



FEDERAL CIRCUIT
AND FAMILY COURT
OF AUSTRALIA

Subpoena

Information for a person requesting the issue of a subpoena

This brochure is for people who want the Federal Circuit and Family Court of Australia to issue a subpoena in a family law matter.

It provides information about the use of, and compliance with, subpoenas in the Court.

Note: Subpoenas attract a **filing fee**.

For more information see the fees sections at www.fcfcoa.gov.au.



What is a subpoena?

A subpoena is a legal document issued by the Court at the request of a party to a proceeding. 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.

If a person refuses or is unable, of their own free will, to give evidence in your proceeding or to provide documents to the Court that are relevant to your case, you can request the Court to issue a subpoena.

Before you request a subpoena, you should attempt to get the required document or evidence by, for example, asking the person to provide it to you.

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

How do you apply for a subpoena?

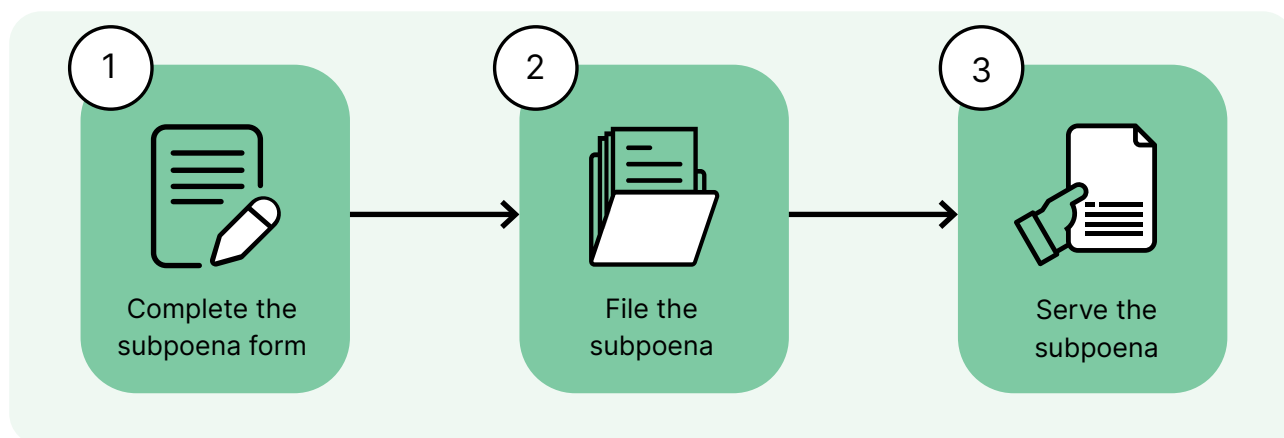
You will need to complete the form titled **Subpoena – Family Law** that is approved by the Court.

This form can be downloaded from the Court's website at www.fcfcga.gov.au.

Without a court order, you cannot request a subpoena to be issued to a person under 18 years of age.

If you are unrepresented, you must seek the permission of the Court to issue a subpoena. If you are a solicitor, you must seek permission to issue a subpoena for a final hearing. Permission can be sought by contacting the registry in writing where the proceeding is being heard. Visit [Court Locations](#) on the website for email and postal addresses.

To request the issue of a subpoena by the Court, follow the steps set out below.



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 Court cannot provide legal advice.

Step 1: Complete the subpoena form

When completing the subpoena, keep in mind that:

- A subpoena must identify the person to whom it is directed by name or by description or office or position (person subpoenaed). 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 Officer
XYZ Pty Ltd
Some Street
Some Town NSW 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 subpoenaed.
- A subpoena for production must identify the specific document/s or thing/s to be produced. The document/s or thing/s should be properly described so the person subpoenaed knows what to produce.
- A subpoena must always require the production of document/s or thing/s which are known to already exist. This means it cannot require the person subpoenaed to create a document to comply with the subpoena.
- A subpoena cannot be written in a way that requires the person subpoenaed to make a decision about whether a document or thing needs to be produced. For example, the subpoena should not ask for 'all documents relating to any account held by the person subpoenaed in a false name'.
- You cannot request the issue of a subpoena requiring the production of a document or thing in the possession of the Court or any other court. To seek a document/s or thing/s in the possession of a court, you must make a written request to the Court, see rule 6.28 of the *Family Law Rules 2021*.
- The date for production of documents in a subpoena requiring production only will usually be two weeks from the date of filing and unless ordered by the Court, no later than three days before any court event to which the subpoena relates. A subpoena requiring attendance of a person must be made returnable to Court when the proceeding is listed for a hearing.


