

# Subpoena

A subpoena is a legal instruction released by the court that requires a person or organisation to give documents or to give evidence at Court. A subpoena must be requested by a party to proceedings (a person or the legal representative involved in the case) and must be endorsed by a magistrate.

The purpose of a subpoena in the Permanency Support Program (PSP) is to bring relevant information before the court, to help inform the magistrates decision. Subpoenas are issued in both criminal and civil matters by State and Federal Courts.

There are three types of subpoena:

- subpoena for documents
- subpoena to give evidence
- a subpoena for documents and to give evidence.

Requests for a subpoena can be issued to ensure that a person attends Court to give evidence or to compel a person or an organisation to provide documents that are relevant to the case to the Court. Attempts to obtain the documents or verbal evidence are commonly made either in writing or in person before a subpoena is pursued. However, a subpoena can be pursued without prior warning. If the person doesn't have a legitimate explanation for not complying with the subpoena, court can issue a warrant for the arrest of the person and order they pay any costs for failure to comply.

## Serving a Subpoena

If the subpoena involves a person subpoenaed to give evidence, the subpoena has to be served directly on the person subpoenaed. The person subpoenaed must attend and this cannot be delegated to another person to give evidence on their behalf. A subpoena that requires a specific casework staff to give evidence must be served on case work staff personally. The person must be served no less than five days before they are expected to be present at Court. If the subpoena isn't served personally, the person subpoenaed isn't required to abide by the subpoena. The subpoena must also be served with conduct money to cover the reasonable expenses for attending court.

## Subpoenas Requiring Production

If the subpoena requires casework staff subpoenaed to generate documents, they must be served the subpoena at least 5 days before the date they are required to attend or produce the documents. The subpoena must also be served with conduct money covering the reasonable expenses for production of the documents. Many agencies have a set fee that is required to be paid as conduct money.

Documents produced in response to a subpoena to produce evidence to the court may become part of the evidence in the proceedings. The Judge hearing the case will decide whether any specific document is admitted into evidence.

## Request for Production of Clients Records

A considerable amount of this material comes from casework records and case notes from PSP Service Providers who are not parties in the case. Casework staff and PSP Service Providers are 'third parties' to the case. When you receive a request for information, read it thoroughly and identify what sort of request you have received.

You need to work out when you are served with a subpoena:

- What type of subpoena is it?
- Who is the subpoena for?
- Who is asking for the documents or for your attendance at court?
- The date you have to provide the documents or go to court?
- What are you being asked to produce?
- Do you have the information you are being asked to deliver?
- Does the subpoena comply with the law?
- Follow your organisations policy and procedures regarding subpoenas.
- Obtain legal advice.

If the subpoena complies with the time requirements but you need more time to produce the documents, contact the service and person who sent the subpoena and request in writing for an extension of time with an explanation why you need more time. Notify the court once an extension is agreed upon. If an agreed extension time is not given, you will

have to go to the court on the day the subpoena is due to be complied with to request an extension. Speak to your manager before you do this and follow your services policy and procedures.

You may be able to redact some of your personal information in documents. Talk with your manager about what should and can be redacted and follow your services policies on subpoenas.

## Objecting to a Subpoena

If you feel you have grounds to object to a subpoena, talk to your manager. There are three reasons why you could object to a subpoena:

- the subpoena is not valid for technical reasons
- general objections against a valid subpoena
- objections based on claims of privilege or specific protections.

Unless you are relying upon a strong statutory protection, such as the protection for the identity of mandatory reporters in [section 29](#) of the *Children and Young Persons (Care and Protection) Act 1998*, you will probably need to appear before the court to argue your objection, so obtaining legal advice is important.

## Witnesses and Evidence

A witness is a person that has seen or has information about an event or issue that a court is making a decision on. You cannot refuse to be a witness. A person that has been given a subpoena to attend a court to give evidence must comply with the subpoena. A court can issue a warrant for the arrest of a witness if they do not attend.

Preparing to be a witness:

- Find out who is going to be in the courtroom.
- If you have previously made a statement or affidavit for the case, read the documents again, so it is fresh before you go to court.
- You cannot use notes while giving evidence unless the judicial officer allows it.
- You can take a support person to court. A support person can be a family member, friend, professional counsellor, person from another service or someone from the service you work for. However, in the Children's Court a support person cannot enter the courtroom.

- You cannot be advised what to say at court. Your role is to tell the truth.
- Witnesses who are called into court are asked to take an oath or affirmation. This is a promise to tell the truth.

For more information about giving evidence at court, see: [Preparing to Attend Children's Court.](#)

## References

Children's Court. (n.d). *Guidelines*. Retrieved from [http://www.childrenscourt.justice.nsw.gov.au/Pages/childrenscourt\\_practiceandprocedure/guidelines.aspx](http://www.childrenscourt.justice.nsw.gov.au/Pages/childrenscourt_practiceandprocedure/guidelines.aspx)>

Justice Connect. (n.d). *Responding to a Subpoena*. Retrieved from [https://www.nfplaw.org.au/sites/default/files/media/Responding\\_to\\_a\\_subpoena.pdf](https://www.nfplaw.org.au/sites/default/files/media/Responding_to_a_subpoena.pdf)>