

Responding to a subpoena

Legal information for community organisations

This fact sheet covers:

- ▶ terms used
- ▶ what is a subpoena?
- ▶ subpoena to produce documents
- ▶ subpoena to attend
- ▶ contacting the court or tribunal



Disclaimer

This fact sheet provides general information about responding to a subpoena. It is intended as a guide only and is not legal advice. If you or your organisation has a specific legal issue, you should seek legal advice before deciding what to do.

Please refer to [the full disclaimer](#) that applies to this fact sheet.

Courts and tribunals across Australia have different rules about subpoenas. This fact sheet provides general guidance only.

Terms used

Some of the terminology used in this fact sheet may be unfamiliar, so we have explained these terms below.

Court or tribunal rules

A court is where a judge decides a range of factual and legal issues, while a tribunal generally deals with specific types of disputes and often uses fewer formal procedures than a court.

Each court or tribunal has its own set of rules regulating and prescribing the practice and procedure to be followed in proceedings in that court or tribunal. They can usually be found online at the relevant court or tribunal website, or the relevant state's government legislation website. If you are having trouble locating these rules or regulations you can contact the relevant court or tribunal. Alternatively, you can locate all Australian rules or regulations (and legislation) at [Austlii](#).

Court order

A command or direction issued by a court or tribunal requiring a person, business, organisation or corporation to do or not do something. A subpoena is a court order requiring attendance to give evidence and/or production of documents or things by the recipient.



Issuer of the subpoena	This is the party to the legal proceeding that filed the subpoena with the court or tribunal and is seeking to compel the subpoena recipient to attend the court or tribunal to give evidence, produce documents or things, or both. The contact details for the issuer will appear on the subpoena document – often this will be the lawyer for the party. Where a lawyer is listed, you should communicate with the lawyer rather than the party directly.
Party or parties	The people, businesses, organisations, corporations or other legal entities directly involved in the court proceedings. Generally, the name of the parties will be used to give a title to the court proceedings (sometimes referred to as the 'Title of proceedings') which you can generally find at the front of the subpoena document. Being served with a subpoena does not make you a party to the proceedings.
Proceeding or proceedings	A word used to describe an action taken in a court or tribunal.
Produce or produced	In this context, 'produce' means provide documents or other things to the court or tribunal.
Return date	The return date is the date and time when the person named in the subpoena must produce the requested documents to the court and/or attend court to give evidence.
Subpoena recipient	A person, business, organisation, corporation or other legal entity served with a subpoena who is required to attend the court or tribunal to give evidence, produce documents or things, or both.
Subpoena to attend	A subpoena to attend to give evidence is a court order requiring a person to attend court at a specified date, time, and place to provide oral evidence as a witness in a proceeding.
Subpoena to produce	A subpoena to produce documents is a court order requiring a person, company, or organisation to produce specified documents or things to the court by a stated date and time for use in legal proceedings.
Service or served	Service is a term used to describe the various methods of delivering certain legal documents to a person, business organisation, corporation or other legal entity. When service has been effected, that person has been 'served'.
Privilege	A legal right to withhold certain information from disclosure in particular circumstances. For example, legal professional privilege may protect confidential communications between a lawyer and client made for the dominant purpose of obtaining legal advice or preparing for litigation.



What is a subpoena?

A subpoena is an order issued by a court or tribunal in response to a request by a party to a civil or criminal proceeding requiring the subpoena recipient to attend that court or tribunal to give evidence, or to produce a document or thing within that other person's possession, or both.

The subpoena recipient is not a party to the proceeding.

Parties often use subpoenas to obtain evidence relevant to the issues in dispute.

A subpoena is typically issued to a person, business, organisation, corporation or other legal entity that is not involved in the proceeding. Being served with a subpoena does not make you a party to the proceedings.

A subpoena is a court order that requires the recipient to:

- attend the court or tribunal as a witness – a ‘subpoena to attend’
- produce certain documents or things to the court or tribunal – a ‘subpoena to produce’
- both – a ‘subpoena to produce and to attend’



Note

A ‘subpoena’ may be known as a different name depending on the court or tribunal it is issued out of such as a ‘witness summons’ or a ‘third party notice for production’.

In this fact sheet, we use the term ‘subpoena’ as it is the most common name, but these principles still apply to other documents with different names that operate in the same manner as a subpoena.



Caution

Failure to comply with a subpoena without a lawful excuse is a contempt of court and the person can be punished, including by being fined or (in rare cases) imprisoned.



