

# SUBPOENAS AND NOTICES TO PRODUCE

## A GUIDE FOR SELF-REPRESENTED LITIGANTS

If a person or organisation has documents you think are relevant to your case, you should approach them and ask to inspect the documents. If they will not give you access to inspect the documents, you might be able to compel them to produce the documents by subpoena or a notice to produce. This Guide explains how to issue subpoenas and notices to produce. It is important that, before issuing either of these, you have checked first with the person or organisation to see if they will let you inspect or obtain a copy of the documents without the necessity of a subpoena or notice to produce.

The Court's Practice Notes require public authorities, including councils, which are parties to proceedings in the court to produce on request any documents that are relevant to the application before the Court: Practice Notes - [Class 1 Development Appeals](#) at [11], [Class 1 Residential Development Appeals](#) at [19], [Classes 1, 2 and 3 Miscellaneous Appeals](#) at [6], [Class 4 Proceedings](#) at [14].

The [Uniform Civil Procedure Rules 2005](#) contain the legal requirements and procedures for obtaining access to documents, and requiring the attendance of witnesses, if it is not possible to arrange this in accordance with the Practice Notes, or otherwise by discussion with the person or organisation concerned.

### Subpoenas

If a person refuses, or is unable of their own free will, to produce documents or give evidence at a hearing, a party may request the Court to issue a subpoena directed to that person.

A subpoena can be issued to a party to the proceedings, or to any other person or organisation. A subpoena is issued by the Court, and failure to comply without lawful excuse is contempt of court: Uniform Civil Procedure Rules [Part 33 rule 33.12](#).

If documents are held by a party to the proceedings, an alternative is to issue a Notice to Produce (see below).

### Step 1

A party who is not represented by a lawyer, and who is representing themselves or is being represented by an agent, must obtain the leave of the Court to issue a subpoena: Uniform Civil Procedure Rules [Part 7 rule 7.3](#).

There are three forms for the different types of subpoena:

- A subpoena to attend to give evidence: [Form 25](#)
- A subpoena to produce: [Form 26](#)
- A subpoena to attend to give evidence and to produce: [Form 27](#)

A request to issue a subpoena can be made by filing the completed subpoena form, together with a written statement of reasons, at the Registry on level 4.

The written reasons should state the reasons why the subpoena is sought. The statement should explain how the evidence of the person to whom the subpoena is directed, or the documents requested, is relevant to the proceedings.

A subpoena must be addressed to a person. A subpoena seeking documents from an organisation must be addressed to the "Proper Officer" in that organisation: Uniform Civil Procedure Rules [Part 33 rule 33.3](#).

The request will be dealt with by the Registrar as soon as practicable, and generally within 48 hours. If the request is granted, the fee for the issue of the subpoena must be paid. The fee for issuing a subpoena is currently \$70 for an individual, \$140 for a corporation: see the [Schedule of Court Fees](#).

If leave is granted to issue the subpoena, the Registrar will include on the subpoena details of the date, time and place for the production of documents, or attendance to give evidence ("the return date"): Uniform Civil Procedure Rules [Part 33 rule 33.3](#).

## Step 2

The subpoena must be personally served on the person to whom it is directed. The requirements for personal service on an individual are set out in Uniform Civil Procedure Rules [Part 10 rule 10.21](#) (see the Court's Guide for Self-represented Litigants). A copy of the subpoena must be sent to the other parties to the proceedings: Uniform Civil Procedure Rules [Part 33 rule 33.5](#).

The person at whose request a subpoena is issued must give the person or organisation served with the subpoena "conduct money": Uniform Civil Procedure Rules [Part 33 rule 33.6](#). Conduct money is:

*A sum of money or its equivalent, such as pre-paid travel, sufficient to meet the reasonable expenses of the addressee of attending court as required by the subpoena and returning after so attending.*

If the subpoena is addressed to a council or other government organisation, they will advise the amount of conduct money that is required.

