

NORTHERN TERRITORY OF AUSTRALIA
SUPREME COURT AMENDMENT (SUBPOENAS) RULES 2006

Subordinate Legislation No. 28 of 2006

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NORTHERN TERRITORY OF AUSTRALIA

Subordinate Legislation No. 28 of 2006*

Supreme Court Amendment (Subpoenas) Rules 2006

WE, the undersigned Judges of the Supreme Court of the Northern Territory of Australia, pursuant to section 86 of the *Supreme Court Act*, make the following Rules of Court.

Dated 21 April 2006.

B. MARTIN CJ

D. N. ANGEL J

D. MILDREN J

S. G. THOMAS J

T. J. RILEY J

S. R. SOUTHWOOD J

Judges of the Supreme Court
of the Northern Territory of Australia

* Notified in the *Northern Territory Government Gazette* on 2 August 2006.

1. Citation

These Rules may be cited as the *Supreme Court Amendment (Subpoenas) Rules 2006*.

2. Rules amended

These Rules amend the *Supreme Court Rules*.

3. Repeal and substitution of Order 42

Order 42

repeal, substitute

ORDER 42 – SUBPOENAS

42.01 Interpretation

(1) In this Order, unless the contrary intention appears:

"addressee" means the person who is the subject of the order expressed in a subpoena;

"conduct money" means a sum of money or its equivalent, such as pre-paid travel, sufficient to meet the reasonable expenses of the addressee of attending court as required by the subpoena and returning after so attending;

"issuing officer" means an officer empowered to issue a subpoena on behalf of the Court;

"issuing party" means the party at whose request a subpoena is issued;

"subpoena" means an order in writing requiring the addressee:

- (a) to attend to give evidence; or
- (b) to produce the subpoena or a copy of it and a document or thing; or
- (c) to do both of those things.

(2) To the extent that a subpoena requires the addressee to attend to give evidence, it is called a subpoena to attend to give evidence.

(3) To the extent that a subpoena requires the addressee to produce the subpoena or a copy of it and a document or thing, it is called a subpoena to produce.

42.02 Issuing of subpoena

(1) The Court may, in any proceeding, by subpoena order the addressee:

- (a) to attend to give evidence as directed by the subpoena; or
- (b) to produce the subpoena or a copy of it and any document or thing as directed by the subpoena; or
- (c) to do both of those things.

(2) An issuing officer must not issue a subpoena:

- (a) if the Court has made an order, or there is a rule of the Court, having the effect of requiring that the proposed subpoena:
 - (i) not be issued; or
 - (ii) not be issued without the leave of the Court and that leave has not been given; or
- (b) requiring the production of a document or thing in the custody of the Court or another court.

(3) The issuing officer must seal with the seal of the Court, or otherwise authenticate, a sufficient number of copies of the subpoena for service and proof of service.

(4) A subpoena is taken to have been issued on its being sealed or otherwise authenticated in accordance with subrule (3).

42.03 Form of subpoena

(1) A subpoena must be in accordance with Form 42A.

(2) A subpoena must not be addressed to more than one person.

(3) Unless the Court otherwise orders, a subpoena must identify the addressee by name or by description of office or position.

(4) A subpoena to produce must:

- (a) identify the document or thing to be produced; and
- (b) specify the date, time and place for production.

(5) A subpoena to attend to give evidence must specify the date, time and place for attendance.

(6) The date specified in a subpoena must be the date of trial or any other date as permitted by the Court.

(7) The place specified for production may be the Court or the address of any person authorised to take evidence in the proceeding as permitted by the Court.

(8) A subpoena must specify the last date for service of the subpoena, being a date not earlier than:

(a) 5 days; or

(b) any shorter or longer period as ordered by the Court and specified in the subpoena,

before the date specified in the subpoena for compliance with it.

(9) If the addressee is a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

42.04 Setting aside or other relief

(1) The Court may, on the application of a party or any person having a sufficient interest, set aside a subpoena in whole or in part or grant other relief in respect of it.

(2) An application under subrule (1) must be made on notice to the issuing party.

(3) The Court may order that the applicant give notice of the application to any other party or to any other person having a sufficient interest.

42.05 Service

(1) A subpoena must be served personally on the addressee.

(2) The issuing party must serve a copy of a subpoena to produce on each other party as soon as practicable after the subpoena has been served on the addressee.

42.06 Compliance with subpoena

(1) An addressee need not comply with the requirements of a subpoena to attend to give evidence unless conduct money has been handed or tendered to the addressee a reasonable time before the date on which attendance is required.

