



## PRACTICE NOTE SC GEN - 19

### Subpoenas – proposed access orders and the return of subpoena list

#### Commencement

1. This Practice Note was issued on 21 December 2011 and commences on 3 January 2012.

#### Application

2. This Practice Note applies to the Court of Appeal and Supreme Court civil proceedings.

#### Definitions

3. In this Practice Note:
  - **Default access orders** means general access to all parties. An order for general access includes permission to copy documents.
  - **Issuing party** means the party requesting the issue of a subpoena for production
  - **Producing person** means the person to whom a subpoena for production is addressed
  - **Produced documents** means documents produced in answer to a subpoena
  - **Return date** means the date on the subpoena on which the **Producing person** is required to produce the relevant documents, or any later date that the subpoena has been adjourned to, and
  - **Subpoena Registrar** means the Registrar assigned to manage the return of Subpoena List.

#### Introduction

4. The purpose of this Practice Note is to inform:
  - parties of:
    - a new procedure, similar to the procedure used in the District Court, Sydney Registry, that requires subpoenas for production to include a proposed access order
    - the Court's practice in relation to granting access to Produced documents, and
  - Producing persons and parties of the Court's practice in the Subpoena List

5. This Practice Note should be read with Practice Note SC – GEN 18 - Production of & access to subpoenaed material and returning exhibits and subpoenaed material in civil proceedings.

### **Proposed Access Order**

6. A subpoena to produce or to give evidence and produce must include either:
  - a proposed access order for the documents to be produced and the reasons for that order, or
  - Default access orders.
7. If the Issuing party does not propose an access order then the Default access order will apply.
8. If the nature of the documents to be produced under the subpoena mean that one or more of the parties may be entitled to claim privilege, or seek orders restricting access in relation to all or some of the documents, then the Issuing party must nominate a proposed access order that provides first access to the party that may be entitled to claim privilege or apply for restricted access. In proceedings where the plaintiff may be entitled to claim privilege or apply for orders to restrict access, the usual order is: plaintiff to have access for 7 days then, in the absence of further application, general access. The terms of the proposed access order should be amended as appropriate to suit the particular case.

### **Serving the subpoena**

9. A copy of the subpoena must be served on all other active parties to the proceedings.

### **Access Orders**

10. The Court produces a list of all documents produced under subpoena, notice to produce or order for production, for proceedings that are listed in the return of subpoena list. This list also includes any documents previously produced in the proceedings. The list shows the proposed access orders, and in relation to documents previously produced and where access has been granted, a summary of the access order. This list is available in the Subpoena Registrar's courtroom and is published on the Court's website (on the Court Lists page), the evening of the business day prior to the return date.
11. Information about produced documents (the Producing person, a description of the documents, and the proposed access orders or the access orders granted) in a case can also be viewed on-line using JusticeLink eServices. For information about how to register for JusticeLink eServices see <http://www.lawlink.nsw.gov.au/eservices>
12. A party cannot access produced documents until the Court has made an order allowing the party to access the documents.
13. The Court will make access orders on the Return date in relation to:

- Produced documents that have been produced to the registry before the close of the business day before the Return date, and
  - Produced documents that are produced in court on the Return date where the Producing person has no objection to the proposed access order and no other party appears to object to the proposed access order.
14. Unless the Court otherwise orders, it will make orders in accordance with the proposed access orders contained in the subpoena. If a proposed access order has not been included in the subpoena, the court will make the default access order in relation to the subpoenaed material.
  15. If all the parties agree to the proposed access order then there is no need for the parties to attend on the Return date.
  16. Any party or the Producing person may object to the Issuing party about the proposed access order. The issuing party must notify all other parties of the objection. Parties who wish to contest the proposed access order must appear on the Return date and argue the question before the Subpoena Registrar.

### **Applications**

17. Any application by a Producing person for costs of production should be made on the Return date.
18. Contested applications, including applications to set aside subpoenas, that cannot be conveniently dealt with in the return of subpoena list will be listed before a Registrar, either the Subpoena Registrar or the Registrar of the list in which the case is being managed.

### **Adjournments**

19. If some or all of the documents have not been produced by the Return date, or the Producing person and the parties to the proceedings cannot agree as to the terms of an access order or there is a pending application in relation to the subpoena, then the subpoena can be stood-over.
20. The Issuing party can apply to stand-over the subpoena by filling in the "Return date folder" which is available in the Subpoena Registrar's courtroom. If the Issuing party and Producing person party cannot agree on a new return date the Subpoena Registrar will deal with the matter.
21. If neither the Issuing party nor the Producing person appears and the subpoena has not been complied with or fully complied with, the Issuing party can apply for an adjourned date for the subpoena by emailing the registry at [supreme\\_court@courts.nsw.gov.au](mailto:supreme_court@courts.nsw.gov.au) and providing the following details:
  - case number and name of parties
  - name of Producing person and Return date missed, and
  - Proposed access orders.
22. The Issuing party must notify the Producing person and all other active parties to the proceedings of any adjourned return date.

T F Bathurst  
Chief Justice of NSW  
21 December 2011

**Related information**

*Uniform Civil Procedure Rules 2005*

UCPR Forms [26A](#) and [27A](#)

*SC Gen 3* - [Supreme Court - Copying of court documents](#)

*SC Gen 7* - [Supreme Court – Use of technology](#)

*SC Gen 18* - [Production of & access to subpoenaed material and returning exhibits and subpoenaed material in civil proceedings](#)

**Amendment history**

21 December 2011: Practice Note SC GEN 19 was issued on 21 December 2011 to commence from 3 January 2012.