

DCJ Policy

Subpoena, summons,
statutory notice or order
requiring production of
documents or things

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Responding to a subpoena, summons, statutory notice or order requiring production of documents or things

This document outlines the policy and procedure when responding to a subpoena, summons, statutory notice or order issued by a court or tribunal, which requires the production of records for the Department of Communities and Justice (DCJ). This policy ensures a consistent approach across identified divisions of DCJ in relation to responding to subpoenas, summons and statutory notices or orders.

Essential Summary

This document explains the:

- centralised process for the receipt and processing of subpoenas, summons, statutory notices or orders
- amount of conduct money required to be paid and reasonable costs that may be charged in complying with a subpoena or summons
- roles and responsibilities of identified divisions and DCJ Legal in handling subpoenas, summons, statutory notices or orders.

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1 Scope

This policy deals with how to respond to a subpoena, summons, statutory notice or order issued by a court or tribunal on DCJ that compels the production of records. It applies to the following divisions within DCJ:

- Corrective Services NSW
- Youth Justice NSW
- Strategic Human Resources
- Corporate Services
- Housing Services
- Child Protection
- Former Disability Services

This policy **does not** apply to subpoenas, summons, statutory notices or orders:

- **That are not issued by a court or tribunal;**
- To attend to give evidence. Subpoenas or summons to attend to give evidence must be served on the individual ordered to attend to give evidence. Legal does not facilitate the service of subpoenas/summons to attend to give evidence and the subpoena/summons should be served on the division where the employee is employed. Employees who have been ordered to attend to give evidence can contact Legal for general advice on the process involved in attending Court. Where legal assistance is required in respect of an order and attendance is work related, the provisions of the Premier's Memorandum 2019-01 (provision of ex gratia legal assistance) must be followed;
- Issued under Rule 33.13 of the *Uniform Civil Procedure Rules 2005* (documents or things in possession of the court or another court);
- Seeking documents and things held by Victims Services NSW;
- Seeking documents and things relating to legal services provided by the NSW Trustee and Guardian;
- Relating to current arbitration or other jurisdictional proceedings concerning employment related matters including matters in the Industrial Relations Commission (IRC), Human Rights and Equal Opportunity Commission (HREOC), NSW Civil and Administrative Decisions Tribunal (NCAT) and Anti-Discrimination Board (ADB);
- Seeking information held by the ADB obtained in the course of the Board exercising functions under the *Anti-Discrimination Act 1977*;
- Seeking documents and things held by the Crown Solicitor's Office;
- Seeking documents and things held by GEO Group Australia (Juncie Correctional Centre), MTC-Broad-spectrum (Parklea Correctional Centre) and Serco Group Pty Ltd (Clarence Correctional Centre);

- Seeking documents and things held by the State Parole Authority (SPA) and Serious Offenders Review Council (SORC);
- Seeking medical records for current and former inmates (these need to be directed to Justice Health); and
- Issued under section 31 of the *Child Protection (Working with Children) Act 2012*.

2 Purpose

The purpose of this policy is to centralise and standardise the receipt and processing of subpoenas, summons and statutory notices or orders across the identified divisions within DCJ.

Centralised processing will ensure a consistent and timely approach to the handling of subpoenas, summons and statutory notices or orders requiring the production of records. A failure to comply with orders for production may constitute a contempt of court, which is punishable by a fine or imprisonment.

3 Definitions

Addressee means the person who is the subject of the order expressed in a subpoena, summons or statutory notice/order.

Conduct money means an amount of money payable by the issuing party at the time of serving a subpoena or summons to meet the reasonable expenses of DCJ in complying with the subpoena or summons.

Issuing party means the party at whose request a subpoena or summons is issued.

Compliance costs means the reasonable expenses (in addition to conduct money) incurred in complying with the subpoena or summons (for example, officer/s attendance time, photocopying and postage/courier costs etc).

Subpoena means a court order requiring the addressee to:

- a) attend to give evidence; or
- b) produce the subpoena or a copy of it and a document or thing; or
- c) do both of the above.

Summons means an official document requiring a person to give evidence at a Court/Tribunal hearing, or to produce documents or things to the Court/Tribunal.

Statutory notice or order means a notice or order from a public agency or body having a statutory power to compel the production of information/documents.

4 Service

A subpoena, summons, statutory notice or order should be served at least 10 clear working days prior to the date DCJ is required to comply with the request for production.

The subpoena, summons, statutory notice or order should be addressed to:

The Proper Officer
Legal
Department of Communities and Justice
160 Marsden Street
PARRAMATTA NSW 2124

OR

The Proper Officer
Legal
Department of Communities and Justice
Locked Bag 5000
PARRAMATTA NSW 2124

Service of a subpoena, summons, statutory notice or order is preferred by email at subpoenas@justice.nsw.gov.au or subpoenas@facs.nsw.gov.au.

