



Legal issues bulletin

Number 25 reviewed September 2012

Subpoenas

The department of Education is frequently served with subpoenas and other similar court issued process which requires the production of documentation to the Court. Staff may also be served with subpoenas requiring them to attend the court to give evidence. The following guidelines provide an outline of what steps should be taken by staff when they are served with a subpoena. For information about the production of documentation in response to notices issued by other government agencies, staff should refer to [legal issues bulletin 47 – Requests for information from other government agencies](#).

What is a subpoena?

A subpoena is a formal court order requiring the attendance of a person at court to give evidence, to produce documents or to do both. If served with a subpoena, the person to whom the subpoena is directed must comply with it unless otherwise excused by the party who has arranged for the subpoena to be issued. Failure to comply with a subpoena in the absence of being excused may result in the court issuing a warrant for the arrest of the subpoena recipient.

What is conduct money?

When served with a subpoena, generally conduct money should also be provided to the person served. For subpoenas requiring the production of documents, the conduct money is meant to cover the costs of assembling the relevant documents and sending them to the court. There is no rule about the amount required to be tendered but is normally about \$50.00. If it is considered that insufficient conduct money has been tendered to cover the cost of assembling the documents, the subpoena should still be complied with in the first instance. After forwarding the documents, the solicitors who issued the subpoena can be contacted and requested to pay any additional sum considered reasonable to cover the costs of compliance. It should be noted however that any such request cannot be enforced if the payment is not forthcoming.

It should be noted that subpoenas issued by the police or public officers (i.e. employees of other NSW government agencies) are not obliged to provide conduct money with subpoenas seeking the production of documents though in many cases they will do so.

If required to attend the court to give evidence, the conduct money should be sufficient to pay the travel costs of getting to and from the court. If not served with sufficient conduct money to meet the reasonable travel costs of getting to and from the court, staff are not required to attend the court in answer to the subpoena until an amount to cover those reasonable costs is provided.

If I am subpoenaed to give evidence am I regarded as being on duty while I am at court?

Staff will sometimes be subpoenaed to give evidence about matters that have arisen during the course of their official duties or about matters which they are aware of because of their role as teachers. A common example of the latter is when required to give evidence in family court proceedings about students who they have taught. When this occurs staff will be regarded as being on duty. Principals should refer to [Section 4.8.21](#) of the Teachers Handbook for information relating to teaching staff or [Section 4.12.4](#) of the Handbook for Non-Teaching Staff in Schools. Administrative & Clerical staff should refer to [Section 6.18](#) of the Personnel Handbook.

If casual staff need to be employed to cover any absence arising from the need to comply with a subpoena, the cost of the casual relief can be sought from the party who has issued the subpoena. The subpoena should still be complied with if payment to cover the cost of casual relief is not met.

What is the position if I am required to give evidence in a private capacity?

If staff are subpoenaed to give evidence about matters arising outside their official duties, they will be required to take leave without pay or access other leave available to them for the purpose of attending court. If leave without pay is taken, the party issuing the subpoena can be asked to pay a sum equivalent to the wages or salary lost by the staff member. Compliance with the subpoena will still be required irrespective of whether any payment for lost salary or wages is received. Further details are contained in the [Teachers Handbook](#), the [Handbook for Non-Teaching Staff in Schools](#) (Section 4.12.5), or the [Personnel Handbook](#).

How are subpoenas served?

Subpoenas can be served personally, by mail or electronic means to a named individual, a specific office holder (e.g. the principal of a school) or to nominal office holder (e.g. the proper officer, administrative officer). Service can be affected by delivering the subpoena at the school, State or regional office premises. Generally subpoenas issued to specifically named individuals or office holders will be served at the work premises of those persons.

Subpoenas issued to nominal officers can be served at any relevant department premises and should be accepted by any departmental employee. Once accepted, the subpoena and any conduct money should be forwarded to the relevant school or other departmental location where the records are held. If insufficient information is contained within the subpoena to identify where the subpoena should be directed, contact should be made with the party issuing the subpoena to obtain relevant details.