Step 2: File the subpoena

Once you have completed the subpoena, you need to file it with the Court.

Subpoenas for production of documents only (where there is an ongoing final orders application) should be eFiled using the Commonwealth Courts Portal. For a step-by-step guide, see [How do I eFile?](#) at www.fcfcoa.gov.au/howdoi.

Subpoenas to give evidence, subpoenas for production and to give evidence, or subpoenas where eFiling is not otherwise available, should be filed via email to the Court registry where the matter is listed. Enter the following details in the email subject field:

Subpoena – file number – your name – name of person/department subpoenaed

 Send	From -	example@gmail.com
	To	sydney.filing@fcfcoa.gov.au
	CC...	
	BCC...	
	Subject	Subpoena-DNC12/2020-Smith-DepartmentofHealth

All Court registries have a discrete generic filing email address. A list of the filing email addresses is on the last page of this brochure.

If you are unable to eFile or email, you can file your subpoena with the registry by post or, attending the registry in person. A list of registry locations is available at www.fcfcoa.gov.au.

Filing a subpoena **incurs a filing fee**. Details of fees can be found on the Court's website at www.fcfcoa.gov.au. Fees can be paid:

- online via credit card when eFiling using the Commonwealth Courts Portal
- by submitting a *credit card payment form*, available from the Court's website, or
- providing your daytime phone number so you can be contacted to make payment over the phone, or
- paying in person at the registry.

The Court will complete the details and add the Court's seal before sending it back to you for your records and to serve (as outlined in Step 3).

Step 3: Serve the subpoena

Note: you must **NOT** serve a subpoena until it has been issued and sealed by the Court.

Service of subpoenas requiring attendance

If the subpoena requires the person subpoenaed to **attend to give evidence**, you must arrange to have the subpoena **served by hand** (personal service) to the person subpoenaed. See Division 2.6.2 of the *Family Law Rules 2021* for rules relating to personal service in Australia. You should give the person subpoenaed as much notice as possible of the next Court date but the person must be served not less than **seven days** before they are required to attend.

Please note, if the subpoena is not served personally in accordance with the *Family Law Rules 2021*, the person subpoenaed is not required to comply with the subpoena.

At the time of service of a subpoena, conduct money must also be served. For information about conduct money, see **Conduct money and witness fees**.

Service of subpoenas requiring production

If the subpoena requires the person subpoenaed to produce documents to the Court, you need to serve the subpoena at least **10 days** before the date for production.

You do not need to serve a subpoena for **production only** by hand. Subpoenas for production only may be served on the person to be subpoenaed by **ordinary service**. See Division 2.6.3 of the *Family Law Rules 2021* for rules relating to ordinary service.

Note: If you eFile the request to issue subpoena, you must wait for an email from the Court notifying you that the sealed subpoena form and cover sheet are available to be served.

Service of copies of the subpoena on parties and interested persons

You must also notify all other parties involved in the proceedings, any other interested persons (for example; a person who is not a party to the proceedings whose records you have subpoenaed) and the independent children's lawyer (if appointed), by serving a copy of the subpoena within a reasonable time prior to the date of production or court attendance.

These copies can be served by **ordinary service**. See Division 2.6.3 of the *Family Law Rules 2021* for rules relating to ordinary service. If the subpoena requires production of document/s only, copies of the subpoena should be served at least **10 days** before the date for production.

Note: You must serve a subpoena **within three months** of it being issued by the Court.

When serving the subpoena on the named person, other parties or interested persons, you should also provide them with a copy of the brochure [Subpoena: Information for a named person or other person \(served with a subpoena or a copy of a subpoena\)](#). This can be downloaded from the Court's website at www.fcfcoa.gov.au

There is a step-by-step guide to serving family law documents available at www.fcfcoa.gov.au/howdoi

Conduct money and witness fees

You are required to pay conduct money to the named person.

For a subpoena for **production only**, you must give the named person:

- Conduct money sufficient to meet the reasonable expenses of complying with the subpoena. For example, the cost of identifying, copying and collating the documents required. This will be at least the minimum amount of \$25 or such other sum as agreed or ordered.

For a subpoena to **give evidence** or a subpoena to **give evidence and produce documents**, the conduct money covers:

- return travel by public transport from the person's place of work or residence to court (if no public transport is available—the amount calculated is at the rate of 80 cents per kilometre required to be travelled between the place of employment or residence and the Court), and
- a reasonable allowance for accommodation and meals during the estimated time of personal attendance at the hearing or trial.

