

# Subpoena – Family Law

Federal Circuit and Family Court of Australia (Family Law) Rules 2021 – RULE 6.26

Please type or print clearly and mark [X] all boxes that apply.

Attach extra pages if you need more space to answer any question/s.

Filed in:

- ☐ Federal Circuit and Family Court of Australia  
☐ Family Court of Western Australia  
☐ Other (specify) \_\_\_\_\_

Filed on behalf of (full name): \_\_\_\_\_

MARK [X] IN THE BOX THAT APPLIES TO YOU

- ☐ Applicant ☐ Respondent ☐ Other (specify) \_\_\_\_\_

**IMPORTANT NOTE FOR FAMILY LAW PROCEEDINGS: Unrepresented parties must obtain permission (known as leave) to request the issue of a subpoena. There are also limits on legally represented parties. See the Notes after the Subpoena.**

Is leave to issue this subpoena required under the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*?

- ☐ Yes – provide cover letter explaining relevance when filing this subpoena (see notes on page 4). ☐ No ☐ No – leave has previously been given by a Court order dated (specify) \_\_\_\_\_

TO

Address

	State	Postcode

**YOU ARE ORDERED TO:** (select one box only)

- ☐ Produce documents and/or things to the Court (see the cover sheet, Part B and the schedule at Part C for details)  
☐ Attend court to give evidence and produce documents (see the cover sheet, Part B and the schedule at Part C for details)  
☐ Attend court to give evidence (see the cover sheet and Part B for details)

**TAKE NOTICE: if you fail to obey this subpoena**

- a warrant may be issued for your arrest
- you may be liable to pay any costs occasioned by your failure to comply, and
- in family law proceedings, the Court may impose a penalty under section 112AD of the *Family Law Act 1975*.

See the cover sheet for the **last date for service** of this subpoena (also see Notes 7–13).

**Please read the Notes at the end of this subpoena**

Filed on behalf of	_____
Prepared by	_____ Lawyer's code
Name of law firm	_____
Address for service in Australia	_____
	State _____ Postcode _____
Email	_____
Telephone	_____

## Part A

### About the parties and the proceeding

File number:

#### APPLICANT 1

Family name as used now

Given names

Client ID (if known):

#### RESPONDENT 1

Family name as used now

Given names

Client ID (if known):

## Part B

### Details of order for person issued with subpoena

**NOTE:** Mark the same option below as on page 1 to indicate the type of subpoena ordered.

#### ☐ Produce documents and/or things to the Court

You **must** produce the documents and things described in the Schedule at Part C to the Court by the date set on the cover sheet.

**DO NOT send subpoenaed documents directly to the issuing party named in the footer on page 1. Subpoenaed documents must be produced to the Court, notwithstanding any objection being made.**

#### How to produce documents

Copies of documents should be produced to the Court electronically in PDF format unless electronic production is not possible. You may email (or deliver) the documents and things described in the Schedule at Part C to the Court (Registry) location / email for production, specified on the cover sheet, at least 2 days before the date for production specified on the cover sheet.

**See Notes 19 and 20 for automatic release of documents.**

#### ☐ Attend court to give evidence and produce documents

Please see the attached cover sheet for details of the date and time you must attend court.

When you attend court, you must produce the documents and things described in the Schedule at Part C, unless the cover sheet specifies that the documents are to be produced to the Court at another date before the hearing date.

You must continue to attend each day unless excused by the Court or until the hearing of this matter is completed.

#### ☐ Attend court to give evidence

Please see the cover sheet for details of the place, date and time you must attend court.

You must continue to attend each day unless excused by the Court or until the hearing of this matter is completed.

For more information see the attached brochure, [Subpoena: Information for named person or other person \(served with a subpoena or a copy of a subpoena\)](#) (available at: [www.fcfcoa.gov.au/fl/subpoenas](http://www.fcfcoa.gov.au/fl/subpoenas)).

**This subpoena was issued at the request of the issuing party named in the footer on page 1.**

**DO NOT send subpoenaed documents to this person. Subpoenaed documents must be produced to the Court, notwithstanding any objection being made.**

**The Registrar will issue a receipt to the person producing the documents or things.**

*(if insufficient space attach list)*

**Documents and things you must produce from your possession, custody or control**

1. a copy of this subpoena
- 2.

**NOTE:** You may produce a copy of the document or thing instead of the original unless the subpoena specifically requires the production of the original document or thing.

**NOTE: Objection to production, inspection or copying of documents**

Any person named in this subpoena or affected by this subpoena to produce documents or things, may object to the production or inspection or copying of documents by completing, filing and serving a [Notice of Objection – Subpoena](http://www.fcfcga.gov.au/resources/forms) available at [www.fcfcga.gov.au/resources/forms](http://www.fcfcga.gov.au/resources/forms). **See Notes 16–18.**

# NOTES

## Limitations — subpoenas

1. Self-represented parties must obtain permission (leave) to request the issue of a subpoena: see rule 6.27(1) of the Family Law Rules.
2. A party must not request the issue of more than 5 subpoenas for production in an application for interlocutory orders without the Court's leave: see rule 6.27(3) of the Family Law Rules.
3. An Independent Children's Lawyer may request the issue of any number of subpoenas for production in an application for interlocutory orders without the Court's leave: see rule 6.27(4) of the Family Law Rules.
4. Without the Court's leave, a party or an Independent Children's Lawyer must not request the issue of a subpoena:
  - (a) to give evidence,
  - (b) for production and to give evidence,
  - (c) for production for a final hearing, or
  - (d) for production directed to another party to the proceeding.See rule 6.27(2) of the Family Law Rules.
5. If leave is required, the issuing party (including the independent children's lawyer) should provide a short cover letter outlining:
  - (a) a list of the subpoena/s you seek to have issued;
  - (b) the reasons why permission should be granted (including relevance or an order of the Court); and
  - (c) an undertaking that the Court has made no order restricting the issuing of any subpoena.
6. Upon receipt of this letter, Registry will direct consideration of request to the Docket Registrar or Docket Judge.

