

Family Violence Order Final Hearing – How to issue a subpoena

Who Should Use This Factsheet?

See the factsheet *'Preparing for your Family Violence Order Final Hearing'* if you are **representing yourself** at a final hearing. The *'Family Violence Order Final Hearing Checklist'* also includes more information on what other steps are involved in preparing for a hearing. This factsheet is not a substitute for legal advice. If you need legal advice in relation to a family violence matter, you should speak to a lawyer. Our Family Violence and Personal Protection Unit may be able to help you with your family Violence matter. To find out about this service, please call our Helpline on 1300 654 314.

Key Terms

- Applicant – the person applying for a court order
- Respondent – the person named by an applicant as the other party
- Magistrate – another name for the Judge that will hear and decide your case at the final hearing
- Parties – another name for both the applicant and the respondent

Remember

- The Magistrate will only consider the evidence given to him or her during the hearing. If there is a document or other evidence you want the Magistrate to see, you need to bring it with you.
- The Magistrate won't have access to police records. If you've made a police report, you will need to get a copy to give to the Magistrate if you want to use it as evidence. You may need to use a subpoena to get a particular document you think is relevant to your case. See the factsheet *'Preparing for your Family Violence Order Final Hearing'* for information on this process.

HOW TO ISSUE A SUBPOENA

There are a few steps to issue a subpoena. A subpoena is a way to get access to evidence someone else has that you know exists.

There are two types of subpoenas:

1. Subpoena to produce documents (to get documents)
2. Subpoena to give evidence (to get a person to be a witness in your case)

Examples of documents you may want to get are:

- Financial records including bank statements, copies of bills,
- Police records, statements, PROMIS entries, incident reports, witness statements, statement of facts, notes and other documentation relating to a certain incident or complaint.
- Professional reports

Family Violence Order Final Hearing – How to issue a subpoena

- Medical and social work notes
- CYPS safety plans

There may be other documents you need to support your case.

Note: If you issue a subpoena for a professional report, you will need to also get the person who wrote the report to be your witness. The report will be most useful to the Court if you and the other party have an opportunity to ask the author questions about the report and their opinion in it.

Step 1: Complete the form

You can get the subpoena forms from the ACT Magistrates Court registry. You need to clearly list the document or things you want to get or who you want to give evidence.

An example subpoena to produce documents to the AFP is included at the end of this factsheet. You will need to fill in the details highlighted in yellow.

The section of a subpoena to produce documents titled 'Schedule' is where you put the documents you want to get from the organisation. The example subpoena to the AFP at the end of this Factsheet includes a schedule with the types of documents you may request from the AFP. The Schedule will be different depending on what documents you want and which organisation you are trying to get them from.

A subpoena must also:

- Identify the person you are asking to give you over certain documents or appear in court as a witness. If you are asking an organisation to give you documents, you need to find out who at that organisation is allowed to hand over this information. At the AFP, this person is called the 'Proper Officer'.
- Ask for documents that exist. You can't ask for someone or an organisation to create a document using a subpoena.
- Be very clear about what documents you want. The person or organisation who gets the subpoena shouldn't need to try and figure out what documents you do or don't want. If they have to make these sorts of decisions, you have not been clear enough.
- Not be directed to a Court. There's a different process for asking for a Court to hand over a document they have. You can't do this using a subpoena.
- List the date that you wish for the material to be returned/the date the you wish for a person to appear to give evidence.

Note: If you are seeking material about a specific person, such as a Respondent, the subpoena schedule will normally require that you list their name **and** date of birth e.g. *The Respondent John Smith (DOB 01/02/1999)*. However, if you do not know a party's date of birth, you can substitute it with their address e.g. *The Respondent John Smith of 1 Mitchell Street, Braddon*.

Family Violence Order Final Hearing – How to issue a subpoena

Step 2: File the subpoena

After you complete the form, you need to give it to the ACT Magistrates Court. This is called filing. There is no fee to file documents in a Family Violence Order or Personal Protection Order court case.

You need to give the ACT Magistrates Court:

1. The original subpoena
2. A copy for each person you are issuing a subpoena to
3. A copy for each party in your case
4. A copy for yourself

For example, if you are only issuing one subpoena to the AFP then you will need the original subpoena and 3 additional copies: one for the AFP, one for the other party, and one for you.

