

## **SUBPOENA TO ATTEND TO GIVE EVIDENCE AND TO PRODUCE with SUBPOENA NOTICE AND DECLARATION**

### **COURT DETAILS**

Court

#Division

#List

Registry

Case number

### **TITLE OF PROCEEDINGS**

[First] plaintiff **[name]**

#Second plaintiff #Number of  
plaintiffs (if more than two)

[First] defendant **[name]**

#Second defendant #Number of  
defendants (if more than two)

### **ISSUING DETAILS**

Issued at request of **[name]** [role of party eg plaintiff]

#Legal representative [solicitor on record] [firm]

#Legal representative reference [reference number]

Contact name and telephone [name] [telephone]

Contact email [email address]

Address for service

### **ORDER TO THE SUBPOENA RECIPIENT**

Name

Address

You are ordered to attend and give evidence and to produce this subpoena or a copy of it and the documents or things specified in the Schedule.

**Note:** The person to whom this subpoena is addressed to is the "addressee" defined in UCPR 33.1(1) and is referred to in this document as the "subpoena recipient".

### **#PROPOSED ACCESS ORDER**

[This section to be completed by the issuing party if the Court issuing the subpoena requires a proposed access order to be specified. The court will make the default access order appropriate for the jurisdiction unless you state the proposed access order for the subpoenaed material and accompanying reasons for that order.]

#[Role of party eg Plaintiff] to have first access for [number of days eg 7] days because [#that party may be entitled to claim privilege #specify other reasons]; thereafter, in the absence of further application, access to all parties.

#Access granted to all parties, because [#no claims for privilege are likely to arise #specify other reasons].

#[Specify proposed alternative access order with reason/s.]

## NOTICE TO THE SUBPOENA RECIPIENT

1 Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest.

2 The last day for service of this subpoena is [date] (see note 1).

[Note: date must be 5 days before the earliest date on which the addressee is required to comply with the subpoena or an earlier or later date fixed by the court (UCPR 33.3), unless the subpoena is to be served on a medical expert (see UCPR 31.32) or outside NSW, but in Australia.]

3 Please read notes 1 to 15 at the end of this subpoena.

4 You must complete the Declaration appearing on the last page of this document and attach it to the subpoena or copy of the subpoena that accompanies the documents or things produced to the Court under the subpoena.

Any enquiries concerning compliance with the subpoena should be directed to the Contact person named above.

## HOW TO RESPOND

In so far as you are required by this subpoena to attend to give evidence, you must attend as follows:

Date

Time

Place

You must continue to attend from day to day

- unless excused by the court or the person authorised to take evidence in the proceedings, or
- until the hearing of the proceedings are completed.

In so far as you are required by this subpoena to produce the subpoena or a copy of it and documents or things, you must comply with this subpoena:

- by attending to produce this subpoena or a copy of it and the documents or things specified in the Schedule below to the address below at the time, date and place specified for attendance and production, or

- by delivering or sending this subpoena or a copy of it and the documents or things specified in the Schedule below to the address below so that they are received not less than 2 clear days before the date specified for attendance and production.  
(See notes 5 – 9.)

**DATE TIME AND PLACE AT WHICH YOU MUST ATTEND TO PRODUCE THE SUBPOENA OR A COPY OF IT AND DOCUMENTS OR THINGS**

Date

Time

Place

**ADDRESS TO WHICH THE SUBPOENA (OR COPY) AND DOCUMENTS OR THINGS MAY BE DELIVERED OR POSTED**

[insert registry address]

**SCHEDULE**

The documents or things you must produce are as follows:

[List the documents or things. Attach another sheet if there is insufficient space. You may specify whether and what electronic form of document production is acceptable.]

[on separate page]

## NOTES

### Last day for service

- 1 You need not comply with the subpoena unless it is served on you on or before the date specified in the subpoena as the last date for serving the subpoena.

### Informal service

- 2 Even if this subpoena has not been served personally on you in accordance with the rules, 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 of its requirements.

### Addressee a corporation

- 3 If the 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 the subpoena in so far as it requires you to attend to give evidence unless conduct money sufficient to meet your reasonable expenses of attending as required by the subpoena is provided to you a reasonable time before the date on which your attendance is required.
- 5 Conduct money may be provided by payment of a sum of money (by way of cash, cheque, or bank cheque) or its equivalent, such as prepaid travel (which can include petrol vouchers), that is sufficient to meet your reasonable expenses of attending court as required by the subpoena and returning after attending. Conduct money may also be provided by an issuing party making an offer to transfer payment by electronic means to meet your reasonable expenses of attending court as required by the subpoena and returning after attending.
- 6 If an offer to pay conduct money by electronic means has been made, non-provision by you of details to facilitate the electronic transfer for payment of conduct money is not an excuse not to comply with this subpoena.
- 7 If conduct money has not been paid by any means an addressee may apply to the court for orders that it be paid.

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

- 8 In so far as this subpoena requires production of the 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 at the address specified in the subpoena for the purpose, or if more than one address is so specified, to any one of those addresses, so that they are received not less than 2 clear days before the date specified in the subpoena for attendance and production.
- 9 If you object to a document or thing produced in response to this subpoena being inspected by a party to the proceeding or any other person, you must, at the time of production, notify the registrar in writing of your objection and of the grounds of your objection.
- 10 Unless the court otherwise orders, if you do not object to a document or thing produced by you in response to the subpoena being inspected by any party to the

proceeding, the registrar may permit the parties to the proceeding to inspect the document or thing.

### **Production of a number of documents or things**

- 11 If you produce more than one document or thing, you must, if requested by the registrar, produce a list of the documents or things produced.

### **Production of copy instead of original**

- 12 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.

- 9A The copy of a document may be:

- (a) a photocopy; or
- (b) in any electronic form that the issuing party has indicated will be acceptable.

- 13 You must complete the Declaration appearing on the last page of this document and attach it to the subpoena or copy of the subpoena that accompanies the documents or things produced to the Court under the subpoena.

- 14 If you declare that the material you produce is copies of documents, the Registrar may, without further notice to you, destroy the copies after the expiry of a period of four months from 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.

- 15 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 specified by you in the Declaration below.

### **Applications in relation to subpoena**

- 16 You have the right to apply to the Court:
- (a) for an order setting aside the subpoena (or a part of it) or for relief in respect of the subpoena, and
  - (b) for an order with respect 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**

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

### **Failure to comply with subpoena—arrest**

- 18 Failure to comply with a subpoena without lawful excuse:
- (a) is a contempt of court and may be dealt with accordingly.
  - (b) may lead to your arrest under section 97 Civil Procedure Act or under rules of the court to enforce compliance with a subpoena.

[on separate page]

**DECLARATION BY 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 compliance with 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 compliance with 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:

Address at which produced items should be returned (if applicable)

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Signature of subpoena recipient

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Name of subpoena recipient

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Date of signature

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