##### Subpoena in an arbitration

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| Family Law Regulations 2024 - Section **34**  Federal Circuit and Family Court of Australia (Family Law) Rules 2021 - RULE **6.26** | | |
| **Please type or print clearly** and mark [**X**] all boxes that apply. Attach extra pages if you need more space to answer any question/s.  Filed in:  Federal Circuit and Family Court of Australia (Division 1)  Federal Circuit and Family Court of Australia (Division 2)  Family Court of Western Australia  Other (specify)  **Filed on behalf of:**  **Full name:**  MARK [**X]** IN THE BOX THAT APPLIES TO YOU  Applicant  Respondent  Other (specify) | | **COURT USE ONLY** |
| Client ID  File number  Filed on  The last date for service of this subpoena is  (refer to Notes 2, 3, 4 & 5 on page 4)    Documents must be produced to registry by: |
|  |  | |
| **TO** |  | |
|  | Name  Address | |
|  |  | |
|  | State       Postcode | |
|  |  | |
| **YOU ARE ORDERED TO:** *(select one box only)*  Attend an arbitration to give evidence (see Part C for details of order).  Produce documents to the Court in relation to an arbitration and attend the arbitration to give evidence (see Part D for details of order).  Produce documents to the Court in relation to an arbitration (see Part E for details of order).  **TAKE NOTICE: if you fail to obey this subpoena**   * a warrant may be issued for your arrest * you may be liable to pay any costs occasioned by your failure to comply, and * the Court may impose a penalty under s.112AD of the *Family Law Act 1975*.   Date:       /       /       Registrar: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  The last date for service of this subpoena is       /       /       (*See Notes 2, 3, 4 & 5*)  **Please read Notes 1 to 19 at the end of this *Subpoena in an Arbitration.*** | | |

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| Filed on behalf of |  | | |
| Prepared by |  | Lawyer’s code |  |
| Name of law firm |  | | |
| Address for service in Australia | Street | | |
|  | State | Postcode | |
| Email |  | | |
| Telephone |  | | |

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| Part A | **About the parties to the arbitration** | | | | | |
| **APPLICANT 1**  Family name as used now | | | | **RESPONDENT 1**  Family name as used now | | |
|  | |  | |  | | |
| Given names | |  | | Given names | | |
|  | |  | |  | | |
|  | | | | | | |
| Part B | **About the arbitrator** | | | | | |
| Arbitrator family name | | | | Given names | | |
|  | |  | |  | | |
| The contact address (address for service) in Australia for the arbitrator is: | | | | | | |
|  | | | | | |
|  | | | | | |
|  | | | State | | Postcode |
| Phone | | | | | |
| DX | | | Email | | |
| Lawyer’s code (if applicable) | | | | | |
|  | | | | | | |
| Part C | **Details of order to attend arbitration to give evidence** | | | | | |
| **Date** you must attend the arbitration:       /       /  **Time** you must attend the arbitration: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ AM  PM  **Place** you must attend the arbitration: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  You must continue to attend from day to day unless excused by the Arbitrator or Court or until the arbitration is completed. | | | | | | |
| Part D | **Details of order to produce documents to the Court in relation to an arbitration and attend the arbitration to give evidence** | | | | | |
| **Date** you must attend the arbitration:       /       /  **Time** you must attend the arbitration: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ AM  PM  **Place** you must attend the arbitration: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  You must continue to attend from day-to-day unless excused by the Arbitrator or the Court, or until the arbitration is completed.  When you attend to produce documents in relation to the arbitration, you must produce the books, documents and things described in the Schedule (see Part F).  **If the Court has already made an order that a document requested in this subpoena should not be produced because it would disclose a protected confidence, you do not need to produce that document (see section 102BD of the Family Law Act).**  **If the document you have been asked to produce would disclose a protected confidence you may apply to the Court for an order that the material not be produced, inspected or copied (see sections 102BA, 102BD and 102BE). See the Notes below for the process to object to the document being produced, inspected or copied.** | | | | | | |
| Part E | **Details of order to produce documents to the Court in relation to an arbitration** | | | | | |
| You must produce the books, documents and things described in the Schedule at Part F:  **Date** **and time** for production: On or before \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ PM on       /       /  **Place:** You must produce the books, documents and things described in the Schedule to an officer of the Court, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ registry, (address of court) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  State: \_\_\_\_\_\_\_\_\_\_\_\_\_\_ Postcode: \_\_\_\_\_\_\_\_\_\_\_\_\_  **Instead of attending the Court** you may post or deliver the books, documents and things described in the Schedule to the registry at the ‘address of court’ specified above at least two days before the date for production specified above.  ***See Notes 13 and 14 for automatic release of documents.***  **If the Court has already made an order that a document requested in this subpoena should not be produced because it would disclose a protected confidence, you do not need to produce that document (see section 102BD of the Family Law Act).** | | | | | | |

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| **This *Subpoena in an arbitration* was issued at the request of the issuing party named in the footer on page 1.**  **DO NOT send subpoenaed documents to this person.**  **Subpoenaed documents must be produced to the Court, notwithstanding any objection being made.**  **The Registrar will issue a receipt to the person producing the documents or things.** |

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| Part F | **Schedule** |

*(if insufficient space attach list)*

**Books, documents and things you must produce from your possession, custody or control**

1. a copy of this subpoena

**NOTE: You may, with the consent of the issuing party, produce a copy, instead of the original of a document.**

*Federal Circuit and Family Court of Australia (Family Law) Rules 2021* — Rule 6.26

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| **NOTES** |

### Limitations — Subpoenas in an arbitration

1. Self-represented parties must obtain permission to request the issue of a subpoena in an arbitration. See rule 6.27(1) of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*.

