

Form 42AA

Rule 42A.03

IN THE SUPREME COURT OF VICTORIA

[INSERT DIVISION]

[INSERT LIST]

S ECI

BETWEEN

Plaintiff

and

Defendant

SUBPOENA FOR PRODUCTION TO THE PROTHONOTARY

Date of Document:

Solicitors Code:

Filed on behalf of:

Telephone:

Prepared by:

Ref:

Email

To *[name]*

of *[address]*:

YOU ARE ORDERED to produce to the Prothonotary 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

You must comply with this subpoena 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 Prothonotary at the address below so that they are received on or before the date for production specified below:

Date for production:

The address of the Prothonotary to which the subpoena (or copy) and documents or things must be delivered or sent is:

The Prothonotary

[Supreme Court of Victoria

Electronic filing at subpoenas@supcourt.vic.gov.au or

in person at the Principal Registry, 450 Little Bourke Street, Melbourne.

See www.supremecourt.vic.gov.au]

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.

Question concerning subpoena

4. Any question concerning this subpoena should be directed not to the Court but to the solicitor for the party at whose request the subpoena was issued.

Availability of documents for inspection and at trial

5. All documents produced in compliance with this subpoena will be available, unless earlier returned, at the trial of the proceeding and, subject to the following, may be inspected in the meantime by each party to the proceeding and his, her or its solicitor, and copies taken.

Objection by addressee to production or inspection

6. If you are the person required by this subpoena to produce documents, and you object to producing the documents or to their being inspected by any one or more of the parties to the proceeding, you must notify the Prothonotary in writing of your objection and the grounds of that objection before the day specified in the subpoena for the production of the documents. The party at whose request this subpoena is issued is required to inform you of the time and place when your objection will be heard by the Court.

Objection by party served with subpoena to inspection

7. If you are a party to the proceeding and have been served with a copy of this subpoena, and you object to the documents being inspected by another party to the proceeding, you must notify the Prothonotary of your objection and the grounds of that objection before the day specified in the subpoena for the production of the documents. The party at whose request this subpoena is issued is required to inform you of the time and place when your objection will be heard by the Court.

Objection by plaintiff to production of hospital or medical file or record

8. If you are the plaintiff in this proceeding and this subpoena seeks from another person the production of a hospital or medical file or record concerning you or your condition, you may, before taking objection, inspect the file or record produced to the Prothonotary and, after such inspection, notify any objection you may have to inspection of that file or record by any other party, provided that you make your inspection and notify your objection and the grounds of that objection, if any, in writing within seven days after the day specified in the subpoena for production.

Obligation of issuing party after objection

9. If you are the party at whose request the subpoena was issued and any objection is taken, either to the production of the documents or to their being inspected, you will be informed by the Prothonotary of the objection and of the time and place when the objection will be heard. You are required promptly to inform the addressee in the subpoena and all other parties to the

proceeding accordingly so that they may be heard, if they wish, before the objection is determined.

Removal of document

10. Documents produced in compliance with this subpoena may not be removed from the custody of the Prothonotary, even for the purpose of their being photocopied, except upon application in writing signed by a solicitor for a party. Rule 42A.11(2) of Chapter I of the Rules of the Supreme Court is then relevant:

- "(2) A solicitor who signs an application under paragraph (1) and removes a document from the office of the Prothonotary, undertakes to the Court by force of this Rule that—
- (a) the document will be kept in the personal custody of the solicitor or a barrister briefed by the solicitor in the proceeding; and
 - (b) the document will be returned to the office of the Prothonotary in the same condition, order and packaging in which it was removed, as and when directed by the Prothonotary."

A breach of this undertaking may be dealt with as a contempt of court.

Production of a number of documents or things

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

Production of copy instead of original

12. 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. Even if the subpoena required the production of the original, you may, if you have the consent of the issuing party, produce a copy, instead of the original, of the document. If you are producing copies of documents, you are encouraged to provide them in electronic form.
13. Electronic copies of documents can be provided on a memory card or stick in any of the formats referred to in paragraph 14(b) below.
14. 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; or

(c) in any other appropriate form.

Applications in relation to subpoena

15. 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 document or thing the subject of the subpoena.

Loss or expense of compliance

16. 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 respect of the loss or expense, including any legal costs, reasonably incurred in complying with the subpoena.

Contempt of court—arrest

- 17. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.
- 18. Note 17 is without prejudice to any power of the Court under any Rules of the Supreme Court (including any Rules of the Supreme Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.

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 Prothonotary may, without further notice to you, destroy the copies after the expiry of four 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 the 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]