

MAGISTRATES' COURT GENERAL CIVIL PROCEDURE RULES 2020

FORM 42C

Rule 42.03(1)(c)

**SUBPOENA BOTH TO ATTEND TO GIVE EVIDENCE AND TO PRODUCE**

IN THE MAGISTRATES' COURT  
OF VICTORIA  
AT:

COURT NUMBER:

BETWEEN:

*(Plaintiff)*

OF:

AND:

*(Defendant)*

OF:

To *[name]*

of *[address]*

**YOU ARE ORDERED both to attend to give evidence and to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents: see below for details.**

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

**You should read all of the Notes set out in this subpoena. Also, you must complete the Declaration by Addressee (Subpoena Recipient) set out at the end of this subpoena.**

The last day for service of this subpoena is: *[date]*

. *(See Note 1)*

Date:

*[Seal of the Court]*

Issued at the request of *[name of party]*

whose address for service is:

Place:

Email:

## Details of subpoena

In so far as you are required by this subpoena to attend to give evidence, you must attend as follows unless you receive notice of a later date or time from the issuing party, in which case, the later date or time is substituted:

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 this proceeding or until the hearing of the matter is 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:

- (a) by attending to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents 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 of documents below to the 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 to 11*).

Date, time and place at which to attend to produce the subpoena or a copy of it and the documents or things unless you receive 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 sent:

### The registrar

Magistrates' Court of Victoria  
at [venue]

## SCHEDULE OF DOCUMENTS

The documents and things you must produce are as follows:

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

## 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 requirements of the subpoena unless a sum of money or its equivalent (such as pre-paid travel) sufficient to meet your reasonable expenses of attending, as required by the subpoena and returning after so attending, is provided or tendered to you a reasonable time before the day on which your attendance is required.

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

5. 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 to that extent by delivering or sending the subpoena (or a copy of it) and the document or thing to the 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 or time 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 the 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, the 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 the registrar, produce a list of the documents or things produced.

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

9. Unless the subpoena specifically requires you to produce an original, you may produce a copy of any document that the subpoena requires you to produce. If you are producing copies, you are encouraged to produce them in electronic form.
10. Electronic copies of documents can be provided on a memory card or stick in any of the formats referred to in paragraph 11(b) below.
11. A copy of a document may be—
  - (a) a photocopy; or
  - (b) in an electronic form in any of the following electronic formats—
    - .doc and .docx—Microsoft Word documents
    - .pdf—Adobe Acrobat documents
    - .xls and .xlsx—Microsoft Excel spreadsheets
    - .jpg—image files
    - .rtf—rich text format
    - .gif—graphics interchange format
    - .tif—tagged image format
    - any other format agreed with the issuing party.

### **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 any claim you may have for privilege, public interest immunity or confidentiality in relation to any evidence you may be required to give under the subpoena or 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 any loss or expense, including any 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. Note 14 is without prejudice to any power of the Court under section 134 of the ***Magistrates' Court Act 1989***.

### DECLARATION BY ADDRESSEE (SUBPOENA RECIPIENT)

**You must complete the declaration below. The completed declaration must be included in the subpoena or in the copy of the subpoena when you produce the subpoena or the copy with the documents required by the subpoena.**

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 4 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.

If you declare that the material you produce 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.

*[tick the relevant option below, provide your address as appropriate, sign and date]*

**All copied documents**

All of the material I am providing in compliance with this 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 original documents**

Some or all of the material I am providing in compliance with this 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—

*[insert address for return of material]* .

Date:

*[signature of addressee]*

*[name of addressee]*

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