You must also pay witness fees for each person you subpoena to attend court, as follows:

- All witnesses: \$75 for each day, or part of a day, that the person is absent from their place of employment or residence, in order to meet the requirements of your subpoena.
- Expert witnesses: such further amount as agreed or the Court allows.

NOTE: If a person incurs a substantial loss or expense greater than the set conduct money or witness fee, the Court may order that the issuing party reimburse these expenses. See Rule 6.35 of the *Family Law Rules 2021*.

Does a person have to comply with a subpoena?

Yes, a person must comply with a subpoena unless:

- the subpoena was not served on the person in the manner required by the *Family Law Rules 2021*, or
- conduct money was not provided.

If a person does not comply with a subpoena, the Court may:

- issue a warrant for the person's arrest, and/or
- order them to pay any costs caused by the non-compliance.

Return of exhibits and documents that are produced

Unless authority has been given by the named person to destroy or dispose of them, the Court must return documents produced in compliance with a subpoena to the named person:

- between 28 and 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).

Can a person object to attendance or producing a document?

Yes, an objection can be made 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.

A party to the proceedings (including the independent children's lawyer) or an interested person may object to the subpoenaed material, being inspected or copied. They may also seek an order from the Court that a subpoena be set aside in whole or in part.

If there is an objection, you will receive a copy of the [Notice of objection – Subpoena](#) and the objection will be heard and determined by the Court.

Inspecting and/or copying of documents produced

If the subpoena is for **production only**, and:

- you as the issuing party have served the subpoena in compliance with the Rules, and
- the person subpoenaed has complied with the subpoena, and
- there is no objection made to the production, inspection or copying of the documents,

you may after the date for production, file a *Notice of Request to Inspect*, which can be downloaded from the Court's website at www.fcfcoa.gov.au.

The notice should be eFiled using the Commonwealth Courts Portal at www.comcourts.gov.au. If you cannot eFile, you may email the documents to the registry using the email address you used to file the subpoena (see Step 2) or you can file with the registry by either posting to, or attending in person.

Once filed, the notice will be processed by the Court as soon as practicable.

There may be restrictions imposed on the copying and/or inspection of child welfare, police, criminal and medical records (see r 6.37 and 6.38 of the *Family Law Rules 2021*).

If permission to copy the documents produced has been granted, you will receive them via email from the registry. If they cannot be emailed, you must make an appointment with the registry to inspect the documents produced and take copies. Each party to the proceedings, including the independent children's lawyer, may also receive a copy of the subpoenaed material upon request.

If permission has been given to inspect the documents only, you will need to make an appointment to attend the registry.

Inspection of medical records

If you have subpoenaed a person's medical records, the person whose records have been produced may give notice to the Court that they want to inspect those medical records in order to decide if they wish to object to their inspection. If they object to their records being inspected, they are allowed to file their notice of objection within seven days after the date for production in the subpoena. In this case, you, or any other party or interested person, will not be permitted to inspect the medical records until the later of seven days after the date for production, or the hearing and determination of any objection.

How long does a subpoena remain in force?

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

- the person subpoenaed complies with the subpoena
- the issuing party (you) or the Court releases the person subpoenaed from the obligation to comply with the subpoena, or
- the hearing or trial is concluded.

Are there any restrictions in using a subpoenaed document?

A person must only use documents obtained by subpoena for the purposes of the proceeding 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 proceeding) without the permission of the Court.

Fees

There is a filing fee for the issue of a subpoena. For more information see the **fees** section on the Court's website at www.fccoa.gov.au.



Note: there are special rules covering subpoenas to be served in New Zealand. They can be found in *Family Law Practice Direction: Trans-Tasman Proceeding Act Proceedings*.

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.



The rules

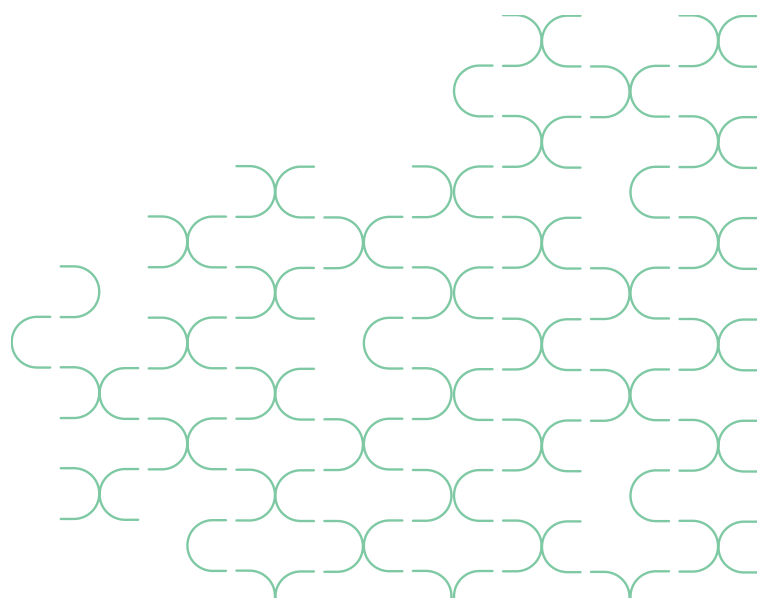
The rules covering subpoenas are set out under Part 6.5, of the *Family Law Rules 2021*.

