

Subpoena

Federal Circuit and Family Court of Australia (Family Law) Rules 2021 – RULE 6.26

Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021 – RULE 16.01

Please type or print clearly and mark [X] all boxes that apply. Attach extra pages if you need more space to answer any question/s.

Filed in: **Check the first box**

- Federal Circuit and Family Court of Australia
 Family Court of Western Australia
 Other (specify) _____

Type of proceeding:

- Family law
 Migration law
 General federal law **Check this box**

Filed on behalf of (full name): **Write your full name** _____

MARK [X] IN THE BOX THAT APPLIES TO YOU

- Applicant **Check this box** Respondent Other (specify) _____

IMPORTANT NOTE FOR FAMILY LAW PROCEEDINGS: Self-represented parties must obtain permission (known as leave) to request the issue of a subpoena. See notes on page 4.

Is leave to issue this subpoena required under the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*?

- Yes – provide cover letter explaining relevance when filing this subpoena (see notes on page 4). No. **Check this box** No – leave has previously been given by a Court order dated (specify) _____

TO

Write the name of the person being subpoenaed

NAME

Address

Write the address of the person being subpoenaed

Write your state and postcode

State

Postcode

YOU ARE ORDERED TO: (select one box only)

- Attend court to give evidence (see Part B for details of order)
 Attend court to give evidence and produce documents (see Part C for details of order)
 Produce documents to the Court (see Part D for details of order). **Check this box**

TAKE NOTICE: if you fail to obey this subpoena Leave this section blank

- a warrant may be issued for your arrest
- you may be liable to pay any costs occasioned by your failure to comply, and
- in family law proceedings, the Court may impose a penalty under section 112AD of the *Family Law Act 1975*.

Date: ____ / ____ / ____ Registrar: _____

The last date for service of this subpoena is ____ / ____ / ____ (See Notes 6-15)

Please read the Notes at the end of this subpoena

Filed on behalf of	Write your name		
Prepared by	Write your full name	Lawyer's code	Leave blank
Name of law firm	Leave blank		
Address for service in Australia	Write your full name		
	State Write your state	Postcode	Write your postcode
Email	Write your email address		
Telephone	Write your telephone number here		

COURT USE ONLY

Client ID **Leave blank** _____

File number **Leave blank** _____

Filed on **Leave blank**

Court location **Leave blank**

The last date for service of this subpoena is (refer to Notes 6 to 15 on pages 4-5)

Leave blank _____

Documents must be produced to registry by: **Leave blank**

Part A About the parties to the proceeding

APPLICANT 1

Family name as used now

Write your surname

Given names

Write your first and middle names

RESPONDENT 1

Family name as used now

Write your employer's surname

Given names

Write your employer's first name

Part B Details of order to attend court to give evidence

Leave this section blank

Date you must attend court: ____ / ____ / ____

Time you must attend court: _____ AM PM

Place you must attend court: _____

You must continue to attend each day unless excused by the Court or until the hearing of this matter is completed.

Part C Details of order to attend court to give evidence and produce documents

Leave this section blank

Date you must attend court: ____ / ____ / ____

Time you must attend court: _____ AM PM

Place you must attend court: _____

You must continue to attend each day unless excused by the Court or until the hearing of this matter is completed.

When you attend court, you must produce the books, documents and things described in the Schedule at Part E.

Part D Details of order to produce documents to the Court

NOTE: Copies of documents should be produced to the Court electronically in PDF format unless electronic production is not possible.

You must produce the books, documents and things described in the Schedule at section E:

Date and time for production: On or before **Write the time** PM on **Write the date**

Email: **Write the email of the Court**

Place: **Write the suburb of the Court** registry, (address of court) **Write the address of the Court**

State: **Write the state** Postcode: **Write the postcode**

Instead of attending court you may email or deliver the documents and things described in the Schedule to the Registry at the 'address of Court' specified above at least 2 days before the date for production specified above.

See Notes 23 and 24 for automatic release of documents.

This subpoena was issued at the request of the issuing party named in the footer on page 1.

DO NOT send subpoenaed documents to this person.

Subpoenaed documents must be produced to the Court, notwithstanding any objection being made.

The Registrar will issue a receipt to the person producing the documents or things.

Part E Schedule

(if insufficient space attach list)

Books, documents and things you must produce from your possession, custody or control

1. a copy of this subpoena
2. **Write a list of the documents and things you want the person named in this subpoena to produce. Make sure you provide enough detail about the documents and things you want produced so that they can be easily identified.**

NOTE: You may produce a copy of the document or thing instead of the original unless the subpoena specifically requires the production of the original document or thing.