For more information see the guide [Leave requirements for subpoenas in family law proceedings](http://www.fcfcogov.au/fl/subpoenas) at [www.fcfcogov.au/fl/subpoenas](http://www.fcfcogov.au/fl/subpoenas)

## Service of subpoena

7. A subpoena requiring a person to **give evidence** must be served personally on the person subpoenaed: see rule 6.30(1) of the Family Law Rules.
8. A subpoena for **production only** must be served by ordinary service, unless otherwise agreed between the issuing party and the person subpoenaed: see rule 6.30(2) of the Family Law Rules.
9. The issuing party must serve by ordinary service a copy of this subpoena on each other party, any interested person and any independent children's lawyer in the proceeding: see rule 6.30(3) of the Family Law Rules.
10. An 'interested person' means a person who has a sufficient interest in the subpoena.

11. The issuing party must serve the subpoena on the person subpoenaed, the other parties, any independent children's lawyer and any interested person as follows:
  - (a) at least **7 days** before the date for attending court for a subpoena to **attend court to give evidence**;
  - (b) at least **10 days** before the date for attending court for a subpoena to **attend court to give evidence and to produce documents**;
  - (c) at least **10 days** before the date for producing documents for a **subpoena requiring the person to produce documents to the Court**.
12. The named person may reach an agreement with the issuing party in relation to a different **manner of service** of a subpoena to produce documents only.
13. The **issuing party** may reach an agreement with each other party, any interested person and any independent children's lawyer in relation to a different **manner of service**.

### **Cost of complying with subpoena**

14. The person serving the subpoena must give the person subpoenaed conduct money sufficient to meet the reasonable expenses of compliance. See rule 6.31 of the Family Law Rules. The amount of conduct money must be at least \$25.
15. If you are the person subpoenaed and 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 for an order that the issuing party pay you an amount in respect of the loss or expense. Before making such an application you may wish to 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.

### **Objection to production, inspection or copying of documents**

16. The person required by this subpoena to produce documents or things may object to producing a document by completing, filing and serving a [Notice of Objection – Subpoena](#) before the date specified in this subpoena for production. The documents or things identified in the subpoena must be provided to the registry before the date of production, even if the person required to comply with the subpoena lodges a *Notice of Objection*.
17. Any party or any interested person or any independent children's lawyer may object to inspection or copying of a document described in this subpoena by completing, filing and serving a [Notice of Objection – Subpoena](#) before the date specified in this subpoena for production.
18. For non-parties, a [Notice of Objection – Subpoena](#) can be lodged for filing by email to the relevant registry filing email address on the Court's website.

**NOTE:** Rule 6.38 of the Family Law Rules.

## Automatic release of documents for inspection or copying (Part C)

19. Subject to any objection being upheld or an order of the Court and subject to the issuing party filing a [Notice of Request to Inspect](#) in the approved form, each party and any independent children's lawyer may, by appointment, inspect all documents produced in response to this subpoena and may take copies of all documents produced in response to this subpoena (other than a child welfare record, medical record, criminal record or police record): see rule 6.37 of the Family Law Rules.
20. A person who inspects or copies a document produced in response to this subpoena must:
  - (a) use the document for the purpose of the proceeding 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 (except to a lawyer, client, or expert as provided in rule 6.36(3) of the Family Law Rules).

## Child welfare, medical, criminal and police records

21. Medical records, criminal records and police records produced in response to this subpoena will be available for inspection by each party and any independent children's lawyer, but these records will not be available for copying without an order of the Court.

**Criminal record** means a record of offences for which the person has been found guilty.

**Medical record**, for a person, means the histories, reports, diagnoses, prognoses, interpretations and other data or records, written or electronic, relating to the person's medical condition or treatment, that are maintained by a physician, counsellor, hospital or other provider of services or facilities for medical treatment.

**Police record** means records relating to the person kept by the police, including statements, police notes and records of interview.

22. In family law proceedings, child welfare records will not be available for copying without an order of the Court.

**Child welfare records** are records relating to child welfare held by a State or Territory agency mentioned in Schedule 9 to the *Family Law Regulations 1984*.

*Note:* For child welfare records, there may be restrictions on inspection imposed by protocols entered into between the Court and the relevant child welfare department.

## Objection by person to inspection of medical records

23. If the documents to be produced under this subpoena include a person's medical records, that person may, **before** the date stated for production, notify the Court in writing that they wish to inspect the records for the purpose of determining whether to object to the inspection or copying of the document by any other party: see rule 6.38 of the Family Law Rules.
24. If such notice is given:
  - (a) that person may inspect the medical records and may, within 7 days after the date stated in the subpoena for production, object to inspection or copying of a document described in this subpoena by completing, filing and serving a [Notice of Objection – Subpoena](#), and
  - (b) unless otherwise ordered, no other person may inspect the medical records until the later of 7 days after the date stated in the subpoena for production or the hearing and determination of the objection.

## Time and date for hearing an objection

25. Any objection in relation to this subpoena will be heard before a judge or registrar. The Registrar will advise the parties and the objector of the time and date when they will be required to attend court for the hearing and determination of the objection.