being inspected, you may file your notice of objection within 7 days after the date for production in the subpoena.

Right to inspect or copy documents

If there is no objection to the production of the subpoenaed documents, and no Court order has been made to set aside the subpoena, after the date for production set out in the subpoena has passed, you can make an appointment with the court registry at which the documents have been subpoenaed to inspect those documents. Documents, other than child welfare records, criminal records, medical records, and police records, may also be copied. To make an appointment to inspect and copy documents, contact the registry to which the documents have been subpoenaed after the date for production has passed. You can obtain registry contact details from the Court's website at www.fmc.gov.au.

If the documents subpoenaed are medical records, the person whose records have been subpoenaed may give notice to the Court that they wish to inspect their records before deciding whether they wish to object to their inspection by other parties or interested persons. In this case, you will not be allowed to inspect the documents until 7 days after the date for production has passed or, if an objection has been made, until the objection has been determined by the Court.

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.