



# Subpoenas in family law

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A subpoena is a legal document that compels a person/entity (organisation or company) to produce certain documents or give evidence at a hearing. A subpoena is issued by the Court at the request of a party to a court proceeding. In this article, we discuss how subpoenas can be used to assist you in your family law proceedings, the procedure to follow before and after issuing a subpoena, and things to keep in mind along the way.

## Types of subpoenas

There are three types of subpoenas:

1. A subpoena for production.
2. A subpoena to give evidence.
3. A subpoena for production and to give evidence.

A subpoena for production is the most common type of subpoena issued in family law proceedings.

## Subpoena for production

### Duty of disclosure and subpoenas

Under the *Family Law Rules*, a party to family law proceedings must [“give full and frank disclosure of all information relevant to the case, in a timely manner.”](#) If a party does not comply with this rule, a subpoena may be a useful tool to obtain such information, however, increased legal costs should be considered with this action.

## Property settlement matters and subpoenas

In a property matter, subpoenas may be used to compel the production of bank statements and/or business documents such as tax returns, financial statements, records of internal communications and policies etc.

Subpoenas to obtain financial records should be a last resort. A party seeking documents must first request these documents from the other party (informally) and/or seek a court order for the production of these documents.

## Parenting matters and subpoenas

In parenting matters, there may be information that a party will simply not have access to. This might include:

1. school attendance records, progress reports, internal notes etc;
2. medical records and notes, including any psychological or psychiatric tests, referrals to other services etc; and/or
3. records from Victoria Police, including criminal history, [family violence](#) incident reports, pending charge records etc.

## Subpoena to give evidence

A subpoena to give evidence is less common because if someone is reluctant to give evidence on your behalf, you will need to assess whether they will assist your case if they are forced to give evidence.

## How to issue a subpoena in family law matters

The Federal Circuit and Family Court of Australia provides a useful brochure containing a step-by-step guide of how to issue a subpoena – [“Information for a person requesting the issue of a subpoena.”](#)

There are three steps to follow when issuing a subpoena.

### Step 1: Complete the subpoena Form

You are required to complete the court form titled [“Subpoena – Family Law”](#).

When completing this form, it is important to ensure that the subpoena is addressed to the correct person. If you intend to subpoena an entity, we recommend contacting the entity to obtain the appropriate contact and service address. If preparing a subpoena for production, you should clearly specify the information/documents you are seeking. If the terms of your subpoena are too broad, it may be objected to.

## Step 2: File the subpoena

The Court has restrictions on who can issue a subpoena and the number of subpoenas that can be issued in family law proceedings.

If you are self-represented (that is, you do not have a lawyer), you are **always** required to seek leave (get permission) from the Court before you issue a subpoena. To do so, you will need to prepare a short cover letter to the Court outlining:

1. details of the subpoena(s) that you seek to issue;
2. the reason why permission should be granted (what is the relevance of the information/documentation that you are seeking to obtain); and
3. an undertaking (legal promise) that the Court has not made an order restricting the issuing of any subpoena.

If you are represented by a lawyer and there are ongoing interim proceedings, your lawyer may issue up to 5 subpoenas without seeking leave from the Court. However, once interim proceedings have concluded and your matter is progressing to a final hearing, your lawyer is also required to seek leave from the Court.

If an [Independent Children's Lawyer](#) is appointed in your matter, there is no restriction on the number of subpoenas they may issue.

How you file the subpoena will depend on the type of subpoena and whether leave is required. Subpoenas are generally emailed to the relevant Court Registry for the direct consideration of the Registrar or Judge with conduct of your matter.

## Step 3: Serve the subpoena

Once the subpoena has been accepted by the Court and a sealed copy has been provided, the subpoena can be served on the relevant party. The Court will attach a cover sheet to the subpoena detailing the deadline for service and the date that the subpoenaed person must produce the documents to the Registry by, or the date they must attend Court.

For a subpoena for production, you must arrange for it to be served by email or post (ordinary service) no later than 10 days before the date of production.

For a subpoena to give evidence, you must arrange to have it served by hand (personal service) no later than 7 days before the subpoenaed person is required to attend court.

You will also need to serve copies of the subpoena on all other parties in your family law proceedings.

# Conduct money and witness fees

For a subpoena for production, you must pay conduct money. The conduct money must be sufficient to meet the reasonable expenses of complying with the subpoena (for example, costs of identifying, copying and collating the documents requested).

For a subpoena to give evidence, you must pay a witness fee for each day of attendance (more for an expert witness) and reasonable expenses associated with the subpoenaed persons attendance at court (travel, accommodation, meals etc).

It is important to ensure that you pay the required conduct money and/or witness fees, as the subpoenaed person is otherwise not required to comply with the subpoena. The amount paid must also be sufficient. If a person incurs a substantial loss or expense greater than the set conduct money or witness fee, the Court may order that you reimburse these expenses.

## Can a person/entity object to a subpoena for production?

The subpoenaed person/entity, a party to the proceedings or any other interested person who received a copy of the subpoena can object by filing a [“Notice of Objection – Subpoena”](#) before the production date.

Grounds to object to a subpoena for production may include:

1. the documents requested are irrelevant;
2. there is no legitimate forensic purpose in requesting the documents;
3. the terms of the subpoena are too broad;
4. compliance with the subpoena constitutes ‘fishing’ or is oppressive;
5. the documents are privileged (for example, if the documents came into existence because of a lawyer-client relationship);
6. the documents contain confidential/private information.

The objection will then be heard and determined by the Court. The Court may order that the subpoena is to be complied with or set aside in whole or in part.

If you have subpoenaed a person’s medical records, the person whose records have been produced may give notice to the Court that they wish to inspect those records to determine whether to object to your (or another party’s) inspection of the records.

If they object, they can file their Notice of Objection within 7 days **after** the production date and you will not be allowed to inspect their records until the later of 7 days after the production date, or the hearing and determination of any objection.

## How to inspect and/or copy documents produced?

If the subpoena has been served on time, the documents produced, and no objection made, you may arrange to inspect the documents. To do so, you must file a [“Notice of Request to Inspect”](#)

Once the Court processes the Notice and grants permission to inspect and/or copy the documents, the documents will either be emailed to you, or you will need to attend Court to inspect the documents. The Court will not, for example, email copies of documents produced by the Department of Families, Fairness and Housing and Victoria Police.

## What are the consequences of non-compliance with a family law subpoena?

There are serious consequences that result from not complying 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. They may also be found guilty of contempt of court under the *Family Law Act*.

## Get advice from a family lawyer

If you are struggling to obtain information and/or documents from your former partner, would like assistance issuing a subpoena, or have been served with a subpoena, we can assist. Please contact our office to arrange a consultation with a member of our team.

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*This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.*