

Subpoena: guide for issuing parties

Purpose

The Department of Children, Youth Justice and Multicultural Affairs processes approximately 1900 subpoenas and similar notices of the Court annually. This guide is aimed at assisting issuing parties better understand the department's document production process and assist in determining the type of child protection information that may be needed to support the court process. The guide covers:

- requirements for child protection documents
- service
- conduct money and reasonable costs
- information restricted from production
- form of production.

The accompanying fact sheet ***Subpoena: guide to child protection documents*** provides information about the types and content of child protection documents produced.

Requirements for child protection documents

Additional to the usual requirements for issuing a subpoena, the *Child Protection Act 1999 (CP Act)* contains specific requirements for seeking child protection documents. Subpoenas that do not comply with these requirements are not able to be accepted. In particular, please note that section 190 of the CP Act requires information to be provided relating to date ranges, circumstances and relevance in order for the department's records to be produced.

Relevance generally

Subpoenas must have enough information to allow relevance to be assessed. For criminal matters, this information should consist of the bench charge sheets or at a minimum, a description of the charges being answered by the defendant/accused. For family law proceedings, we require a general description of the orders being sought and context around the matter to allow for relevance of material to be assessed.

Service

Ordinary service is acceptable for most Australian Court. Subpoenas for some matters **must** be served by hand and can be served at the address below.

Service by hand is to the delivery address provided in the '**More information**' section below.

While service by hand is required before the last date of service, we welcome advance notice of an upcoming service by emailing a copy of the subpoena to the address provided below. This email address may also be used to effect ordinary service where applicable court rules allow for ordinary service.

Alternatively, you can post the subpoena to the postal address also provided below.

Please note Australia Post [standard postage timeframes](#) if effecting ordinary service by post. The subpoena itself **must** be addressed to the **Director-General, Department of Children, Youth Justice and Multicultural Affairs**, in order for us to have authority to deal with and produce the documents.

Conduct money and reasonable costs

Some applicable court rules require that the subpoena be accompanied by **conduct money** sufficient to cover the costs of compliance. Other court rules specify that **reasonable costs** associated with compliance may be set at a particular rate by the court and can be collected if the party responding to the subpoena provides advice that the costs will be incurred. If you are required to pay conduct money or wish to make payment for our reasonable costs upfront, the rate is currently set at **\$84.45**. Payment by cheque or money order is preferred and these **must be made out in the department's full name** found in the '**More information**' section below.

Should reasonable costs be charged, you will be advised and provided with adequate time to pay these costs. Documents will be produced by the relevant time regardless of whether or not the reasonable costs have been paid.

Payment of outstanding charges will be followed up by the department.

Information restricted from production

The CP Act **prohibits** the production of information from which the identity of a child protection notifier can be deduced, as follows:

186 Confidentiality of notifiers of harm or risk of harm

- (1) *This section applies if a person (the notifier) notifies the chief executive or an authorised officer, police officer, doctor or nurse that the notifier suspects—*
 - (a) *a child has been, is being or is likely to be, harmed; or*
 - (b) *an unborn child may be at risk of harm after he or she is born.*
- (2) *The person who receives the notification, or a person who becomes aware of the identity of the notifier, must not disclose the identity of the notifier to another person unless the disclosure is made—*
 - (a) *in the course of performing functions under this Act or a child welfare law or interstate law of another State to another person performing functions under this Act or a child welfare law or interstate law of another State; or*
 - (b) *under the Child Protection (International Measures) Act 2003, part 6; or*
 - (c) *to the ombudsman conducting an investigation under the Ombudsman Act 2001; or*
 - (e) *for the performance by the chief executive (adoptions) of his or her functions under the Adoption Act 2009; or*
 - (f) *by way of evidence given in a legal proceeding under subsections (3) and (4).*

Maximum penalty—40 penalty units.
- (3) *Subject to subsection (4)—*
 - (a) *evidence of the identity of the notifier or from which the identity of the notifier could be deduced **must not be given in a proceeding before a court or tribunal without leave of the court or tribunal**; and*
 - (b) *unless leave is granted, a party or witness in the proceeding—*
 - (i) *must not be asked, and, if asked, can not be required to answer, any question that can not be answered without disclosing the identity of, or leading to the identification of, the notifier; and*
 - (ii) *must not be asked to produce, and, if asked, can not be required to produce, any document that identifies, or may lead to the identification of, the notifier.*