The Court will keep the original and give you back the copies. The copies the Court gives back to you will have the Court's stamp on it.

Step 3: Serve the subpoena

You will then need to give a copy of the stamped subpoena to the person or organisation you want to give you certain documents, or to the person you want to be a witness. There is a process for how to do this called 'service'. There are rules about how to serve a subpoena that you need to follow.

The rules state that you need to serve the subpoena personally.

The last date to serve is **5 business days** before the date in the subpoena for compliance. This means you need to serve the document at least 5 business days before the date the document or thing needs to be produced, or the person needs to come to court to give evidence. For example, if you want material returned to the Court by Thursday, you must serve the subpoena by close-of-business Wednesday the previous week.

Note: Public holidays are **not** counted in the 5 business days. Using the example above, the last date to serve would become Tuesday.

If you miss this deadline, you need to ask the court's permission to serve late. This is called 'an application for leave'. You can do this by giving the court ('filing'):

- A draft of the subpoena; and
- An affidavit in support of the court doing this.

Family Violence Order Final Hearing – How to issue a subpoena

An affidavit is a written document of your evidence. There is an affidavit form (Form 6.11) attached to the end of this resource. It is also available on the ACT Magistrates Court website:

<https://www.courts.act.gov.au/magistrates/forms/witnessing-documents>

The affidavit in support of leave being granted needs to include:

- Why it is important the person gives evidence or produce a document/thing;
- Why you didn't do this earlier;
- If you have told the person they will be need to give evidence on a certain date or produce a document/thing;
- If they will be able to come to court on this date or produce the document/thing; and
- The earliest date you will be able to serve the subpoena if the court grants you leave to do this late.

Step 4: Attend the return date for the subpoena

There will be a return date for the subpoena. This is the date the subpoena should be complied with. If it is a subpoena for a witness to give evidence, the return date will be the date the witness is required to go to the hearing and give evidence.

If it is a subpoena to produce a document, you will need to come to court on the return date in order to check whether they have produced the document and to ask for access to it. The return of subpoenas list is normally held every Thursday from 2:15pm

Access orders for subpoenas to produce

If you have filed a subpoena to produce material, and the material is returned before the Court, the Court will ask you what access orders you are seeking. There are two steps to access orders: which party gets first access; and for how long that party gets first access.

Which party gets first access depends on to whom the subpoena material relates. For example, if you have sought AFP material or medical records of a Respondent, then the Respondent will get first access. This is because the Respondent must have the opportunity to review the material and assert any claim of privilege over the material. If the material relates to both parties equally, then both parties get immediate access. For example, if an Applicant is seeking material relating to the Applicant and Respondent's shared child, then both parties are given access immediately.

Once it is determined who gets first access, the next step is to determine for how long the first access lasts. There are two types of access orders:

Family Violence Order Final Hearing – How to issue a subpoena

1. 'Usual orders' gives the first party access for 5 **business** days. If the Court orders that 'usual orders are made with first access to the Respondent,' this means that the Respondent will have exclusive access to the material for 5 business days. After those 5 business days have elapsed, the Applicant and the Respondent can both review the material at their discretion.
2. 'Shortened access orders' gives the first party access for a period that is less than 5 business days. Shortened access is normally sought where there is not sufficient time for a full 5 business days to pass. For example, if material is returned on Thursday, and the final hearing is the next week, the Court will grant shortened access to allow all parties the opportunity to review the material. You must normally have a reason to apply for shortened access.

Objecting to a subpoena

The court has the power to set aside a subpoena completely or partly. This means that if the Applicant, Respondent or someone else with sufficient interest in the case can ask the court to not require a person or organisation to give evidence or hand over (produce) a certain document or thing.

To object, you need to tell the court why you are objecting. Examples of reasons you might object are:

- If the subpoena doesn't follow the time constraints;
- If the records being requested are confidential or sensitive;
- If the document is irrelevant to the court case;
- If the document being requested is not in your possession.