If the subpoena requires a person to attend to give evidence, the expenses of the witness, which may include loss of income, must be paid. The court may order the payment of other amounts for reasonable loss or expense incurred in complying with the subpoena: Uniform Civil Procedure Rules [Part 33 rule 33.11](#).

## Step 3

The person to whom the subpoena is addressed may object to the subpoena, and can apply to have the subpoena set aside on the ground that it was improperly issued and an abuse of process. This requires a Notice of Motion, and the request will be determined by the Registrar or a Judge of the Court.

If the subpoena requires the production of documents, the documents will be produced to the Court on the return date. The person at whose request the subpoena was issued can attend on that date and request access to the documents. Access to the documents produced is not automatic. The person producing the documents can object to access on the ground of privilege or confidentiality. The decision as to whether access should be granted will be made by the Registrar or by a Judge of the Court: Uniform Civil Procedure Rules [Part 33 rule 33.9](#).

If access to documents produced under subpoena is granted, it will usually be in the form of "general access". This includes the right to physically inspect the documents, and to photocopy them (subject to a fee for copying). Access is subject to agreeing to the following undertaking:

*I undertake to use the information obtained from this inspection only for the purpose of these proceedings and to destroy any copies at the conclusion of the proceedings.*

If a lawyer is representing a party, the Registrar may permit "uplift access": Uniform Civil Procedure Rules [Part 33 rule 9\(9\), \(10\)](#).

Documents produced under subpoena do not automatically become part of the evidence in the proceedings. The Judge or Commissioner hearing the matter will decide whether any particular document is admitted into evidence.

## **Notice to Produce**

If you seek the production of documents that are in the custody of another party to the proceedings you can ask them to produce the documents by issuing a Notice to Produce. There are two types of Notice to Produce.

### **Notice to Produce for Inspection**

A Notice to Produce for Inspection requires the party to produce specified documents at a specified location on a date set out in the Notice to Produce. The specified documents can be documents referred to in any of the documents prepared for the proceedings, including witness statements, and any other documents relevant to a fact in issue in the proceedings: Uniform Civil Procedure Rules [Part 21 rule 21.10](#); [Part 21 rule 21.9\(2\)](#).

The Notice to Produce for Inspection form is [Form 19](#).

There is no fee for a Notice to Produce for Inspection, and the Notice is not required to be filed in the Registry or provided to the Court. The court can order the payment of any reasonable loss or expense incurred in complying with a notice to produce: Uniform Civil Procedure Rules [Part 21 rule 21.13](#).

The party to whom the Notice to Produce is addressed can object to complying, by filing a Notice of Motion to set aside the notice. This will be determined by the Registrar or a Judge of the Court. If the party does not comply with the Notice to Produce within a reasonable time (generally 14 days), an application can be made to the Court to direct compliance, or a subpoena can be issued: Uniform Civil Procedure Rules [Part 21 rule 21.11](#).

### **Notice to Produce at Hearing**

A Notice to Produce to Court requires the party to produce any specified document to the court: Uniform Civil Procedure Rules [Part 34 rule 34.1](#). The fee is the same as that for the issue of a subpoena, however it is payable when the documents are produced to the Court: see [Schedule of Court Fees](#).

The Notice to Produce to Court form is [Form 24](#).

The party to whom the Notice to Produce to Court is addressed must comply by producing the document, or a copy of it, if it is in his or her possession: Uniform Civil Procedure Rules [Part 34 rule 34.1\(2\)](#), [Part 34 rule 34.2\(1\)](#). The court may require the party requiring production to pay the amount of any reasonable loss or expense incurred by the party required to produce: Uniform Civil Procedure Rules [Part 34 rule 34.3](#).

Documents produced in response to a Notice to Produce either to a party or to the Court do not automatically become part of the evidence in the proceedings. The Judge or Commissioner hearing the matter will decide whether any particular document is admitted into evidence.