### Service of subpoena in an arbitration

1. The issuing party must serve the subpoena **personally** on the person subpoenaed.
2. The issuing party must serve by ordinary service a copy of this subpoena on each other party, any interested person and any independent children’s lawyer in the proceeding.
3. An ‘interested person’ means a person who has a sufficient interest in the subpoena.
4. The issuing party must serve the subpoena on the person subpoenaed, the other parties, any independent children’s lawyer and any interested person as follows:
   1. at least **7 days** before the date for attending court for a subpoena to **attend court to give evidence**;
   2. at least **10 days** before the date for attending court for a subpoena to **attend court to give evidence and to produce documents**;
   3. at least **10 days** before the date for producing documents for a **subpoena requiring the person to produce documents to the Court**.
5. The named person may reach an agreement with the issuing party in relation to a different **manner of service** of a subpoena to produce documents only.
6. The **issuing party** may reach an agreement with each other party, any interested person and any independent children’s lawyer in relation to a different **manner of service**.

### Cost of complying with subpoena in an arbitration

1. The person serving the subpoena must give the person subpoenaed conduct money sufficient to meet the reasonable expenses of compliance. The amount of conduct money must be at least $25. See rule 6.31 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*.
2. If you are the person subpoenaed and you are not a party to the arbitration and you will incur substantial loss or expense in properly complying with the subpoena, you may apply to the Court for an order that the issuing party pay you an amount in respect of the loss or expense. Before making such an application, you may wish to give notice to the issuing party that substantial loss or expense would be incurred in properly complying with the subpoena, including an estimate of the loss or expense.

### Objection to production, inspection or copying of documents

1. The person required by this subpoena to produce documents or things in relation to an arbitration may object to producing a document by completing, filing and serving the attached *Notice of objection – Subpoena in an arbitration* before the date specified in this subpoena for production. The documents or things identified in the subpoena must be provided to the registry before the date of production, even if the person required to comply with the subpoena lodges a *Notice of objection – Subpoena in an arbitration.* The documents will not be viewed by any party until the objection has been dealt with by the Court.
2. Any party or any interested person may object to inspection or copying of a document described in this subpoena by completing, filing and serving the attached *Notice of objection – Subpoena in an arbitration* before the date specified in this subpoena for production.
3. For non-parties, a *Notice of Objection – Subpoena in an arbitration* can be lodged for filing by email to the relevant registry filing email address on the Court’s website.

**NOTE:** *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* — Rule 6.38 and section 102BD of the Family Law Act.

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| **NOTES continued…** |

### Automatic release of documents for inspection or copying (Part E)

1. Subject to any objection being upheld or an order of the Court and subject to the issuing party filing a *Notice of Request to Inspect – Arbitration* in the approved form, each party may, by appointment, inspect all documents produced in response to this subpoena and may take copies of all documents produced in response to this subpoena except as follows:
   1. If an Objection has been filed, there will be no access to the documents until the Court has determined the objection;
   2. If an objection is upheld, the documents will not be available for inspection by any party;
   3. If the subpoenaed documents are child welfare records or police records, the parties will not be able to copy the documents unless an order is made permitting this; and
   4. If the subpoenaed documents are medical records, special arrangements apply – see Notes 16 and 17.
2. A person who inspects or copies a document produced in response to this subpoena must:
   1. use the document for the purpose of the arbitration only, and
   2. not disclose the contents of the document or give a copy of it to any other person without the Court’s permission (except to a lawyer, client or expert as provided in rule 6.36(3) of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*).

### Child welfare, medical, criminal and police records

1. Child welfare records, medical records, criminal records and police records produced in response to this subpoena will be available for inspection by each party and any independent children’s lawyer, but these records will not be available for copying without an order of the Court.

***Criminal records*** means a record of offences for which the person has been found guilty.

***Medical records*** means the histories, reports, diagnoses, prognoses, interpretations and other data or records, written or electronic, relating to the person’s medical condition or treatment, that are maintained by a physician, counsellor, hospital or other provider of services or facilities for medical treatment.

***Police records*** means records relating to the person kept by the police, including statements, police notes and records of interview.

***Child welfare records*** are records relating to child welfare held by a State or Territory agency mentioned in section 53 of the Family Law Regulations 2024.