In many cases, subpoenas are served on Legal Services. If this occurs, arrangements will be made for a copy of the subpoena to be sent to the relevant school, State or regional office location. A document outlining the steps to be followed will also accompany the subpoena.

What should I do if served I am served with a subpoena?

If the subpoena relates to workers compensation proceedings, immediate contact should be made with the Manager, Work Health and Safety directorate.

Subpoenas requiring production of documents

In all other matters, the following action should be taken by principals or in the case of material within the area of responsibility of a particular directorate or unit of the department (functional unit), a suitably authorised person within that functional unit:

- Confirm that conduct money, if required, has been tendered with the subpoena.
- Locate and photocopy all relevant material in answer to the subpoena. If insufficient information is provided within the subpoena to identify what material is required, contact should be made with the party issuing the subpoena to obtain relevant details.
- If the material sought is held in more than one location, e.g. different schools, a copy of the subpoena should be provided to the other location(s) so that any relevant documentation can be photocopied and sent to the court from that other location. The distribution of any conduct money paid at the time of service is a matter to be determined between the relevant staff dealing with the matter.
- Once all material is located and photocopied, it should be sent back to the court of issue together with a copy of the subpoena. Do not send the material to the party who has issued the subpoena.

- If no material is located in answer to the subpoena, a letter indicating same together with a copy of the subpoena should be returned to the court.

If the subpoena has been issued in a matter where the department of Education are a party to the proceedings, a copy of the subpoena and the material collated in answer to it should be forwarded to Legal Services and not the court. Legal Services Staff will then arrange for the material to be sent to the court. If principals are in doubt about whether the department is a party to the proceedings, contact should be made with Legal Services.

Subpoenas requiring a person to attend court to give evidence

- Confirm that conduct money has been tendered with the subpoena.
- If uncertain as to what evidence may be required to be given in the matter, contact the party who has issued the subpoena to discuss the matter with them. It is not unusual to find that after having informal discussions with the party, attendance at court is not necessary.
- If the subpoena has been issued on behalf of the Crown, contact should be made with the relevant officer who will be conducting the prosecution of the case. This may be either the police officer in charge of the case, the police prosecutor or an officer from the department of Public Prosecutions.
- If applicable, discuss with the party who has issued the subpoena details of payment for relief staff or lost salary or wages.

Subpoenas requiring production of school counsellor's files

- Confirm that conduct money has been tendered with the subpoena.
- In all cases, in conjunction with their district guidance officer, counsellors must ascertain whether there is any material sought by the subpoena that might reasonably fall within the definition of a protected confidence.
- If protected confidence is to be sought, staff should refer to [legal issues bulletin 23](#) for further information
- Counsellors must place any information to be provided in answer to the subpoena in a sealed envelope, affix a copy of the subpoena to the outside of the envelope and return the material to the relevant court, or, in cases where the department is a party to the proceedings, to Legal Services.

Subpoenas requiring production of risk of serious harm notifications

A crucial element of both departmental policy and the Children and Young Persons Care and Protection Act 1998 (the Act) is the protection of the identity of the notifier.

In relation to risk of serious harm notifications, the Act provides the following protections:

- The report or evidence of its contents is only admissible in the following legal proceedings: care proceedings in the Children's Court,
- proceedings in relation to a child or young person under the Family Law Act 1975 of the Commonwealth,
- proceedings in relation to a child or young person before the Supreme Court of the Civil and Administrative Tribunal,
- proceedings before the Civil and Administrative Tribunal that are allocated to the Guardianship Division of the Tribunal or are commenced under the Victims Rights and Support Act 2013
- proceedings under the Coroners Act 2009,
- any associated appeal in the above proceedings.
 - A person cannot be compelled in any proceedings to produce the report or a copy or extract from it; A person cannot be compelled to give evidence of any of its contents.
 - The identity of any person who made the report or information from which the identity of that person can be deduced must not be disclosed by any person except with the consent of the person who made the report or by leave of the court.
 - In the absence of consent or leave of the court, a person cannot be asked and cannot be required to answer any question that will disclose the identity or lead to the identification of the person who made the notification.
 - If any employee is served with a subpoena which requires the production of a notification to the department of Community Services, the notification must not be produced in answer to the subpoena.

