

Form 6.10B Subpoena to give evidence and produce documents

Court Procedures Rules 2006

(see r 6602 (Form of subpoena))

No _____ of 20 _____

In the (*name of court*) of the Australian Capital Territory

*[(*for a civil matter*)

(*Name of party*) *[and (*another/others*) named in the schedule of parties]

*[Plaintiff/Appellant/other (*specify*)]

and

(*Name of party*) *[and (*another/others*) named in the schedule of parties]

*[Defendant/Respondent/other (*specify*)]]

*[(*for a criminal matter*)

(*Name of prosecuting entity*)

and

(*Name of defendant*) *[and (*another/others*) named in the schedule of parties]]

To: (*full name of addressee*), (*address of addressee*)

You are ordered to attend to—

- **give evidence; and**
- **produce the documents or things stated in the schedule of documents; and**
- **produce this subpoena or a copy of this subpoena.**

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

The last date for service of this subpoena is (*date*).

Please read notes 1 to 20 at the end of this subpoena.

Filed for the *[plaintiff/prosecuting entity/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*)

Date:

(seal or stamp of the court)

Issued at the request of (*name of party*), whose address for service is:

Place:

Email:

*[This subpoena is issued for the *Evidence (Miscellaneous Provisions) Act 1991*, section 79G (Preliminary examination of protected confidence evidence).]

Note: Everything above this line must be included on page 1

**delete if, or whichever is, inapplicable*

Details of subpoena

To the extent that this subpoena requires you to attend to give evidence, you must comply with this subpoena by attending to give evidence on the following date and at the following time and place:

Date:

Time:

Place:

However, if the issuing party gives you notice of a later date or time, the later date or time is the date or time when you must attend to give evidence.

You must continue to attend each subsequent day of the hearing until you are—

- (a) excused by the court or the person authorised to take evidence in this proceeding; or
- (b) the hearing of the matter is completed.

To the extent that this subpoena requires you to produce this subpoena or a copy of it and documents or things, you must comply with this subpoena by doing either of the following:

- (a) attending to produce this subpoena or a copy of it and the documents or things stated in the schedule of documents on the following date and at the following time and place

Date:

Time:

Place:

- (b) delivering or sending this subpoena or a copy of it and the documents or things stated in the schedule of documents to the registrar at the following address, so that they are received not later than 2 clear business days before the date stated in paragraph (a):

The Registrar

(*name of court*) of the Australian Capital Territory

4-6 Knowles Place

Canberra City ACT 2601

However, if the issuing party gives you notice of a later date or time, the later date or time is the date or time when you must attend to produce.

Schedule of documents

You must produce the following documents and things:

(Include a list of the documents or things. Attach the list if there is insufficient space)

^Schedule of parties

**[(for a civil matter)*

(Name of party) **[and (another/others) named in the schedule of parties]*

**[Plaintiff/Appellant/other (specify)]*

and

(Name of party) **[and (another/others) named in the schedule of parties]*

**[Defendant/Respondent/other (specify)]]*

**[(for a criminal matter)*

(Name of prosecuting entity)

and

(Name of defendant) **[and (another/others) named in the schedule of parties]]*

^delete schedule of parties if all parties are named on page 1

**delete if, or whichever is, inapplicable*

Notes

Last day for service

- 1 You need not comply with the 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 You must comply with the requirements of the subpoena even if it has not been served personally on you if, by the last date for service of the subpoena, you have actual knowledge of the subpoena and 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 To the extent that this subpoena requires you to attend to give evidence, you need not comply with the subpoena unless conduct money 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 To the extent that this subpoena requires production of the subpoena (or a copy of it) and a document or thing, you may comply with the subpoena by—
 - (a) attending to produce the subpoena (or a copy of it) and any document or thing required to be produced in response to this subpoena; or
 - (b) delivering or sending the subpoena (or a copy of it) and the document or thing to the registrar at the address stated in the subpoena so that they are received not later than 2 clear business days before the date for attendance.