Tip

A subpoena is different from a search warrant. A search warrant is also a court order, but it lawfully permits authorities to enter and search your property or premises.



For more information, see the following guides:

- [Legal Aid New South Wales webpage Step by step guide – Subpoenas](#)
- [Subpoenas - County Court of Victoria](#)
- [Subpoenas | Legal Aid WA](#)

These links are a helpful starting point, but subpoena requirements vary between courts and tribunals. Your organisation should seek legal advice about the specific court or tribunal that issued the subpoena to make sure it complies with the relevant rules and legal requirements.

Is the subpoena valid?



Tip

Do not ignore a subpoena, even if you think it was issued incorrectly or seeks documents you should not have to provide. Seek legal advice as soon as possible, as objections and requests for extensions are often subject to tight timeframes.

Check the following subpoena details:

Does the subpoena have a 'filed' stamp showing the date it was filed?	A filed stamp or cover page is proof that the document was issued by the court or tribunal. If there is any doubt, contact the court or tribunal and ask them to confirm that the subpoena was filed and issued. If the court or tribunal has no record of the subpoena, seek legal advice and contact the issuing party before taking any further steps. It's preferable that this contact is made in writing (for example, by email) so you have a written record, if needed at a later date.
Did you receive the subpoena before the 'last date for service'?	The last date for service will be stated in the subpoena document. If you didn't receive the subpoena by this date or you don't think you can comply with the subpoena by the return date, you can ask the issuing party to obtain an extension of the return date (which is the date by which you must comply with the subpoena) from the court. Alternatively, if there is no issue with you complying by the return date, you should do so. See 'When do I have to comply with the subpoena', below.
Was the subpoena served in accordance with the court or tribunal rules?	Each court or tribunal has its own set of rules for service, for example rules on how the subpoena is to be delivered to the person (such as – being handed to the person personally, left at the premises, or posted). If there is an issue with the service of the subpoena, you can raise this with the issuer. Alternatively, if there is no issue with you complying by the return date, you should do so.
Were you provided with 'conduct money' (payment to cover your costs of complying with the subpoena)?	Conduct money must generally be sufficient to meet the reasonable expenses of complying with the subpoena. What is reasonable depends on the circumstances. For example, conduct money may reimburse expenses like travel costs or lost wages incurred while complying with a subpoena to attend to give evidence. Conduct money is generally provided at the time the subpoena is served on the recipient. In some circumstances a subpoena recipient is not excused from complying just because conduct money has not paid, so if there is any issue with the conduct money, including if it is not provided, you should raise this with the issuer of the subpoena before the return date. In some circumstances a court may order the issuing party to provide an additional sum to the recipient for what they incurred

in complying with the subpoena, including legal costs and other costs for production of documents.

If any of these points are an issue, seek legal advice.

Subpoena to produce documents

When do I have to comply with the subpoena?

The date that the documents need to be produced is referred to in the subpoena as a 'return date'. The documents need to be produced to the court or tribunal for its records at the address specified in the subpoena, not to the party that issued the subpoena.

If you need more time to produce the documents (for example, if there are a large number of them, or they are stored off-site), contact the issuer of the subpoena so that a joint request can be made to the court or tribunal for a new return date. Alternatively, you or a lawyer can appear at the court or tribunal on the return date and ask for a new return date. You may need to provide an explanation.

If you have missed the return date or a deadline you can contact the issuer of the subpoena to obtain a new return date in the same way.

The subpoena schedule

A subpoena to produce will have a 'schedule' listing the documents or things you are required to produce. You only need to produce documents that are in your (or your organisation's) possession or control (ie. you don't have to ask other people for documents that you don't have).

Before producing the documents you should consider whether you need to inform anyone that you are disclosing the documents. For example, you may have a contract with someone which states that you will obtain their consent before producing documents or you may have privacy obligations under the law, such as personal information contained in the documents to be produced.

You are entitled to consult with people in your organisation about the subpoena or those whose rights or privacy may be affected by the production of the documents. Confidentiality alone does not usually excuse compliance with a subpoena. However, confidentiality, privilege, privacy concerns or lack of relevance may support an objection to production or inspection in some circumstances.

Most legal proceedings are open to the public so unless the proceedings are subject to a non-publication order or are closed, which the subpoena issuer should be able to tell you, you are permitted to discuss the subpoena with others.

If you are able to produce the requested documents by the return date at a reasonable cost and have no objections then you should do so.