At the return date for the subpoena, you can tell the court that you object to the subpoena. If you object at the Return of Subpoena list, the Court has the power to hear the objection then and there. You can also object in writing before or after the return date. If an objection is made in writing, this is called an 'Application in Proceeding'. The Court will likely listen to your objection and the reasons why on a Wednesday in the Civil Applications List. The other party will also get a chance to say why they want the subpoena complied with.

If you object, the Court may:

- Support you and prevent documents being disclosed;
- Support some of your objection and only allow certain things to be disclosed in a document;
- Put limitations on the use and distribution of information;
- Find the subpoena invalid and set it aside so it doesn't have to be complied with;
- Dismiss your objection.

Family Violence Order Final Hearing – How to issue a subpoena

Where Can I Get Legal Help?

Legal Aid ACT

For assistance phone our free Legal Aid Helpline.

Phone: 1300 654 314

Monday to Friday 9.00am to 4.00pm

Address: 2 Allsop Street Canberra City

Website: www.legalaidACT.org.au

Women's Legal Centre

Women's Legal Centre is a Community Legal Centre for women in Canberra.

Phone (From Canberra): 02 6257 449

Phone (Outside Canberra): 1800 634 669

Monday to Friday 9.30am to 12.00pm

Website: <http://womenslegalact.org/>

Other Resources

ACT Policing

Phone: **000** in an emergency or life threatening situation.

ACT Domestic Violence Crisis Service

DVCS is an inclusive service working with children, young people and adults who experience violence and/or controlling behaviours in their relationships.

Phone: 6280 0900 24/7 Crisis Line

Website: www.dvcs.org.au

Canberra Rape Crisis Centre (CRCC)

CRCC is available for any woman, man, young person or child who has experienced sexual violence in any of its forms, recently or historically. CRCC also offer support for family and friends who are supporting a victim/survivor of sexual violence.

Phone: 6247 2525, 7am to 11pm

Website: www.crcc.org.au

Magistrates Court

Address: 4 Knowles Place Canberra

Civil: (02) 6205 3649

Criminal: (02) 6205 4902

Family Violence Order Final Hearing – How to issue a subpoena

National Sexual Assault, Domestic & Family Violence Counselling Service

Professional counselling and support 24/7

Phone: 1800RESPECT (1800 737 732)

Website: <https://www.1800respect.org.au/>

Translating and Interpreting Service

Phone: 131 450, 24 hours / 7 days a week

Relevant Legislation

Court Procedure Rules 2006 (ACT)

<https://www.legislation.act.gov.au/sl/2006-29/default.asp>

Family Violence Act 2016 (ACT)

<https://www.legislation.gov.au/Details/C2017C00385>

Service and Execution of Process Act 1992 (Cth)

<https://www.legislation.gov.au/Details/C2018C00175>

Example of how to complete a subpoena

Form 6.10A Subpoena to produce documents

Court Procedures Rules 2006

(see r 6602 (Form of subpoena))

In the Magistrates Court of the Australian Capital Territory
Civil Jurisdiction

No **FVO/WPO/PPO XXXX/YEAR**

Firstname Lastname

Applicant

Firstname Lastname

Respondent

To: The Proper Officer

Information Access Team, Prosecution Support

Australian Federal Police

City Police Station

London Circuit

Canberra City ACT 2601

Filed by the Applicant

Address:

Email

Telephone:

You are ordered:

- to produce this subpoena or a copy of it and the documents or things stated in the schedule—see section A

Failure to comply with this subpoena without lawful excuse is a contempt of court and you may be dealt with accordingly.

The last date for service of this subpoena is: **Day Month Year**
(see note 1)

Please read notes 1 to 16 at the end of this subpoena.