Requesting documents from another court

If you wish to seek the production of document/s or thing/s in the custody of another court, you must make a request in writing to the Registry Manager, setting out:

- the name and address of the Court having possession of the document
- a description of the document to be produced
- the date when the document is to be produced by, and
- the reason for seeking production.

See *Family Law Rules 2021* – Rule 6.28





Court locations

AUSTRALIAN CAPITAL TERRITORY

Canberra	Cnr University Ave and Childers Streets, Canberra ACT 2600	canberra.filing@fcfcoa.gov.au
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NEW SOUTH WALES

Albury	Level 1, 463 Kiewa Street, Albury NSW 2640	albury.filing@fcfcoa.gov.au
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Dubbo	Cnr Macquarie and Wingewarra Streets, Dubbo NSW 2830	dubbo.filing@fcfcoa.gov.au
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Lismore	Level 2, 29–31 Molesworth Street, Lismore NSW 2300	lismore.filing@fcfcoa.gov.au
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Newcastle	61 Bolton Street, Newcastle NSW 2300	newcastle.filing@fcfcoa.gov.au
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Parramatta	1–3 George Street, Parramatta NSW 2150	parramatta.filing@fcfcoa.gov.au
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Sydney	97–99 Goulburn Street, Sydney NSW 2000	sydney.filing@fcfcoa.gov.au
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Wollongong	Level 1, 43 Burelli Street, Wollongong NSW 2500	wollongong.filing@fcfcoa.gov.au
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NORTHERN TERRITORY

Darwin	Supreme Court Building, State Square, Darwin NT 0800	darwin.filing@fcfcoa.gov.au
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QUEENSLAND

Brisbane	119 North Quay, Brisbane Qld 4000	brisbane.filing@fcfcoa.gov.au
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Cairns	Level 3 and 4, 104 Grafton Streets, Cairns Qld 4870	cairns.filing@fcfcoa.gov.au
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Rockhampton	48 East Street Rockhampton Qld 4700	rockhampton.filing@fcfcoa.gov.au
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Townsville	Level 2, Commonwealth Centre, 143 Walker Street, Townsville Qld 4810	townsville.filing@fcfcoa.gov.au
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SOUTH AUSTRALIA

Adelaide	3 Angas Street, Adelaide SA 5000	adelaide.filing@fcfcoa.gov.au
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TASMANIA

Hobart	39–41 Davey Street, Hobart Tas 7000	hobart.filing@fcfcoa.gov.au
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Launceston	Level 1, Henty House, 1 Civic Square, Launceston TAS 7250	launceston.filing@fcfcoa.gov.au
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VICTORIA

Dandenong	53–55 Robinson Street, Dandenong Vic 3175	dandenong.filing@fcfcoa.gov.au
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Melbourne	305 William Street, Melbourne Vic 3000	melbourne.filing@fcfcoa.gov.au
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WESTERN AUSTRALIA

Family Court of Western Australia:

Perth	<ul style="list-style-type: none">• www.familycourt.wa.gov.au• 150 Terrace Road, Perth WA 6000• 08 9224 8222
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More information



For more information, including access to the Family Law Act, the Family Law Rules and any of the forms or publications listed in this brochure:

- go to www.fcfcoa.gov.au
- live chat on the website
- call **1300 352 000**, or
- visit a family law registry near you.

 Live Chat

The Federal Circuit and Family Court of Australia respects your right to privacy and the security of your information. You can read more about the Court's commitments and legal obligations in the fact sheet [The Court and your privacy](#). The fact sheet includes details about information protection under the privacy laws and where privacy laws do not apply.

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 Federal Circuit and Family Court of Australia cannot provide legal advice.

Approved by the Chief Justice/Chief Judge in accordance with Rule 15.21.