Once documents are produced, and subject to any court orders restricting access, the parties will generally be entitled to inspect the documents and use them in the proceeding. Importantly, subpoenaed documents may only be used for the purposes of that proceeding and cannot be used or disclosed for any unrelated purpose or proceeding.

If you have conducted all reasonable searches and have not located any documents in your possession or control falling within the subpoena schedule, you should still produce a copy of the subpoena and complete any subpoena declarations. You can include a covering letter to the court stating that you do not have any of the requested documents in your possession or control.

Objections to producing documents

Valid objections to producing documents include:

- producing all the requested documents would be very onerous and time consuming for you (if that is the case, you can apply to the court to have the subpoena set aside or negotiate an amended schedule or return date, or additional compliance costs)



- the scope of the subpoena is too broad or may require you to decide for yourself what kind of documents would be relevant or not, and
- legal professional privilege, public interest immunity, confidentiality or another recognised ground of objection

Examples of production requests that might be successfully contested include if the subpoena schedule asks you to produce:

- *all correspondence or documents regarding the person A for the past 10 years*
- *all ledgers, journals, invoices, statements, or other financial records of the corporation*
- *all agreements and contracts between party A and party B, or*
- *all communications between party A and their solicitor*

That is because a subpoena must identify documents with sufficient specificity and must seek material that is relevant to the issues in dispute. Broad requests can be likened to a fishing expedition calling for everything in sight without regard to actual or potential relevance. It would also be very time-consuming and difficult to gather everything. In that case, the judge will need to decide what, if anything, you must produce.

Examples of production requests that might **not** be successfully contested include if the schedule asks you to produce:

- *a copy of internal policies related to conflict of interest as they were in effect from 1 January 2025 to 1 January 2026*
- *the membership record, including membership status and type, for member A from 1 June 2025 to 1 June 2026, or*
- *all correspondence sent by party A and received by party B from 1 January 2025 to date related to the contract between party A and party B dated 1 April 2025*

That is because these requests are specific and relevant to a particular issue. If you have to think about whether a document falls within the request and there is some ambiguity, the subpoena might be too broad or not-well defined.

Claims for 'privilege' over documents containing communications with lawyers or content relating to past or present legal proceedings are not a basis for objecting to production, but may be a basis for objecting to the parties to the proceeding inspecting the documents. Speak with the lawyers referred to in the communications. If you think there may be public interest or confidentiality issues, you may also have grounds to object to inspection. See 'Objection to inspection of produced documents' below for more information.

These issues can involve complex technical legal issues, so consider seeking legal advice if you think you should object to production.

Objection to inspection of produced documents

If you claim privilege or otherwise object to the documents you have been asked to produce being inspected by the parties to the proceeding, it is important to get legal advice and check the relevant court or tribunal rules about how those documents should be dealt with.

In most cases, you are still required to produce the documents to the court, despite your objection to inspection.

Prepare a list of the documents you object to being inspected and the reasons for each objection, for example privilege. The parties are entitled to know, in general terms, what the documents are and the basis of your objections.

You may be able to raise your objection in writing to the court, or you may have to make a formal application. It is important that the court knows an objection has been raised, so that the documents are not inspected until a decision is made.

Courts and tribunals have different rules about how and when objections to inspection must be made, so check the rules or get legal advice well before the



	date production is due. In the County Court of Victoria, for example, some objections must be made at the time the documents are produced.
Producing the documents	If you have gathered the documents or things to be produced, you can comply with the subpoena in one of the following ways below. It is important to check ahead of time whether the court issuing in the subpoena requires a specific method of production (that is physically, electronically or postal). Produce electronically – Some courts require or strongly prefer that subpoenaed material be produced via an online platform. If the court has an electronic production system, you should follow its procedures and upload the documents in the accepted file formats. Attend in person – You may attend the court or tribunal on the return date and hand the documents or things over to the court, however it is important to check that this is an allowed method of production as some courts, such as County Court of Victoria, require that a party wanting to produce physically obtain permission from the court first. Send to the court – If the court permits production by post or delivery, you may send the documents or things within the timeframe indicated on the subpoena. Place them in an envelope labelled with the proceeding number, party details, subpoena recipient details and words such as '<i>Documents produced under subpoena by [INSERT]</i>'. Include your contact details on the envelope. You should send them by registered post, or another method providing tracking information and signature on delivery. This cost could form part of any costs you seek for compliance (see below). Ensure you post your documents well ahead of the return date time to allow for delivery. Check if the subpoena is asking for original documents and if not, keep the originals and produce copies. However, if you send original documents, keep a copy. If you want the documents to be returned to you after the proceedings are concluded, most subpoenas have an option for you to ask for this to happen. Make sure you complete any declarations contained in the subpoena.
Costs of compliance	In some circumstances a subpoena recipient may have their reasonable costs of compliance paid in addition to the conduct money. Keep a copy of any expenses incurred in attending court for reimbursement. You can raise this with the issuer of the subpoena and should do so as early as possible. Most courts and tribunals also give you the option of making an application to the court for your costs to be reimbursed if you cannot resolve your compliance costs with the issuer.