(2) An addressee need not comply with the requirements of a subpoena unless it is served on or before the date specified in the subpoena as the last date for service of the subpoena.

(3) Despite rule 42.05(1), an addressee must comply with the requirements of a subpoena even if it has not been served personally on that addressee if the addressee has, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

(4) The addressee must comply with a subpoena to produce:

- (a) by attending at the date, time and place specified for production and producing the subpoena or a copy of it and the document or thing to the Court or to the person authorised to take evidence in the proceeding as permitted by the Court; or
- (b) by delivering or sending the subpoena or a copy of it and the document or thing to the Registrar at the address specified for the purpose in the subpoena, so that they are received not less than 2 clear days before the date specified in the subpoena for attendance and production.

(5) If a subpoena is both a subpoena to attend to give evidence and a subpoena to produce, production of the subpoena or a copy of it and of the document or thing in any of the ways permitted by subrule (4) does not discharge the addressee from the obligation to attend to give evidence.

42.07 Production otherwise than upon attendance

(1) This rule applies if an addressee produces a document or thing in accordance with rule 42.06(4)(b).

(2) The Registrar must, if requested by the addressee, give a receipt for the document or thing to the addressee.

(3) If the addressee produces more than one document or thing, the addressee must, if requested by the Registrar, provide a list of the documents or things produced.

(4) The addressee may, with the consent of the issuing party, produce a copy, instead of the original, of any document required to be produced.

(5) The addressee may at the time of production inform the Registrar in writing that any document or copy of a document produced need not be returned and may be destroyed.

42.08 Removal, return, inspection, copying and disposal of documents and things

The Court may give directions in relation to the removal from and return to the Court, and the inspection, copying and disposal, of any document or thing that has been produced to the Court in response to a subpoena.

42.09 Inspection of, and dealing with, documents and things produced otherwise than on attendance

(1) This rule applies if an addressee produces a document or thing in accordance with rule 42.06(4)(b).

(2) On the request in writing of a party, the Registrar must inform the party whether production in response to a subpoena has occurred, and, if so, include a description, in general terms, of the documents and things produced.

(3) Subject to this rule, no person may inspect a document or thing produced unless the Court has granted leave and the inspection is in accordance with that leave.

(4) Unless the Court otherwise orders, the Registrar may permit the parties to inspect at the Registry any document or thing produced unless the addressee, a party or any person having sufficient interest objects to the inspection under this rule.

(5) If the addressee objects to a document or thing being inspected by any party to the proceeding, the addressee must, at the time of production, notify the Registrar in writing of the objection and of the grounds of the objection.

(6) If a party or person having a sufficient interest objects to a document or thing being inspected by a party to the proceeding, the objector may notify the Registrar in writing of the objection and of the grounds of the objection.

(7) On receiving notice of an objection under this rule, the Registrar:

- (a) must not permit any, or any further, inspection of the document or thing the subject of the objection; and
- (b) must refer the objection to the Court for hearing and determination.

(8) The Registrar must notify the issuing party of the objection and of the date, time and place at which the objection will be heard, and the issuing party must notify the addressee, the objector and each other party accordingly.

(9) The Registrar must not permit any document or thing produced to be removed from the Registry except on application in writing signed by the solicitor for a party.

(10) A solicitor who signs an application under subrule (9), and removes a document or thing from the Registry, undertakes to the Court by force of this rule that:

- (a) the document or thing will be kept in the personal custody of the solicitor or a barrister briefed by the solicitor in the proceeding; and

- (b) the document or thing will be returned to the Registry in the same condition, order and packaging in which it was removed, as and when directed by the Registrar.

(11) The Registrar may, in the Registrar's discretion, grant an application under subrule (9) subject to conditions or refuse to grant the application.

42.10 Disposal of documents and things produced

(1) Unless the Court otherwise orders, the Registrar may, in the Registrar's discretion, return to the addressee any document or thing produced in response to the subpoena.

(2) Unless the Court otherwise orders, the Registrar must not return any document or thing under subrule (1) unless the Registrar has given to the issuing party at least 14 days notice of the intention to do so and that period has expired.

(3) If the addressee has informed the Court that a document or a copy of a document produced need not be returned and may be destroyed, the Registrar may, unless the Court otherwise orders, destroy the document or copy instead of returning it.

(4) The Registrar must not destroy a document or a copy of a document unless the Registrar has first given to the issuing party and to the addressee at least 14 days notice of the intention to destroy the document or copy.