- (4) *The court or tribunal must not grant leave unless—*
- (a) *it is satisfied—*
 - (i) *the evidence is of critical importance in the proceeding; and*
 - (ii) *there is compelling reason in the public interest for disclosure; or*
 - (b) *the notifier agrees to the evidence being given in the proceeding.*
- (5) *In deciding whether to grant leave, the court or tribunal must take into account—*
- (a) *the possible effects of disclosure on the safety or wellbeing of the notifier and the notifier's family; and*
 - (b) *the public interest in maintaining confidentiality of notifiers.*
- (6) *As far as practicable, an application for leave must be heard in a way that protects the identity of the notifier pending a decision on the application.*

For the department to produce information *from which the identity of a notifier can be deduced*, leave must be granted by the Court. An order must be issued to that effect. Given that notifiers are any person who tells the department about harm to a child, a notifier can be:

- the subject child
- the subject child's parents or extended family
- neighbours or friends
- mandatory notifiers, for example, health and education professionals dealing with the subject child and their family (e.g. police, doctors, nurses, teachers)
- other professionals who work with children and who may notify as a result of their close dealings with a child (e.g. early childhood education and care professionals, allied health professionals, social workers).

Protections are afforded to all of these types of notifiers under section 186, even if the notifier is a party to the proceeding or the notifier's identity is otherwise known to the parties. Departmental officers and police officers performing child protection functions are generally not afforded protections under section 186.

Other information which may be refused

Additionally, section 191 of the *Child Protection Act 1999* provides discretion for other information to be refused for production in a proceeding, including:

- information subject to legal professional privilege
- communications between the department and the office of the Director of Child Protection Litigation
- information the disclosure of which would be likely to endanger a person's safety or psychological health
- information the disclosure of which identifies or is likely to identify its source and identification of that source is likely to prejudice the achievement of the purpose of the CP Act
- records of confidential therapeutic counselling the disclosure of which is not consented to by the person to whom it relates (mandatory to refuse to produce except in limited circumstances)
- information the disclosure of which could reasonably be expected to prejudice the investigation of a contravention or possible contravention of the law in a particular case
- information the disclosure of which could reasonably be expected to prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law

- information the disclosure of which could reasonably be expected to enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained
- personal information not materially relevant to the proceeding
- information the disclosure of which would be contrary to public interest
- where there is other good reason for not disclosing information, having regard to the best interests of a child who is a subject of the proceeding.

Redactions

The department uses redaction software to redact information restricted from production before producing documents to the court.

Redaction codes

'Codes' are used in the boxes redacted to specify the grounds upon which information has been redacted. The following codes are commonly used:

Code	Information redacted
s186	Information from which the identity of a notifier could be deduced (prohibited by section 186 of the CP Act)
s191(2)(a)	Information subject to legal professional privilege
s191(2)(b)	Communications between the department and the office of the Director of Child Protection Litigation
s191(2)(c)	Information the disclosure of which would be likely to endanger a person's safety or psychological health
s191(2)(d)	Information the disclosure of which identifies or is likely to identify its source where identification of that source is likely to prejudice the achievement of the purpose of the CP Act
s191(2)(e)	Records of confidential therapeutic counselling the disclosure of which is not consented to by the person to whom it relates
s191(2)(f)(i)	Information the disclosure of which could reasonably be expected to prejudice the investigation of a contravention or possible contravention of the law in a particular case
s191(2)(f)(ii)	Information the disclosure of which could reasonably be expected to prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law
s191(2)(f)(iii)	Information the disclosure of which could reasonably be expected to enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained
s191(2)(g)(i)	Personal information not materially relevant to the proceeding
s191(2)(g)(ii)	Information the disclosure of which would be contrary to public interest
s191(2)(g)(iii)	Information the disclosure of which is not disclosed for another good reason, having regard to the best interests of a child who is a subject of the proceeding

If you have agreed to the removal of duplicated information, the information will be redacted with the code 'duplicated information'. Usually, there will be a reference to the page on which the information appears the first time.

A code should appear on every page and will refer to all boxes beneath the code until the code changes.

Concerns with redaction

Please contact the subpoena team if you:

- do not understand the context of the information produced
- consider the information redacted should be before the court in order for it to make an informed decision
- have concerns that too much information has been redacted.

In these cases, documents can be reviewed by a senior staff member and advice provided. If review warrants it, or the court orders further production, it is possible for the department to respond quickly by providing additional documents to the court by secure email.

Form of production

Where accepted by the court, documents are produced on CD. In other cases, photocopies of documents are produced.

More information

Contact the Subpoena Team for further information or assistance.

Postal address: Department of Children, Youth Justice and Multicultural Affairs
Locked Bag 3405
BRISBANE Q 4001

Delivery address: 111 George Street
BRISBANE Q 4000

Email: subpoena@csyw.qld.gov.au

Hotline: (07) 3097 5603

Fax: (07) 3097 5604