Subpoena to attend

When do I have to comply with the subpoena?	For this kind of subpoena the 'return date' is when the person named in the subpoena is required to attend the court or tribunal to give evidence as a witness under oath or affirmation (a legally binding promise to tell the truth). The witness will be required to answer questions asked by the parties' lawyers about issues relevant to the proceeding. The length of time required will depend on the nature of the proceeding and the evidence being given. The return date is usually the first day of the hearing and the witness may not be required on that day, but they will need to be available to attend court for the duration of the hearing or until they are excused by the court. You can contact the lawyer of the party that requested the subpoena to see if you can get an estimate of how long you will need to attend court and which days you will need to attend.
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What should I do when attending court?	A witness attending a hearing should ensure that they are punctual and dress appropriately. When giving evidence, make sure you listen carefully to the questions you are asked. If you don't understand a question or a word, say so. Evidence given in a court or tribunal is recorded and provided to the parties. You can be subject to a penalty if you lie under oath or affirmation. The lawyer for the issuing party can provide you with any further information you need.
What if I can't attend court on the date specified in the subpoena?	If there are circumstances preventing your attendance (for example, if you are going to be overseas or you are unwell), contact the lawyer for the issuing party promptly as a first step. You can contact the court or tribunal for further information but you should not ignore the subpoena.
Costs of compliance	The witness may be entitled to have their reasonable costs of compliance paid (for example transport and accommodation expenses) in addition to the conduct money. Keep a copy of any expenses incurred in attending court for reimbursement. Raise this with the issuer of the subpoena as early as possible, as you may need to apply to the court or tribunal for those costs if they cannot be agreed.

Contacting the court or tribunal

Contact details for courts and tribunals are provided in the table below.

Jurisdiction	Court or tribunal
Federal	High Court of Australia Federal Court of Australia Federal Circuit and Family Court of Australia Administrative Review Tribunal
New South Wales	Children's Court of New South Wales District Court of New South Wales Drug Court of New South Wales Dust Diseases Tribunal Independent Commission Against Corruption NSW Land and Environment Court of New South Wales Local Court of New South Wales New South Wales Coroners Court NSW Civil and Administrative Tribunal (NCAT) Industrial Relations Commission of New South Wales Supreme Court of New South Wales Personal Injury Commission
Victoria	Children's Court of Victoria Coroners Court of Victoria County Court of Victoria Magistrates' Court of Victoria Supreme Court of Victoria Victorian Civil and Administrative Tribunal (VCAT)
Queensland	Queensland Human Rights Commission



	Children's Court of Queensland Queensland Civil and Administrative Tribunal (QCAT) Coroners Court of Queensland Crime & Corruption Commission Queensland Industrial Relations Commission Mental Health Court Murri Court Planning and Environment Court Queensland Drug and Alcohol Court Residential Tenancies Authority
Western Australia	Children's Court of Western Australia Coroner's Court of Western Australia District Court of Western Australia Industrial Magistrates Court Magistrates Court of Western Australia Supreme Court of Western Australia The Western Australian Industrial Relations Commission State Administrative Tribunal of Western Australia
Northern Territory	Northern Territory Local Court Supreme Court of the Northern Territory Northern Territory Civil and Administrative Tribunal (NTCAT)
Australian Capital Territory	ACT Civil and Administrative Tribunal (ACAT) ACT Magistrates Court ACT Supreme Court
Tasmania	The Supreme Court of Tasmania Magistrates Court of Tasmania Tribunals Tasmanian Civil & Administrative Tribunal (TASCAT)
South Australia	Supreme Court of South Australia District Court of South Australia Adelaide Magistrates Court Environment, Resources and Development Court Youth Court of South Australia Warden's Court Coroners Court South Australia Civil and Administrative Tribunal (SACAT) South Australian Employment Tribunal Independent Commissioner against Corruption South Australia