42.11 Costs and expenses of compliance

(1) The Court may order the issuing party to pay the amount of any reasonable loss or expense incurred in complying with the subpoena.

(2) If an order is made under subrule (1), the Court must fix the amount or direct that it be fixed in accordance with the Court's usual procedure in relation to costs.

(3) An amount fixed under this rule is separate from and in addition to:

- (a) any conduct money paid to the addressee; and
- (b) any witness expenses payable to the addressee.

42.12 Failure to comply with subpoena – contempt of court

(1) Failure to comply with a subpoena without lawful excuse is a contempt of court and the addressee may be dealt with accordingly.

(2) Despite rule 42.05(1), if a subpoena has not been served personally on the addressee, the addressee may be dealt with for contempt of court as if the addressee had been so served if it is proved that the addressee had, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

(3) Subrules (1) and (2) are without prejudice to any power of the Court under any rules of the Court (including any rules of the 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.

42.13 Documents and things in the custody of a court

(1) A party who seeks production of a document or thing in the custody of the Court or of another court may inform the Registrar in writing accordingly, identifying the document or thing.

(2) If the document or thing is in the custody of the Court, the Registrar must produce the document or thing:

- (a) in Court or to any person authorised to take evidence in the proceeding, as required by the party; or
- (b) as the Court directs.

(3) If the document or thing is in the custody of another court, the Registrar must, unless the Court has otherwise ordered:

- (a) request the other court to send the document or thing to the Registrar; and
- (b) after receiving it, produce the document or thing:
 - (i) in Court or to any person authorised to take evidence in the proceeding as required by the party; or
 - (ii) as the Court directs.

4. New Schedule 1 heading

Before Form 5A

insert

SCHEDULE 1

5. Amendment of Schedule 1

Schedule 1, Forms 42A, 42B, 42C and 42D

omit, substitute

FORM 42A

Rule 42.03

SUBPOENA

[heading as in originating process]

To: *[name]*

[address]

YOU ARE ORDERED:

***to attend to give evidence – see section A of this form; or**

***to produce this subpoena or a copy of it and the documents or things specified in the Schedule – see section B of this form; or**

***to attend to give evidence and to produce this subpoena or a copy of it and the documents or things specified in the Schedule – see section C of this form**

** Select one only of these 3 options*

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

The last date for service of this subpoena is: (See Note 1)

Please read Notes 1 to 15 at the end of this subpoena.

[Seal or Stamp of the Court]

Date:

Issued at the request of *[name of party]*, whose address for service is:

A. Details of subpoena to attend to give evidence only

Date, time and place at which you must attend to give evidence:

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.

B. Details of subpoena to produce only

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 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 below to the Registrar at the address below so that they are received not less than 2 clear days before the date specified for attendance and production. (*See Notes 5 – 11*)

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

Date:

Time:

Place:

Address to which the subpoena (or copy) and documents or things may be delivered or posted:

The Registrar
[Name of Court etc. as the case may be]

Schedule

The documents and things you must produce are as follows:

[If insufficient space attach list]

C. Details of subpoena both to attend to give evidence and to produce

In so far as you are required by this subpoena to attend to give evidence, you must attend as follows:

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 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 below to the Registrar at the address below so that they are received not less than 2 clear days before the date specified for attendance and production. (*See Notes 5 – 11*)

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

Date:

Time:

Place:

Address to which the subpoena or a copy of it and documents or things may be delivered or posted:

The Registrar
[*Name of Court etc. as the case may be*]

Schedule

The documents and things you must produce are as follows:
[*If insufficient space attach list*]

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 subpoena in so far as it requires you to attend to give evidence unless conduct money sufficient to meet your reasonable expenses of attending as required by the subpoena is handed or tendered to you a reasonable time before the date 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 by delivering or sending the subpoena or a copy of it and the document or thing to the Registrar at the address specified in the subpoena for the purpose so that they are received not less than 2 clear days before the date specified in the subpoena for attendance and production.
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. You may, with the consent of the issuing party, produce a copy, instead of the original, of any document that the subpoena requires you to produce.

Return or destruction of documents or copies

10. You may, at the time of production, inform the Court that any document or copy of a document produced need not be returned and may be destroyed.
11. If you have so informed the Court, the Registrar may destroy the document or copy instead of returning it to you.

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 your claim for privilege, public interest immunity or confidentiality in relation to 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 the loss or expense, including 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 any rules of the Court (including any rules of the 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.
