

HELP, I've been served with a Subpoena!

The Australasian Lawyers Group Pty Ltd trading as Butlers, Barristers & Solicitors

HELP, I've been served with a Family Court Subpoena!

What is a Subpoena?

A Subpoena is a Summons issued by the Court, issued at the request of a party requiring the person named in the Subpoena to produce documents and/or to give evidence (oral testimony) for the purpose of a hearing or Trial in Court. It is often used when the person who has been required to produce documents or provide evidence refuses to do so, or when they are unable to do so (eg. due to privacy reasons) without a Subpoena.

Do I have to accept a Subpoena served on me?

If the Subpoena is properly addressed, and you are either the specific person named in the Subpoena or have authority to sign a receipt acknowledging that you have been provided with the Subpoena eg. An employee at the registered address of a business, you should sign the receipt for the subpoena. Note however, that before you sign the receipt, you should check that the documents set out in the receipt as having been provided to you have actually been provided to you. If you are not the person named in the Subpoena, you should immediately provide the Subpoena to the named person, or the person with the authority to deal with the subpoena.

Do I have to respond to a Subpoena?

Yes, you must respond to a Subpoena served on you whether you wish to object to the Subpoena, or to comply with the Subpoena. If you fail to respond to a Subpoena, and the Court is satisfied that you have been properly served with the Subpoena and provided with "conduct money" you may be guilty of Contempt of Court and/or a Warrant may issue for your arrest and you may be ordered by the Court to pay any Costs resulting from your non-compliance. Failure to comply with a Subpoena is a serious Offence.

How should I respond to a Subpoena served on me?

You should first determine what is being asked of you, whether the Subpoena is for the production of documents and/or to give evidence. Please see below in relation to your rights and objections that may be taken to the Subpoena. We recommend that you consult your lawyer if in doubt, and or when you wish to object to the Subpoena served on you.



All mail to:

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The next thing you should do, is to check the time and date when you are required to comply with the Subpoena. If you are willing and have no Objection to complying with the Subpoena served on you, but the time within which you are required to comply with the Subpoena is too short, or you have difficulty attending at Court on the date set out in the Subpoena, you should contact the lawyer who has caused the issue of the Subpoena, to seek an extension of time to comply or a more convenient time when you may appear.

In the meantime, you should also determine what costs you are likely to incur in complying with the Subpoena. We recommend that you obtain agreement from the lawyers for the person who caused the issue of the Subpoena about the payment of your likely costs, prior to incurring the costs in compliance with the Subpoena.

How do I comply?

The Subpoena will show the date when you are to attend Court, or the date by which you are to produce the documents to the Court. The Subpoena should have been served on you with the Family Court brochure titled "Subpoena, information for people who have been served with a Subpoena" which sets out basic information in relation to Subpoenas, and instructions as to how you comply with a Subpoena from the Family Court. If you have not been served with a copy of the brochure, the brochure may be downloaded directly from the Family Court of Western Australia's website at <http://www.familycourt.wa.gov.au>.

Who pays for my costs and expenses of complying with the Subpoena?

You have a right to be provided with, and do not have to comply with a Subpoena when you have not been provided with, Conduct Money which is sufficient to meet your reasonable expenses of complying with the Subpoena served on you. The current minimum amount of Conduct Money that may be paid to you is \$10.00.

Where you have been served with a Subpoena to give evidence, the Conduct Money should cover the fares on public transport for return travel between your place of employment or residence and the Court and a reasonable allowance for accommodation and meals to be incurred during the time you are required to attend Court, if you are forced to rent accommodation, or buy meals, because of your attendance at Court. In addition, you are also entitled to be paid a witness fee by the person who caused the issue of the Subpoena, immediately after you have attended at Court in compliance with the Subpoena. The allowance currently provided under the Court rules is \$75.00 per day or part of a day, for the necessary absence from your employment or residence. If you are an expert witness, you may be paid such further amount as the Court allows for the preparation of a report and absence from your place of employment.

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We recommend that the above issues about the expenses and costs of complying with a Subpoena are raised and discussed with the lawyers for the person who caused the issue of the Subpoena as soon as possible after you are served with a Subpoena so that an agreement may be reached prior to the costs and expenses being incurred. Pursuant to Rule 15.24(1)(b) of the Family Law Rules, the person served with a Subpoena does not have to comply with the Subpoena if Conduct Money is not given to them at the time of service or within a reasonable time before the Court date for the Subpoena.

Pursuant to Rule 15.23(3), you may apply to the Court to be reimbursed if you incur substantial loss or expenses that are greater than the amount of Conduct Money or Witness Fee paid to you. The issue is what amounts to reasonable costs, as you must act reasonably in incurring the costs and expenses required to comply with the Subpoena. As recommended earlier, when you anticipate substantial costs and expenses, the issue should be raised immediately with the lawyers for the person who caused the issue of the Subpoena and they should confirm that they do still wish you to comply with the Subpoena and that they will pay your costs and expenses as estimated. If you have reason to believe that you may not be paid for your costs and expenses and wish to have the protection of a Court Order prior to incurring the expenses of complying with a Subpoena, you may apply to the Court for an Order that your costs and expenses be paid, prior to your compliance. We recommend that you obtain legal advice before making such an Application, as the law as to what is “reasonable” varies depending on the circumstances of the case.

Can I “object’ to the Subpoena?

Provided that you have a proper basis for your Objection (briefly described below), you may object to the Subpoena and apply to the Court to have the Subpoena set aside and be relieved from the obligations imposed on you either by the whole of the Subpoena or part/s of the Subpoena. The following are some of the Objections that may be taken to a Subpoena:

- Where complying with the Subpoena would constitute an oppressive burden on you;
- Where the Subpoena has not been issued in good faith for the purpose of obtaining evidence and you are unable to give relevant evidence to the Court for the purpose of the proceedings;
- Where the terms of the Subpoena are too wide, require you to go to unreasonable effort and expense and is a clear abuse of process by the person who caused the issue of the Subpoena;
- Where the Subpoena has been used to obtain discovery against you;
- Where the Subpoena seeks the production of documents “privileged” from production such as legal professional privilege or medical privilege;
- Where the documents are highly personal, sensitive and confidential and are unrelated or irrelevant to the proceedings;
- Where the documents are commercially sensitive and confidential and the issuing party may be able to use the documents to obtain an advantage unrelated to the case and proceedings.

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The law relating to whether or not a Subpoena has been properly issued, for a “genuine forensic purpose”, and whether an Objection is reasonable and ought to be upheld by the Court can be complex at times. If you wish to object to a Subpoena, we recommend that you obtain legal advice. If you have been served with a Subpoena and wish to discuss any of the above with us, please call us on (08) 9386 5200.

Butlers

At Butlers we pride ourselves on being “The Personal Law Firm”. Our commitment at Butlers is to make the law more accessible, affordable, understandable and human. We aim to reduce your concerns by speaking and writing in plain English, cutting through legal jargon and keeping you informed at all times. Through it all, we work closely with your family’s accountant, bank manager, financial adviser, and other professionals as required. We therefore encourage you to contact us if we may be of any assistance.

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