



# Subpoena Kit

FAMILY COURT OF WESTERN AUSTRALIA

## Is this kit for me?

This kit is for people who are seeking the issue of a Subpoena (Form 14).

For more information about Subpoenas, please see the brochure, 'Subpoenas, Information for People Requesting Issue of a Subpoena', available from the Registry or the Family Court of Western Australia website [www.familycourt.wa.gov.au](http://www.familycourt.wa.gov.au).

## Completing the subpoena

It is important that when completing the subpoena you:

1. Complete Part "A"; **and either**
2. Part "B" if you only require the person to come to Court to give evidence; **or**
3. Part "C" if you require the person to come to Court to give evidence and produce documents; **or**
4. Part "D" if you only require the person to produce documents.

Please keep in mind that subpoenas for production often have additional requirements attached to them.

## Step 1: Complete the subpoena

To make sure your Subpoena satisfies the rules, you should remember the following:

- **A subpoena must identify the person to whom it is directed by name or by description of office or position.** 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 Proper Officer  
XYZ Pty Ltd  
Some Street  
Some Town, WA 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 named.
- **A subpoena for production** must identify the specific document or thing to be produced.
- A document or thing requested in a subpoena should be properly described so that the person subpoenaed knows what to produce.
- A subpoena must always require the production to the Court of a document or thing which already exists (that is, it cannot require a person/organisation to create a document to comply with the subpoena).
- A subpoena cannot be written in a way that requires the person/organisation to form a conclusion as to whether a document or book is relevant. For example, the subpoena could not ask for 'all documents relating to any account held by the wife/husband in a false name'.

## The Return date

- When you file the subpoena at the Registry, you will be given a date for the return of the subpoena. The date will be shown on the front panel of the subpoena and also inside the form (see Part C, D or E). If the subpoena is to give evidence, or give evidence and produce documents, this is a court hearing. If the subpoena is for the production of documents only, it is the 'production date'. The person receiving the subpoena must come to court to give evidence on the hearing date, or produce the documents by the production date.
- The brochure 'Subpoena: Information for People Requesting Issue of a Subpoena' contains information about how to view documents delivered to the Court under subpoena.

## Step 2: Have the subpoena “issued” by the court

Once you have completed the Subpoena, you need to file it with the Court. To do this you need to:

Provide the Court with the original of the subpoena and *at least 3* copies.

The Court keeps a copy of the Subpoena. The original is stamped by the Court, returned to you and must then be served on the person or organisation being subpoenaed (the “named person”). The other copies are for you, and for service on the other parties to the proceedings.

You will need to provide enough copies of the subpoena to the Court to make sure that there is a copy for service on each other party to the proceedings, including the independent children’s lawyer, if one has been appointed, and for each interested person (meaning a person who has a sufficient interest in the subpoena).

The Court will give you as many copies of the brochure ‘Subpoena – Information for people who have been served with a subpoena’ as there are extra copies of the subpoena.

## Step 3: Serve the subpoena

As the person who requested the subpoena to be issued (the “issuing party”), you must arrange for the subpoena to be served on the named person, and each other party to the proceedings, and any interested person.

At the time of service of a subpoena on the named person the following must also be served:

- conduct money of no less than \$25; and
- a copy of the brochure ‘Subpoena – information for people who have been served with a subpoena’.

There are specific rules relating to the service of subpoenas. If necessary, you should read the Court’s ‘Service Kit’, or visit the Court’s website [www.familycourt.wa.gov.au](http://www.familycourt.wa.gov.au) as it may help you carry out service correctly. If the subpoena is not served according to the Court’s Rules, the person you are asking the Court to subpoena is not required to comply with the Subpoena.

Where the subpoena requires the named person to attend court to give evidence, the issuing party must serve the subpoena on the named person **by hand** at least **7 days** before the court date.

Where the subpoena requires the named person to attend court to give evidence and produce documents, the issuing party must serve the subpoena on the named person **by hand** at least **10 days** before the court date.

Where the subpoena requires the named person to produce documents only, the issuing party must serve the subpoena on the named person by **ordinary service** at least **10 days** before the production date.

You will need to serve a copy of the subpoena and a copy of the brochure on each other party to the proceedings by **ordinary service**, including the independent children’s lawyer, if one has been appointed, and each interested person. An example of an interested person is a person whose information (including criminal or police records, or bank records) may be contained in the subpoenaed documents.

## Special requirements for a subpoena for production only

All parties and an Independent Children’s Lawyer (if any) may be automatically permitted to inspect and copy documents (other than child welfare, medical, police and criminal records) produced under a subpoena for production, only if the following **all** occur:

- The named person is properly served with the subpoena, the required Information brochure and conduct money at least 10 days before the production date;
- all other parties to the proceedings and the Independent Children’s Lawyer (if one), and any interested person are served with the subpoena and the required Information brochure at least 10 days before the production date;
- The named person produces the documents on or before the production date and does not object to any party inspecting or copying the documents.

- No party or Independent Children’s Lawyer (if any) or any interested person objects to any party inspecting or copying the documents on or before the production date.
- you file a “Notice of Request to Inspect” on or after the production date.

A person who inspects or copies the documents must:

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

The brochure ‘Subpoena: Information for People who have been served with a Subpoena’ contains further information about how to view documents delivered to the Court under subpoena.

If a person objects to the inspection or copying of the documents that person and the issuing party must attend Court on a date to be advised for a judicial officer to decide whether to allow inspection or copying.

### **Objections to a subpoena for production**

A named 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 a named person wishes to object in this way they must complete, file and serve the Part F Notice of objection - subpoena before the production date, and attend court on a date to be advised when the court will hear and determine their objection.

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

On application by a named person, an interested person or an independent children’s lawyer, 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.

### **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?**

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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