



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.

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). This is a court hearing and the person receiving the subpoena must come to court or have produced the documents by this 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 2* copies.

The Court keeps a copy of the Subpoena. The original is stamped by the Court and must then be served on the person or organisation being subpoenaed. The second copy is for you.

If it is a subpoena for production you will need enough copies to make sure that there is a copy for service on each other party.

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

Special requirements for a subpoena for production

All parties and an Independent Children’s Lawyer (if any) may be automatically permitted to inspect and copy any documents produced under a subpoena without the need to attend the court date, only if the following all occur:

- The subpoena is issued more than 21 days before the court date.
- The named person and all other parties and the Independent Children’s Lawyer (if any) are served with:
 - the subpoena;
 - a written notice that the person requesting the subpoena intends to rely upon Rule 15.30; at least 21 days before the court date.
- you file an affidavit of such service at least 7 days before the court date.
- The named person produces the documents more than 7 days before the court date and does not object to any party inspecting or copying the documents.
- No party or Independent Children’s Lawyer (if any) objects to any party inspecting or copying the documents by 10 days prior to the court date.

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

Step 3: Serve the subpoena

As the person who requested the subpoena to be issued, you must arrange for the subpoena to be personally handed to the named person.

You should give the named person as much notice as possible of the hearing or trial date.

A subpoena expires 3 months after the date of issue.

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

- conduct money (see the brochure ‘Subpoena – information for people requesting issue of a subpoena’);
- if a subpoena for production – a copy of the brochure ‘Subpoena – information for people who have been served with a subpoena’; and
- a written notice if you seek that Rule 15.30 should apply (see attachment).

If necessary you should read the Court’s ‘Service Kit’ as it may help you carry out service. If the subpoena is not served personally, according to the Court’s Rules, the person you are asking the Court to subpoena is not required to comply with the Subpoena.

Special requirements for a subpoena for production

A person or organisation required by a subpoena to produce documents to the Court must be given at least 14 days notice.

In some circumstances a Registrar of the Court may give permission for a Subpoena to be filed within this 14 day period but generally would only do this if there is written consent from the person named, stating that they will be able to comply with the subpoena within the shorter time period.

A copy of the subpoena for production must be served on the named person and all parties to the case and an Independent Children's Lawyer (if one has been appointed).

If Rule 15.30 is to apply you must also serve a copy of the notice and immediately file an Affidavit of Service (Form 7) to prove that this has been done.

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?

For more information about the Family Court of Western Australia, including access to the legislation, forms or publications listed in this brochure:

- go to www.familycourt.wa.gov.au
- call 08 9224 8222 or 1800 199 228; or
- visit the Family Court of Western Australia registry.

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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Notice to named person

To: _____

COMPLETE NAME OF PERSON

With this notice you have been served with a subpoena to produce documents.

Please note that if you:

- (i) comply with the subpoena and lodge the documents required by the subpoena at the Court specified in the subpoena at least 7 days before the court date; and
- (ii) do not object to a party or any child's representative inspecting or copying the documents; and if no other party or person objects to the documents being inspected and copied by the parties or any independent children's lawyer;

then each party and any independent children's lawyer will be entitled, without an order of the court to inspect and take copies of the documents from 7 days before the court date until the documents are destroyed, returned to you or the Court orders otherwise.

A person who inspects or copies the documents must:

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

DATE _____