(seal or stamp of the Court)

Date: **Day Month Year**

Issued by the **Applicant** whose address for service is:

Address
Email:

A. Details of subpoena to produce

You must comply with this subpoena—

- (a) by attending to produce this subpoena or a copy of it and the documents or things stated in the schedule below at the date, time and place stated for attendance and production; or
- (b) by delivering or sending this subpoena or a copy of it and the documents or things stated in the schedule below to the Registrar (*or, for an arbitration under the Commercial Arbitration Act 2017, the arbitral tribunal*) at the address below so that they are received not less than 2 days before the date stated for attendance and production. (*see notes 5-12*)

Date, time and place at which you must attend to produce the subpoena or a copy of it and documents or things (unless you are given notice under rule 6603A of a later date or time to attend)—

Date: XX XXXX 2020

Time: XX:XX AM/PM

Place: ACT Magistrates Court

Address where the subpoena (or copy) and documents or things may be delivered or posted—

ACT Magistrates Court
4 Knowles Place, City
Australian Capital Territory 2601

If you are given notice under rule 6603A stating a date or time for attendance or production or both, you must attend at the date or time stated in the notice.

Schedule

The documents and things you must produce are as follows:

1. Copies of all police records, statements, PROMIS entries, incident reports, witness statements, case summaries, notes and documentation in relation to any incidents or complaints involving the Applicant, **(Name, DOB)** and the Respondent, **(Name, DOB)**
2. Copies of all incident reports/case summaries/PROMIS entries concerning any complaint of or investigation into allegations of personal or family violence or contraventions of Domestic Violence Orders, Family Violence Orders or Personal Protection Orders involving the Respondent, **(Name, DOB)**.
3. Copy of the criminal record of the Respondent, **(Name, DOB)**.

(if insufficient space, attach list)

Notes

Last day for service

- 1 You need not comply with this subpoena unless it is served on you on or before the date stated in the subpoena as the last date for service of the subpoena.

Informal service

- 2 Even if this subpoena has not been served personally on you, you must, nevertheless, comply with its requirements, if you have, by the last date for service of the subpoena, actual knowledge of the subpoena and its requirements.

Addressee a corporation

- 3 If this subpoena is addressed to a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

Conduct money

- 4 You need not comply with this subpoena unless conduct money sufficient to meet your reasonable expenses of attending as required by the subpoena is handed or tendered to you a reasonable time before the date when your attendance is required.

Production of subpoena or copy of it and documents or things by delivery or post

- 5 If this subpoena requires you to produce this subpoena or a copy of it and a document or thing, instead of attending to produce the subpoena or a copy of it and the document or thing, you may comply with the subpoena by delivering or sending the subpoena or a copy of it and the document or thing to the Registrar (*or, for an arbitration under the Commercial Arbitration Act 2017, the arbitral tribunal*) at the address stated for the purpose in the subpoena so that they are received not less than 2 days before the date stated in the subpoena for attendance and production or, if you are given notice under rule 6603A, before the later date stated in the notice.

- 6 If you object to a document or thing produced in response to this subpoena being inspected by a party to the proceeding or anyone else, you must tell the Court about your objection and the grounds of your objection either orally on the return date for this subpoena or in writing before or after the return date.
- 7 Unless the Court otherwise orders, if you do not object to a document or thing produced by you in response to this subpoena being inspected by any party to the proceeding, the Registrar may allow the parties to the proceeding to inspect the document or thing.
- 8 If the material you produce to the Court is or includes any original document, the Court will return all of the material to you. You must complete the declaration which is attached to this subpoena and specify your address for return of this material. If you have elected to produce copies of any subpoenaed documents and declare this when completing your declaration, those copies will be destroyed, without further notice, 4 months after the conclusion of the proceeding or, if the documents become exhibits in the proceeding, when they are no longer required in connection with the proceeding, including on any appeal.

Production of a number of documents or things

- 9 If you produce more than 1 document or thing, you must, if asked by the Registrar (*or, for an arbitration under the Commercial Arbitration Act 2017, the arbitral tribunal*), produce a list of the documents or things produced.

Production of copy instead of original

- 10 If the subpoena requires you to produce a document, you may produce a copy of the document unless the subpoena specifically requires you to produce the original.
- 11 The copy of the document may be—
 - (a) a photocopy; or
 - (b) in PDF format on a CD-ROM; or
 - (c) in any other electronic form that the issuing party has indicated will be acceptable.

Applications in relation to subpoena

- 12 You have the right to apply to the Court—
- (a) for an order setting aside this subpoena (or a part of it) or for relief in relation to the subpoena; and
 - (b) for an order in relation to your claim for privilege, public interest immunity or confidentiality in relation to any document or thing the subject of the subpoena.