If staff are served with a subpoena requiring production of documents not within their possession, the check list below may assist in determining where the subpoena should be forwarded for further action.

Personnel files, including leave records, of permanent teachers in the department of Education	Newcastle State Office*
Salaries records for permanent teachers	Wollongong State Office*
Personnel files, including leave records, of non-teaching staff in the department of Education (including former non-teaching staff)	Bathurst State Office* (SASS staff only) Oxford Street* (state office, district office SES and other administrative staff)
Non-currently employed school teaching staff of the department of Education	Blacktown State Office*
Files relating to medical examination for Permanency/retirement for staff	Newcastle State Office (school teachers) Bathurst State Office (SASS staff only) Oxford Street (state office, district office, SES and other administrative staff)
Files relating to disciplinary proceedings involving staff	Employee Performance and Conduct directorate*, Child Wellbeing unit*
Workers' compensation files for staff	Work Health & Safety*

*Contact Details

Employee Service Centre, Sydney CBD

For all non school based staff
Level 13, 1 Oxford Street Darlinghurst
Ph. (02) 9266 8000
Fax. (02) 9244 5541 or (02) 9244 5776
Postal address: GPO Box 33 SYDNEY NSW 2001

Employee Service Centre, Bathurst

For all non teaching staff in schools in all regions
Level 1, 140 William Street Bathurst
Ph. 1300 338 003
Fax. 1300 338 123
Postal address: Locked Bag 1010 BATHURST NSW 2795

Employee Service Centre, Newcastle

For teachers in Hunter and Central Coast, New England, North Coast, Northern Sydney and Western Sydney Regions
117 Bull Street Newcastle
Ph. 1300 338 001
Fax. 1300 338 121
Postal address: Locked Bag 6 Hamilton Delivery Centre HAMILTON NSW 2303

Employee Service Centre, Wollongong

For teachers in Illawarra and South East, Riverina, South Western, Sydney and Western NSW Regions
84 Crown Street Wollongong
Ph. 1300 338 002
Fax. 1300 338 122
Postal address: Locked Bag 12 WOLLONGONG EAST NSW 2520

Staffing Services

Casual.Direct

Ph. 1300 660 338

Fax. (02) 9836 9257

Email: Casual.Direct@det.nsw.edu.au

Postal Address: Locked Bag 3003 BLACKTOWN NSW 2148

School Administrative and Support Staffing Team

Ph. 1300 302 338

Fax. 1300 737 338

Postal Address: Locked Bag 3003 BLACKTOWN NSW 2148

Teacher Recruitment

Level 2, 22 Main Street, Blacktown

Ph. 1300 300 498 (option 2)

Fax. (02) 9836 9767

Postal Address: Locked Bag 3003 BLACKTOWN NSW 2148

School Staffing

Level 2, 22 Main Street, Blacktown

Ph. 131 075

Fax. 1300 556 306

Postal Address: Locked Bag 3003 BLACKTOWN NSW 2148

Work Health & Safety directorate

Level 1, 1 Oxford Street, Darlinghurst

Ph: 9266 8952

Fax: 9266 8934

Postal Address: GPO Box, SYDNEY, 2001

Employee Performance and Conduct

Ph: 9266 8070

Fax: 9266 8077

Postal Address: GPO Box 33, SYDNEY, 2001

Child Wellbeing unit

Ph: 9269 9400

Fax: 9269 9444

Postal Address: Locked Bag 53, DARLINGHURST, 2010

About Legal Services

Legal Services is here to support our government schools. **Staff can contact Legal Services by email or phone.**

Legal Services can only provide legal advice to departmental staff. It is not able to provide legal advice or assistance to parents, students or members of the public due to the potential for a conflict of interest.