Form CP42

Federal Court (Criminal Proceedings) Rule 8.04(1)(b)

Subpoena to produce a document or thing

No.       of 20

Federal Court of Australia

District Registry: [State]

Division: General

**Commonwealth Director of Public Prosecutions[or other as appropriate]**Prosecutor

**[Name of Accused]**Accused

[Change title for summary criminal proceedings (Form CP2) or criminal appeal proceedings (Form CP3)]

To: [name], [address]

**You are ordered to produce this subpoena or a copy of it and the documents or things specified in the Schedule.** See next page for details.

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

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

The last date for service of this subpoena is [date]. (See Note 1)

Date:

|  |
| --- |
| Issuing Officer |

**Address for service**

Issued at the request of [name of party], whose address for service is:

Place: [see CP Rule 1.38]

Email:

**Details of subpoena**

You must comply with this subpoena:

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

(b) by delivering or sending this subpoena or a copy of it and the documents or things specified in the Schedule below to a Registrar at the address below, or if there is more than one address below, at any one of those addresses, so that they are received not less than 2 clear business days before the date specified for attendance and production. (See Notes 5–11)

Date, time and place at which you must attend to produce the subpoena or a copy of it and documents or things, unless you receive a notice of a later date or time from the issuing party, in which case the later date or time is substituted:

Date:

Time:

Place:

Address, or any address, to which the subpoena (or copy) and documents or things may be delivered or posted:

The Registrar
Federal Court of Australia
[Registry] District Registry
[address]

**Copy documents**

In so far as you are required by this subpoena to produce documents you may comply with this subpoena by producing copies of the documents unless it is specified in the Schedule that you must produce the original of some or all of the documents.

Even if the subpoena requires you to produce an original of any document, you may produce a copy if the issuing party gives you consent to do so.

**Notice and declaration by addressee**

If you comply with this subpoena by delivering or sending this subpoena or a copy of it and the documents or things specified in the Schedule to a Registrar, please complete the attached Notice and declaration by addressee (Form CP44) and attach it to the front of the subpoena or copy before doing so.

**Schedule**

The documents and things you must produce are as follows:

[List the documents or things. Attach list if insufficient space.]

[Specify if original documents are required to be produced]

***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 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 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 handed or tendered to you a reasonable time before the date your attendance is required.

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

5. If 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 a Registrar:

(a) at the address specified in the subpoena for the purpose; or

(b) if more than one address is specified - at any of those addresses;

so that they are received not less than 2 clear business days before the date specified in the subpoena for attendance and production, or if you receive notice of a later date from the issuing party, before the later date or time.

6. 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 a Registrar in writing of your objection and of the grounds of your objection.

7. 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, a Registrar may permit the parties to the proceeding to inspect the document or thing.

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

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

**Production of copy instead of original**

9. You may produce a copy, instead of the original, of any document that the subpoena requires you to produce unless the subpoena specifies that you must produce the original document.

10. Even if the subpoena requires you to produce an original of any document, you may produce a copy if the issuing party gives consent for you to do so.

11. The copy of a document may be:

(a) a photocopy; or

(b) in an 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 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**

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 a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.

15. The Court also has power to enforce compliance with a subpoena and may issue a warrant to arrest a person who fails to comply with a subpoena.