Federal Circuit and Family Court of Australia (Family Law) Rules 2021 (Family Law Rules) — Rule 6.26
Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021 (General Federal Law Rules) — Rule 16.01

NOTES

Family law proceedings

Limitations – subpoenas

1. Self-represented parties must obtain permission to request the issue of a subpoena: see rule 6.27(1) of the Family Law Rules.
2. A party must not request the issue of more than 5 subpoenas for production in an application for interlocutory orders without the Court's leave: see rule 6.27(3) of the Family Law Rules.
3. An Independent Children's Lawyer may request the issue of any number of subpoenas for production in an application for interlocutory orders without the Court's leave: see rule 6.27(4) of the Family Law Rules.
4. Without the court's leave, a party or an Independent Children's Lawyer must not request the issue of a subpoena:
 - (a) to give evidence,
 - (b) for production and to give evidence,
 - (c) for production for a final hearing, or
 - (d) for production directed to another party to the proceeding.See rule 6.27(2) of the Family Law Rules.
5. **If leave is required, the issuing party (including the independent children's lawyer) should provide a short cover letter outlining:**
 - (a) **a list of the subpoena/s** you seek to have issued;
 - (b) **the reasons why permission should be granted (including relevance or an order of the Court); and**
 - (c) **an undertaking that the Court has made no order restricting the issuing of any subpoena.**
6. Upon receipt of this letter, Registry will direct consideration of request to the Docket Registrar or Docket Judge.

For more information see the guide [Leave requirements for subpoenas in family law proceedings](https://www.fcfsa.gov.au/fl/subpoenas) at <https://www.fcfsa.gov.au/fl/subpoenas>

Service of subpoena

7. A subpoena requiring a person to **give evidence** must be served personally on the person subpoenaed: see rule 6.30(1) of the Family Law Rules.
8. A subpoena for **production only** must be served by ordinary service, unless otherwise agreed between the issuing party and the person subpoenaed: see rule 6.30(2) of the Family Law Rules.
9. The issuing party must serve by ordinary service a copy of this subpoena on each other party, any interested person and any independent children's lawyer in the proceeding: see rule 6.30(3) of the Family Law Rules.

General federal law proceedings

Limitations – subpoenas

10. A party must not request the issue of more than 5 subpoenas in a proceeding without the Court's leave: see rule 16.04 of the General Federal Law Rules.

Service of subpoena

11. A subpoena requiring a person to **give evidence** must be served personally on the person subpoenaed: see rule 6.06 of the General Federal Law Rules.
12. Personal service of a subpoena is not required in certain circumstances: see rule 6.06(2) of the General Federal Law Rules.
13. The issuing party must serve a copy of this subpoena on each other party and any interested person in the proceeding by ordinary service: see rule 16.05(2) of the General Federal Law Rules.

All proceedings

14. An 'interested person' means a person who has a sufficient interest in the subpoena.
15. The issuing party must serve the subpoena on the person subpoenaed, the other parties, any independent children's lawyer and any interested person as follows:
 - (a) at least **7 days** before the date for attending court for a subpoena to **attend court to give evidence**;
 - (b) at least **10 days** before the date for attending court for a subpoena to **attend court to give evidence and to produce documents**;
 - (c) at least **10 days** before the date for producing documents for a **subpoena requiring the person to produce documents to the Court**.
16. The named person may reach an agreement with the issuing party in relation to a different **manner of service** of a subpoena to produce documents only.
17. The **issuing party** may reach an agreement with each other party, any interested person and any independent children's lawyer in relation to a different **manner of service**.

Cost of complying with subpoena

18. The person serving the subpoena must give the person subpoenaed conduct money sufficient to meet the reasonable expenses of compliance. The amount of conduct money must be at least \$25. See rule 6.31 of the Family Law Rules and rule 16.06 of the General Federal Law Rules.
19. If you are the person subpoenaed and you are not a party in the proceeding and you will incur substantial loss or expense in properly complying with the subpoena, you may apply to the Court for an order that the issuing party pay you an amount in respect of the loss or expense. Before making such an application you may wish to give notice to the issuing party that substantial loss or expense would be incurred in properly complying with the subpoena, including an estimate of the loss or expense.

Objection to production, inspection or copying of documents

20. The person required by this subpoena to produce documents or things may object to producing a document by completing, filing and serving the attached *Notice of Objection – Subpoena* before the date specified in this subpoena for production. The documents or things identified in the subpoena must be provided to the registry before the date of production, even if the person required to comply with the subpoena lodges a *Notice of Objection*.
21. Any party or any interested person or any independent children’s lawyer may object to inspection or copying of a document described in this subpoena by completing, filing and serving the attached *Notice of Objection – Subpoena* before the date specified in this subpoena for production.
22. For non-parties:
 - (a) In family law proceedings, a *Notice of Objection* can be lodged for filing by email to the relevant registry filing email address on the Court’s website.
 - (b) In general federal law proceedings, a *Notice of Objection* can be lodged for filing by email to the relevant general federal law registry email address on the Court’s website.

NOTE: Rule 6.38 of the Family Law Rules and rule 16.13 of the General Federal Law Rules.

Automatic release of documents for inspection or copying (Part D)

23. Subject to any objection being upheld or an order of the Court and subject to the issuing party filing a *Notice of Request to Inspect* in the approved form, each party and any independent children’s lawyer may, by appointment, inspect all documents produced in response to this subpoena and may take copies of all documents produced in response to this subpoena (other than a child welfare record, medical record, criminal record or police record): see rule 6.37 of the Family Law Rules and rule 16.12 of the General Federal Law Rules.
24. A person who inspects or copies a document produced in response to this subpoena must:
 - (a) use the document for the purpose of the proceeding only, and
 - (b) not disclose the contents of the document or give a copy of it to any other person without the Court’s permission (except to a lawyer, client, or expert as provided in rule 6.36(3) of the Family Law Rules).

Child welfare, medical, criminal and police records

25. Medical records, criminal records and police records produced in response to this subpoena will be available for inspection by each party and any independent children’s lawyer, but these records will not be available for copying without an order of the Court.

Criminal record means a record of offences for which the person has been found guilty.

Medical record, for a person, means the histories, reports, diagnoses, prognoses, interpretations and other data or records, written or electronic, relating to the person’s medical condition or treatment, that are maintained by a physician, counsellor, hospital or other provider of services or facilities for medical treatment.

Police record means records relating to the person kept by the police, including statements, police notes and records of interview.

26. In family law proceedings, child welfare records will not be available for copying without an order of the Court.

Child welfare records are records relating to child welfare held by a State or Territory agency mentioned in Schedule 9 to the *Family Law Regulations 1984*.

Note: For child welfare records, there may be restrictions on inspection imposed by protocols entered into between the Court and the relevant child welfare department.

Objection by person to inspection of medical records

27. If the documents to be produced under this subpoena include a person’s medical records, that person may, **before** the date stated for production, notify the Court in writing that they wish to inspect

the records for the purpose of determining whether to object to the inspection or copying of the document by any other party: see rule 6.38 of the Family Law Rules and rule 16.13 of the General Federal Law Rules.

28. If such notice is given:

- (a) that person may inspect the medical records and may, within 7 days after the date stated in the subpoena for production, object to inspection or copying of a document described in this subpoena by completing, filing and serving the attached *Notice of Objection – Subpoena*, and
- (b) unless otherwise ordered, no other person may inspect the medical records until the later of 7 days after the date stated in the subpoena for production or the hearing and determination of the objection.

Time and date for hearing an objection

29. Any objection in relation to this subpoena will be heard before a judge or registrar. The Registrar will advise the parties and the objector of the time and date when they will be required to attend court for the hearing and determination of the objection.

You should provide a copy of this Notice of objection with the Subpoena when you serve the person names in the subpoena.

Notice of objection – Subpoena

Any person named in this subpoena or affected by this subpoena who objects to the production or inspection or copying of documents described in this subpoena must:

TO BE COMPLETED BY THE PERSON FILING THIS NOTICE

File number _____

Court date _____

Filed at _____

Filed on _____

Court location _____

1. **complete and sign** this *Notice of Objection*
2. **file** this *Notice of Objection* together with a copy of the subpoena before the date for the production of documents required by the subpoena. If you are the person required in the subpoena to provide the documents or things, you are still required to provide these to the court registry prior to the date of production.
3. serve a copy of this *Notice of Objection* together with a copy of the subpoena on the issuing party, all other parties (including any independent children’s lawyer), and the person being subpoenaed (if that is not you), and
4. **attend Court** on the date set by the Registrar for consideration and determination of this Objection.

Part A Details of objection

TO the Registrar of the Court, at (registry) _____

AND TO the issuing party

AND TO all other parties in this proceeding

(Name of person objecting): _____

(select **one** box only)

I am the person subpoenaed in the attached subpoena

I have been given a copy of the attached subpoena directed to

(Name of person subpoenaed): _____

Filed on behalf of	
Prepared by	Lawyer's code
Name of law firm	
Address for service in Australia	
	State	Postcode
Email	
Telephone	

Details of objection continued...

(select **box** or **boxes**)

I give notice that I object to the production of some or all of the documents to the Court for the following reasons: *(attach extra page if insufficient space)*

1.

I give notice that I object to the inspection / copying of some or all of the documents produced for the following reasons: *(attach extra page if insufficient space)*

1.

Part B Signature

Signed

Date

Signed by (print full name): _____

the applicant

lawyer for the applicant

the person objecting

lawyer for the person objecting