Loss or expense of compliance

- 13 If you are not a party to the proceeding or arbitration, you may apply to the Court for an order that the issuing party pay (in addition to any conduct money and any witness expenses) the amount of any reasonable loss or expense, including legal costs, incurred in complying with this subpoena.

Contempt of court

- 14 Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.
- 15 Note 14 does not affect any power of the Court to enforce compliance with a subpoena, including the power to issue a warrant for the arrest of an addressee who does not comply with a subpoena.
- 16 Failure to comply with a subpoena may also be a criminal offence (see Criminal Code, s 719 (Failing to attend) and s 720 (Failing to produce document or other thing)).

**Form 6.10C Subpoena—declaration by
addressee**

Court Procedures Rules 2006

(see r 6610 (Disposal of subpoenaed documents and things produced))

In the Magistrates Court of the Australian Capital Territory

No **FVO/FVO/PPO XXXX/Year**

Firstname Lastname

Applicant

Firstname Lastname

Respondent

Filed by the

Applicant/Respondent

Address

Phone

Filed by the **Applicant**

Address:

Email:

Telephone:

Notice to addressee

The **addressee** is the person to whom the subpoena is addressed, and who will be the recipient of the subpoena.

You may produce copies of any subpoenaed documents, unless the subpoena specifically requires you to produce originals. A copy of the document may be—

- (a) a photocopy; or
- (b) in PDF format on a CD-ROM; or
- (c) in any other electronic form that the issuing party (the party that issued the subpoena) has indicated to you will be acceptable.

You must complete the declaration below, attach it to the subpoena or a copy of the subpoena and return them with the documents or things you provide to the Court under the subpoena.

If you declare that the material you produce is copies of documents, the Registrar may, without further notice to you, destroy the copies at the end of 4 months after the end of the proceeding or, if the documents become exhibits in the proceeding, when they are no longer required in relation to the proceeding, including on any appeal.

If the material you produce to the Court is or includes any original document, the Court will return all of the material to you at the address stated by you in the declaration below.

Declaration by addressee (subpoena recipient)

(tick the relevant option below, provide your address as appropriate, sign and date)

- All** of the material I am providing to the Court in response to the attached subpoena is copies of documents. I acknowledge that the Court will destroy the copies once they are no longer required, without further notice to me.

- Some or all** of the material I am providing to the Court in response to the attached subpoena is an **original** document. Once the material is no longer required, all of the material should be returned to me at the following address:

(state address)

(signature of addressee)

(name of addressee)

Date

Form 6.11 Affidavit—general

Court Procedures Rules 2006

(see r 6710 (Affidavit—form))

In the *[Supreme/Magistrates] Court of the Australian Capital Territory

*[Criminal jurisdiction]

No *[SC/MC] of (*year*)

**(for a civil matter)*

(*name*)

Plaintiff

(*name*)

Defendant

**(for a criminal matter)*

*[The Queen/*name of informant*]

and

(*name of accused person*)

Filed for the *[plaintiff/defendant/other (specify)] by:
(the person's address for service and telephone number (if any) or, if the person is represented by a solicitor and the solicitor is the agent of another solicitor, the name and place of business of the other solicitor)

Error!
Unknown
document
property
name.

Approved form under
Court Procedures Act 2004, s 8

page 19

On *(date)*, I *(Full name of person making affidavit)* of *(home or business address)*, *[say on oath/solemnly affirm]—

1. I am *etc.*
2. *etc*

At the end of the body of the affidavit:

*[Sworn/Affirmed] by *(full name)*:

(signature of person making affidavit)

at *(place)* in the presence of:

(signature of person before whom affidavit is made)

(Full name of person before whom affidavit is made) of *(address)*

[Justice of the Peace/Barrister/Solicitor/(other)*]

Note If the affidavit extends over more than 1 page, the person making the affidavit and the person taking the affidavit must sign or initial each page of the affidavit (see r 6715 (1) (Affidavit—taking of)).

**omit if, or whichever is, inapplicable*

**Error!
Unknown
document
property
name.**

Form 6.11—Affidavit—general

page 21

Unauthorised version prepared by ACT Parliamentary Counsel's Office