If a subpoena is served by email, a hard copy is not required to be served personally or by post. Service is also accepted by delivering or posting a copy of the subpoena, summons or statutory order at either of the above addresses.

5 Conduct money and compliance costs

Conduct money must accompany a subpoena or summons and be made payable to the Department of Communities and Justice. Conduct money is for the amount of \$100 and is payable at the time of serving the subpoena or summons.

Payment of conduct money is accepted by:

- Cheque or money order payable to the Department of Communities and Justice; or
- Electronic funds transfer to the following account:
Bank Account: Department of Justice Operating Account
BSB: 032001
Account number: 201716
- Online by credit or debit card by contacting DCJ.

Legal may also charge additional compliance costs incurred in complying with a subpoena or summons at the rate of:

- \$69 per hour after the first hour in respect of processing by clerical officers, and
- \$82 per hour after the first half hour in respect of processing by legal officers.

If additional compliance costs are not paid by the time DCJ has complied with the subpoena or summons, DCJ will make a formal application to the relevant court or tribunal seeking payment of those costs.

6 Handling subpoenas, summons and statutory notices or orders (excludes child protection and Housing matters)

6.1 Role of Legal

Subpoenas, summons, statutory notices or orders issued by a court or tribunal seeking production of documents or things in the possession or control of DCJ will be processed by Legal on behalf of the divisions identified above. Statutory notices or orders that are not issued by a court or tribunal are not handled by Legal, however Legal is available to provide advice to the DCJ business areas that hold the information falling within the terms of the notice or order.

Where a subpoena, summons, statutory notice or order to produce documents or things is received by a Division (where it has been issued by a court or tribunal), it must be immediately forwarded to Legal by email to subpoenas@justice.nsw.gov.au for processing.

The role of Legal is to:

- consider the schedule of documents and things sought and determine if:
 - there is a legitimate forensic purpose for seeking the documents/things;
 - it clearly identifies the documents/things sought;
 - it can be narrowed, or whether an application should be made to the court or Tribunal to have it set aside.
- liaise with the relevant divisions to source the documents or things sought;
- consider and advise on any grounds of objection identified by business unit/s, such as client legal privilege, public interest immunity etc.;
- assist business unit/s to manage any claims for public interest immunity (PII) and where required, to instruct the Crown Solicitor to act where a claim of PII arises. PII claims fall within 'core legal work' and are paid from the Attorney General's Legal Fund;

Note: Where the matter does not fall within the category of 'core legal work', and prior to instructing the Crown Solicitor, Legal will require confirmation in writing that the business unit/s will bear the costs associated with instructing the Crown Solicitor. The NSW Government Core Legal Work Guidelines provide information about what constitutes core legal work and a list of matters that are generally treated as core legal work. A copy of the Guidelines can be accessed at the following link:

<https://arp.nsw.gov.au/assets/ars/49df5591a9/Core-Legal-Work-Guidelines.pdf>

- seek appropriate orders in relation to access where relevant;
- appear in court if required to raise objections or to seek specific orders not agreed to with the issuing party;

Note: Legal may instruct the Crown Solicitor to act where it is necessary to do so because of the complexity or sensitivity of the matter or the need that it be handled or managed centrally on behalf of the NSW Government.

- ensure documents are produced to the Court, Tribunal or organisation/agency in a timely manner, and in accordance with the orders of the relevant court or tribunal;
- monitor the volume and nature of requests for the production of documents received by DCJ;
- ensure that conduct money, additional compliance costs and other amounts payable in relation to the production of documents are received and monitored.

6.2 Role of DCJ divisions when responding to requests from Legal

Divisions that receive a request from Legal to provide documents in response to an order for production must respond to the request by the date specified in the email.

The request will contain:

- the documents or things required to be provided to Legal;
- the date by which the documents or things must be returned to Legal;
- a 'subpoena checklist' that must be completed and returned to Legal together with the requested documents. This checklist is critical as it affirms the actions taken by the division in compliance with the order for production and relating to the information held/not held by the division;
- a factsheet titled 'Responding to requests to produce documents'.

The Director/Manager of the business unit is responsible for ensuring compliance with the request by:

- arranging searches for the documents and things and the collation of the material caught by the request;
- reviewing the collated documents and considering whether there are any grounds for objecting to the documents or things being produced to the court;
- completing the 'subpoena checklist' and signing the checklist to certify that reasonable searches have been conducted and the documents have been reviewed. The factsheet titled 'Responding to requests to produce documents' provides information about grounds for objection. If further advice and assistance is sought Legal should be contacted by email or telephone on 8346 1526; and
- forwarding the requested documents and completed checklist to Legal (not the issuing Court or Tribunal) by the due date by email.