Inspection by parties

- 6 The registrar may allow the parties to the proceeding to inspect the document or thing unless—
 - (a) you, a party or someone else having sufficient interest objects to the inspection; or
 - (b) the court otherwise orders.

Objections to inspection

- 7 If you wish to 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 make your objection to the court—
 - (a) in writing on, before or after the return date; or
 - (b) orally on the return date.
- 8 Your objection must identify the grounds for the objection.

Production of multiple documents or things

- 9 If you produce more than one document or thing, you must, if the registrar requests, 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 requires you to produce the original.
- 11 If you produce a copy of the document, the copy may be—
- (a) a photocopy of the original; or
 - (b) in any of the following electronic formats:
 - (i) .doc or .docx—Microsoft Word document;
 - (ii) .pdf—Adobe Acrobat document;
 - (iii) .xls or .xlsx—Microsoft Excel spreadsheet;
 - (iv) .jpg—image file;
 - (v) .rtf—rich text format;
 - (vi) .gif—graphics interchange format;
 - (vii) .tif—tagged image format;
 - (viii) .avi—audio visual interleave format;
 - (ix) .mov—QuickTime Movie file;
 - (x) .mp3—MP3 audio file;
 - (xi) .mp4—MP4 video file; or
 - (c) in any other format that the issuing party has indicated will be acceptable.

Applications about complying with the subpoena

- 12 You have the right to apply to the court—
- (a) for an order setting aside all or part of the subpoena or for relief in respect of the subpoena; and
 - (b) for an order with respect to any 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, you may apply to the court for an order that the issuing party pay an amount (in addition to conduct money and any witness's expenses) in respect of the loss or expense, including legal costs, reasonably incurred in complying with the subpoena.

Contempt of court—arrest

- 14 Failure to comply with this subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.
- 15 The court may take steps to enforce compliance with the subpoena, including by issuing a warrant for your arrest.
- 16 Failure to comply with this subpoena may also be a criminal offence (see Criminal Code, section 719 (Failing to attend) and section 720 (Failing to produce document or other thing)).

Counselling communications relating to sexual or family violence offences

- 17 The *Evidence (Miscellaneous Provisions) Act 1991*, section 79D (General immunity for protected confidences) provides that a counselling communication made by, to or about a person against whom a sexual offence or family violence offence was, or is alleged to have been, committed must not be disclosed unless the court has given leave for that disclosure.
- 18 If a document contains a counselling communication of the kind described above, you may be required to produce the document only if the purpose of production is for the court to conduct a preliminary examination of the document under the *Evidence (Miscellaneous Provisions) Act 1991*, section 79G (Preliminary examination of protected confidence evidence). If the subpoena is issued for the purpose of a preliminary examination, the first page of the subpoena must include the words “This subpoena is issued for the *Evidence (Miscellaneous Provisions) Act 1991*, section 79G (Preliminary examination of protected confidence evidence).”
- 19 The person who made the counselling communication or the person to whom the counselling communication was made may object to the counselling communication being inspected (see notes 6 to 8 for more information about objections to inspection).

Arbitration under the *Commercial Arbitration Act 2017*

- 20 If the subpoena is issued under the *Commercial Arbitration Act 2017*, modifications apply to the subpoena and its notes (see *Court Procedures Rules 2006*, rule 6614).

Declaration by Addressee (Subpoena Recipient) about Return of Documents/Things Produced

You must sign and date this declaration and return it as part of this subpoena when you produce the documents or things required to produce to the court under this subpoena.

You must tick one of the following options about the return of documents or things once they are no longer required by the court.

- I require the documents or things I am producing to the court to be returned to me at the following address:
(address)

- I do not require the documents or things I am producing to the court to be returned and understand that the documents or things may be destroyed.

Signed by *(name of addressee)*
Addressee

Date: