

Subpoenas – Frequently Asked Questions

What is a subpoena?

A subpoena is a witness summons issued by the Court to give evidence, or provide documents to the Court.

Subpoenas can be to attend Court to give oral evidence, produce documents to the Court, or to give evidence and produce documents. The subpoena will specify which of these is requested of you.

Do I have to comply with a subpoena?

You do not have to comply with the subpoena if:

- You were not served in accordance with the Court rules. The rules differ depending on whether the matter is in the Family Court of Australia or the Federal Circuit Court of Australia.
- You were not provided with conduct money when you were served with the subpoena.
- The subpoena has been set aside.
- You have been excused from complying with the subpoena.

How do I comply with a subpoena?

If the subpoena is to give evidence only, it will specify a date and time that you are required to attend Court. Your evidence will be in answer to the questions that are put to you by the lawyers for the parties.

Subpoenas to produce documents will specify a time and a date that documents are to be delivered to the Court. The documents may be faxed, posted or delivered personally. Documents can also be produced on a flash drive.

Can I object to the subpoena?

There are grounds for the recipient of a Subpoena to object to the production of documents. Grounds for objecting to a subpoena may include:

- Compliance with the subpoena is oppressive because the subpoena does not sufficiently specify what documents are sought, or obliges you to exercise judgement about which documents fall within the ambit of the subpoena.

- The information may be sensitive and/or confidential. There may be a danger that the information may be used for a different purpose. In the case of therapeutic records, the person's therapy may be jeopardised if the information is made known to the other party.
- Compliance may be onerous in time or cost. This may be the case where historical records are sought.
- If large quantities of documents are sought, it may interfere with your capacity to operate your business, although this is less common with the advent of electronic records. In this case, it may be possible to arrange for the documents to be inspected at your office, rather than you having to copy and forward them to the Court.

If you have any of these issues it may be worthwhile getting advice. The problem may be able to be addressed by seeking clarification from the issuing party about what is sought, or reaching agreement on the conditions upon which the documents will be released.

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