Incomplete 'subpoena checklists' will be returned to the relevant Division for completion.

Where records are held in archives, it is the responsibility of the relevant Division to retrieve these documents from archives. Legal must be notified if records need to be retrieved from archives as a further court return date may need to be sought from the issuing party to allow for the additional time to retrieve the archived documents.

7 Handling of child protection and housing services subpoenas and summons (excludes statutory notices or orders)

Subpoenas and summons seeking production of child protection records are served on Legal and then sent to the relevant Community Services Centre (CSC) for processing and compliance.

7.1 Role of Legal in child protection and housing services matters

The role of Legal is to:

- Register the subpoena or summons.
- Identify and allocate the subpoena or summons to the relevant CSC.
- Ensure that conduct money, additional compliance costs and other amounts payable in relation to the production of documents are received and monitored.
- If the subpoena or summons requires documents in excess of 250 pages, issue a tax invoice to the issuing party seeking the payment of further compliance costs.

7.2 Role of Community Services Centres – Child Protection matters

The Manager Casework is responsible for ensuring compliance with the subpoena or summons.

The procedures to be followed are outlined and available at:

- <https://caseworkpractice.intranet.facs.nsw.gov.au/mandates/legal-options/subpoenas#section-449385>

CSCs are responsible for:

- considering the schedule of documents and things sought and determine if:
 - there is a legitimate forensic purpose for seeking the documents/things;
 - it clearly identifies the documents/things sought; or
 - it can be narrowed.
- arranging searches for the documents and things and the collation of the material requested;
- reviewing the collated documents and considering whether there are any grounds for objecting to the documents or things being produced to the court/tribunal;
- If documents have been obtained from other persons or agencies under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998*, notify the relevant person or agencies so they have an opportunity to lodge an objection application to the court if appropriate;
- If the subpoena seeks JCPR records, liaise with the JCPR unit who had carriage of the matter;

- ensure documents are produced to the court, tribunal or organisation/agency in a timely manner, and in accordance with the orders of the relevant court or tribunal;
- If the subpoena requires documents in excess of 250 pages, advise Legal so that a tax invoice can be issued to the issuing party seeking further compliance costs.
- Notifying Legal upon compliance with the subpoena advising of the following information:
 - the exact number of pages that were sent to court/tribunal (for invoicing purposes);
 - the date documents were produced to the court/tribunal;
 - the booking number and method by which the documents were produced to the court/tribunal (i.e. courier or Australia Post etc.).

If legal advice is required in respect of a compliance issue, the CSC should contact their relevant Child Law Legal Officer.

7.3 Subpoenas or summons seeking production of DCJ Housing records

Subpoenas, summons or statutory notices/orders seeking production of documents relating to Housing Services records are processed by Legal.

7.3.1 Role of Legal

The role of Legal is to:

- consider the schedule of documents and things sought and determine if:
 - there is a legitimate forensic purpose for seeking the documents/things;
 - it clearly identifies the documents/things sought; or
 - it can be narrowed, or whether an application should be made to the court or tribunal to have it set aside.
- conduct searches for the documents and things and collate the material requested;
- review the collated documents and consider whether there are any grounds for objecting to the documents or things being produced to the court/tribunal;
- seek appropriate orders in relation to access where relevant;
- appear in court/tribunal if required to raise objections or to seek specific orders not agreed to with the issuing party;
- ensure documents are produced to the court, tribunal or organisation/agency in a timely manner, and in accordance with the orders of the relevant court or tribunal; and
- ensure that conduct money, additional compliance costs and other amounts payable in relation to the production of documents are received and monitored.

8 Handling of child protection statutory notices or orders for child protection information

Statutory notices or orders seeking production of child protection information must be served on the Information Access and Exchange (IAE) Unit, not Legal.

The IAE Unit in DCJ provides support to the CSCs for the requesting and releasing of child protection information. The types of statutory notices or orders that the IAE unit deals with include:

- Chapter 16A of the Care Act
- Section 31 of the *Child Protection (Working with Children) Act 1999*
- Section 34A of the *Health Care Complaints Act 1993*
- Section 25 of the *Crimes (High Risk Offender) Act 2006*
- Section 58 of the *Terrorism (High Risk Offenders) Act 2017*
- Clause 17 of the Schedule 1 to the *Mental Health Act 1990*.

9 References

Uniform Civil Procedure Rules 2005

Ritchie's Uniform Civil Procedure NSW

Supreme Court Practice Note No. SC Gen 18 Production of & access to subpoenaed material and returning exhibits and subpoenaed material in civil proceedings

Supreme Court Practice Note No. SC Gen 19 Subpoenas - proposed access orders and the return of subpoena list

10 Document information

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