



# Subpoena

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

## Why have you received this brochure

You have received this brochure because you have also been served with a subpoena.

You are either:

- The person named on the front page of the subpoena who is required to attend court to give evidence and/or produce documents to the court (the named person).
- A party to the court proceedings (or their lawyer).
- The Independent Children's Lawyer.
- A person who has a sufficient interest in the subpoena (an interested person). An interested person may include a person whose information is included in the documents sought to be produced.

The brochure includes general information about what to do if you have been subpoenaed, compliance with a subpoena and objecting to a subpoena. Further information and brochures can be obtained from the Family Court Registry or website [www.familycourt.wa.gov.au](http://www.familycourt.wa.gov.au).

## 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 to the court 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 in it, unless it has not been served properly, conduct money was not provided or you have been excused from compliance.

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 will need to attend court to have your objection determined.

## Subpoena to give 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 to produce documents only**

If you have been served with a subpoena to produce documents only, you must produce the documents to the Subpoena Officer at the Court Registry **on or before** the date fixed for the production of the documents stated in Part E of the Subpoena (the production date). Unless you object, you do not need to do anything else.

If you do produce the documents, you will be regarded as having complied with the Subpoena. However, if you do not want to produce the documents, or for the parties to inspect or copy the documents you have produced, it is important that you read the following information.

## **Complying with the Subpoena for production only prior to the production date**

If you wish to produce the documents prior to the 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 issuing party). 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 Under Subpoena*. This affidavit is available from the Court's website or registry.

## **What happens if you wish to object to the Subpoena for production?**

If the named person, any other party to the proceedings or an interested person objects to the production or inspection and/or copying of the documents to be produced:

- You must give written notice of your objection to the Registry by completing and filing in the Court the Part F Notice of objection which is attached to the Subpoena. You should file the Part F **before** the production date.
- You must provide a copy of the Part F Notice to each party including the Independent Children's Lawyer (if any), and any interested person.
- You and the issuing party must attend court on a date to be advised, at which time the Court will hear and determine the objection and consider whether to allow it. (Any other party may also appear at the Court at this time, if they choose to do so.)

## **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.

## **Setting aside the subpoena or other orders**

On application by a party, an interested person, an 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.

## Costs of complying with the subpoena

If you are the named person, you should receive conduct money sufficient for return travel between your place of residence or employment (as appropriate) and the Court. This should be at least \$25.

If you are the named person and will incur substantial loss or expense in properly complying with the subpoena, you may apply to the Court for an order that the issuing party pay you an amount (in addition to 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.

## Parties' right to inspect or copy documents

If documents are produced to the Court, the parties, their lawyers, the Independent Children's Lawyer (if any) and any interested person may be able to inspect and copy the documents unless an objection is filed.

If no objection to the documents produced being inspected and copied is received by the Court, and the issuing party has filed a Notice of request to Inspect in the approved form, **the parties and the Independent Children's Lawyer have an automatic right to inspect and copy the documents (other than medical/police/criminal/child welfare documents)**.

Even if the named person has no objection to the documents being inspected or copied, a party, an interested person or the Independent Children's Lawyer may object to this.

A person who inspects or copies a document produced in response to a subpoena must:

- use the document for the purpose of the proceeding only; and
- not disclose the contents of the document or give a copy of it to any other person without the Court's permission.

## Medical Records

If a subpoena seeks the production of the medical records of a party, that party has the right to inspect the documents produced before anyone else to determine if they want to object to them being inspected. That party must give written notice to the Registry on or before the production date of their request to inspect. They will be allowed to inspect the documents but then must file and serve the Part F objection notice within 7 days of the production date, or otherwise **the other parties and the Independent Children's Lawyer have an automatic right to inspect the documents**.

## Redaction of information contained in documents

If a party wants the opportunity to inspect the documents produced before any other party to determine if any information contained in the documents should be redacted/removed (for example their confidential address), then they will need to file and serve the Part F objection notice before the production date or otherwise **the other parties and the Independent Children's Lawyer have an automatic right to inspect the documents**.

## Complying with a subpoena

### How long does a subpoena remain 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

As the person named in a subpoena, you do not have to comply with the subpoena if:

- the subpoena was not served on you properly in accordance with the Rules; or

- conduct money (of no less than \$25) 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.

## **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.

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.  
December 2018

## 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  
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

