

## Checklist: HOW TO OBTAIN A SUBPOENA

This is a checklist of the steps to follow when you need a subpoena to have documents or things produced to ACAT, or a witness attend to give evidence at a hearing. This checklist is for subpoenas for service within the ACT only. There are additional steps for interstate subpoenas. Information about subpoenas including how to obtain an interstate subpoena is available from our website: <http://www.acat.act.gov.au>

### Step 1: Fill in the subpoena

- The subpoena is available from [www.acat.gov.au/application\\_and\\_forms](http://www.acat.gov.au/application_and_forms)
- If you want to issue a subpoena on a company, the subpoena should be addressed to The Proper Officer at the company's registered office.
- If the subpoena is for a document or thing, the subpoena must clearly identify what document or thing is to be produced.

### Step 2: Give the subpoena and at least **four** copies to ACAT, and pay the fee

- You must give ACAT the original subpoena and at least four copies:
  - The original is for the person or organisation receiving the subpoena (see step 4).
  - One copy is to be attached to your affidavit of service (see step 5 below).
  - One copy is to be given to each of the parties in the proceedings. If there is more than one other party to the proceedings, you will need to give ACAT extra copies (see step 6 below).
  - One copy is to be kept for your records.
  - One copy is kept by ACAT.
- You must pay the fee for issuing a subpoena: see [www.acat.act.gov.au/fees](http://www.acat.act.gov.au/fees)
- Once ACAT has your subpoena, ACAT will decide if it should be issued.
- If the subpoena is issued, ACAT will contact you to arrange for you to collect the subpoena. The subpoena and each copy will be signed, stamped (sealed), given a subpoena number, and given a return date.
- If ACAT decides not to issue the subpoena, it will contact you to tell you about the decision.

### Step 3: Note the date for complying with the subpoena (the return date)

- If the subpoena asks for a document or thing to be produced to ACAT, the subpoena will be given a return (or compliance) date. This is the date that:
  - the material sought by the subpoena must be given to ACAT; and
  - the subpoena will be listed before ACAT for orders about access to the material produced in response to the subpoena, and to hear and decide any objections to the subpoena.
- If the subpoena is for a witness to give evidence, the witness will be required to attend on the hearing date.

### Step 4: Personally give the subpoena to the person or organisation before the *last day for service*

- You must personally give the subpoena to the person or organisation receiving the subpoena. This is called *service* or *servicing* the subpoena. You cannot post or email the subpoena, unless the recipient agrees to this in advance.
- If the subpoena is for an organisation such as a company, it must be served in person on the company's registered office.

- You must serve the subpoena no later than five days before the return (compliance) date or hearing date. The last day for service of the subpoena will be written on the subpoena when you get it back from ACAT.
- The earlier you serve the subpoena on the recipient, the better.
- If you want to have a subpoena issued less than five days before the hearing, you need to ask ACAT for an order for short service.
- You must give the person or organisation who receives the subpoena money for complying with the subpoena. This is called conduct money. This money is to pay the cost of travelling to ACAT in response to the subpoena, or for sending the subpoenaed material to ACAT.
- If the person or organisation who receives the subpoena is not a party to the proceedings, you may also be required to pay their reasonable costs for complying with the subpoena.

**☐ Step 5: Do an affidavit of service and give it to ACAT**

- After you have personally served the subpoena, you need to make a sworn statement (an affidavit) about how and when the subpoena was served.
- You need to give the completed affidavit of service to ACAT prior to the return date (for documents or things) or hearing date (for witnesses to give evidence).

**☐ Step 6: Give a copy of the subpoena to the other parties in the proceedings**

- You need to give one copy of the subpoena which has been issued by ACAT to each party to the proceedings.
- You must do this as soon as practical after you have served the subpoena, usually at least three days before the return date.

**☐ Step 7: Attend the return of the subpoena (subpoenas for documents or things only)**

- At the return of subpoena, ACAT will tell the parties if material has been produced in response to the subpoena. ACAT may make orders allowing the parties to look at the documents or things produced in response to the subpoena. This is an *access order* and usually lets the parties inspect, copy and/or photocopy the material produced.
- If there is an objection the subpoena, ACAT will listen to the reasons for the objection and the views of the parties, and make a decision about the objection. The objection could be from the person receiving the subpoena or from a party.
- You can ask to attend the return of subpoena by telephone. You need to ask the Registry to attend by telephone at least five days before the return date.
- A copy of the *access orders* will be sent to each party in the proceedings.

**☐ Step 8: Inspect and/or photocopy the documents or things**

- If ACAT makes an *access order*, you can make an appointment to look at the material produced in response to the subpoena.
- Appointments are usually 30 minutes long and held at ACAT.
- To make an appointment, email ACAT at [tribunal@acat.gov.au](mailto:tribunal@acat.gov.au) with three different times and dates that you are able to look at the material.
- If you are permitted to photocopy material produced in response to the subpoena, there is a cost: see [www.acat.act.gov.au/fees](http://www.acat.act.gov.au/fees)