*Note*: For child welfare records, there may be restrictions on inspection imposed by protocols entered into between the Court and the relevant child welfare department.

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| **NOTES continued…** |

### Objection by person to inspection of medical records or other documents that contain protected confidences

1. If the documents to be produced under this subpoena include a person’s medical records or other protected confidences, that person may, **before** the date stated for production, notify the Court in writing that they wish to inspect the records for the purpose of determining whether to object to the inspection or copying of the document by any other party: see rule 6.38 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*.
2. A **protected confidence** is defined in section 102BA of the Family Law Act as a communication made:
   1. in the course of, or in connection with, a relationship in which one person (the **confidant**) is acting in a professional capacity to provide a professional service to another person (the **protected confider**); and
   2. in circumstances in which the confidant is under an obligation not to disclose communications made to them by, or in relation to, the protected confider (whether the obligation is express or inferred from the nature of the relationship).

A **professional service** is a health service, or a specialist service in relation to sexual assault or family violence (see section 102BB of the Family Law Act for the full definition).

1. If such notice is given:
   1. that person may inspect the medical records and may, within seven days after the date stated in the subpoena for production, object to inspection or copying of a document described in this subpoena by completing, filing and serving the attached *Notice of Objection – Subpoena in an arbitration*, and
   2. unless otherwise ordered, no other person may inspect the medical records until the later of seven days after the date stated in the subpoena for production or the hearing and determination of the objection.

### Time and date for hearing an objection

1. Any objection in relation to this subpoena will be heard before a judge or registrar. The Registrar will advise the parties and the objector of the time and date when they will be required to attend court for the hearing and determination of the objection.

**Notice of objection – Subpoena in an arbitration**

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| **Any person named in this *Subpoena in an arbitration* or affected by this subpoena who objects to the production or inspection or copying of documents described in this subpoena must:** | |  | | **TO BE COMPLETED BY THE PERSON FILING  THIS NOTICE** | |
| File number  Court date  Filed on | |
|  | |
|  | |
|  | | |  | | |
| 1. **Complete and sign** this *Notice of objection – Subpoena in an arbitration.* 2. **File** this *Notice of objection – Subpoena in an arbitration* together with a copy of the subpoena at the Court registry before the date for the production of documents required by the subpoena. If you are the person required in the subpoena to provide the documents or things, you are still required to provide these to the Court registry prior to the date of production. 3. Serve a copy of this *Notice of objection – Subpoena in an arbitration* together with a copy of the subpoena on the issuing party, all other parties, and the person being subpoenaed (if that is not you). 4. **Attend court** on the date set by the Registrar for consideration and determination of this objection. | | | | | |
| Part A | | Details of objection | | | |

**TO** the Registrar, at (registry)

**AND TO** the issuing party

**AND TO** all other parties in the arbitration

(Name of person objecting):

(select ***one*** box only)

I am the person subpoenaed in the attached *Subpoena in an arbitration*

I have been given a copy of the attached *Subpoena in an arbitration* directed to

(Name of person subpoenaed): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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| Filed on behalf of |  | | |
| Prepared by |  | Lawyer’s code |  |
| Name of law firm |  | | |
| Address for service in Australia | Street | | |
|  | State | Postcode | |
| Email |  | | |
| Telephone |  | | |

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| **Details of objection continued… (select *box or boxes*)** |

I give notice that I object to the production of some or all of the documents to the Court for the following reasons: *(attach extra page if insufficient space)*



I give notice that I object to the inspection / copying of some or all of the documents produced for the following reasons: *(attach extra page if insufficient space)*



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| Details of objection related to a protected confidence (select *box* or *boxes*) |

I give notice that I object to the production of some or all of the documents to the Court as a direction pursuant to section 102BD of the Family Law Act was made by the Court on:

I give notice that I object to the production of some or all of the documents to the Court as the documents disclose or relate to a protected confidence *(provide reasons)*



I give notice that I object to the inspection / copying of some or all of the documents produced as the documents disclose or relate to a protected confidence *(provide reasons)*:



**Note 1**: see section 102BA of the Family Law Act for the definition of a protected confidence:

*A* ***protected confidence*** *is a communication made:*

*(a) in the course of, or in connection with, a relationship in which one person (the* ***confidant****) is acting in a professional capacity to provide a professional service to another person (the* ***protected confider****); and*

*(b) in circumstances in which the confidant is under an obligation not to disclose communications made to them by, or in relation to, the protected confider (whether the obligation is express or inferred from the nature of the relationship).*

*A* ***professional service*** *is a health service, or a specialist service in relation to sexual assault or family violence (see section 102BB of the Family Law Act for the full definition).*

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| Part B | Signature |

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| --- | --- | --- |
| Signature |  | |
| Signed by (print full name): | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |
| the applicant  lawyer for the applicant  the person objecting  lawyer for the person objecting | | Date: \_\_\_\_\_\_\_\_\_/\_\_\_\_\_\_\_\_\_/\_\_\_\_\_\_\_\_\_\_ |