

TASMANIA

**SUPREME COURT FORMS AMENDMENT RULES
2017**

STATUTORY RULES 2017, No. 103

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SUPREME COURT FORMS AMENDMENT RULES 2017

IN THE SUPREME COURT OF TASMANIA

Dated 14 December 2017.

We, the Honourable Alan Michael Blow, OAM, Chief Justice, and the Honourable Helen Marie Wood, the Honourable Stephen Peter Estcourt, the Honourable Robert William Pearce, the Honourable Michael Joseph Brett and the Honourable Gregory Peter Geason, Puisne Judges of the Supreme Court of Tasmania, on the recommendation of the Rule Committee, make the following Rules of Court under the *Supreme Court Civil Procedure Act 1932*.

1. Short title

These Rules of Court may be cited as the *Supreme Court Forms Amendment Rules 2017*.

2. Commencement

These Rules of Court take effect on the day on which their making is notified in the *Gazette*.

3. Principal Rules

In these Rules of Court, the *Supreme Court Forms Rules 2000** are referred to as the Principal Rules.

*S.R. 2000, No. 26

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4. Schedule 1 amended (Forms)

Schedule 1 to the Principal Rules is amended as follows:

(a) by omitting the following item

Form 6A	Notice to defendant served outside Australia
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from Part 1;

(b) by omitting

Form 37	Subpoena
Form 37A	Notice and declaration

from Part 1 and substituting the following items:

Form 37	Subpoena to give evidence
Form 38	Subpoena to produce documents or things
Form 39	Subpoena to give evidence and produce documents or things

(c) by inserting in Part 1 after

Form 83B	Summary of document to be served
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the following item:

Form 83C	Notice to defendant served outside of Australia
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-
- (d) by omitting Form 6A from Part 2;
- (e) by omitting Forms 37 and 37A from Part 2 and substituting the following forms:

FORM 37

Rule 496

SUBPOENA TO GIVE EVIDENCE

To: [name]
[address]

You are ordered to give evidence. See next page for details.

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

Please read Notes 1 – 6 at the end of this subpoena.

[Seal or Stamp of the Court]

Dated:

.....
Signed by an officer acting with the authority of the Registrar

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

.....

Details of subpoena

Date, time and place at which you must attend to give evidence, unless you receive a notice of a later date or time from the issuing party, in which case the later date or time is substituted:

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 the proceeding, or until the hearing of the matter is completed.

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Notes:

Informal service

1. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with its requirements if you have actual knowledge of the subpoena and of its requirements.

Addressee a corporation

2. If the subpoena is addressed to a corporation, the corporation must comply with the subpoena through its appropriate or proper officer.

Applications in relation to subpoena

3. 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 that is the subject of the subpoena.

Loss or expense of compliance

4. 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 legal costs, reasonably incurred in complying with the subpoena.

Contempt of court – arrest

5. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.
6. Note 5 is without prejudice to any power of the Court under any Rules of Court (including any Rules of 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.

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FORM 38

Rule 496 and 500C(3)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS

To: [name]
[address]

You are ordered to produce this subpoena (or a copy of it) and the documents or things specified in the Schedule of documents. See next page for details.

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

Please read Notes 1 – 14 at the end of this subpoena.

[Seal or Stamp of the Court]

Dated:

.....
Signed by an officer acting with the authority of the Registrar

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

.....

Details of subpoena

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 of documents 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 of documents below to the Registrar at the address below, or, if there is more than one address below, at any one of those addresses, so that they are received not less than 2 clear business days before the date specified for attendance and productions (*see Notes 3 – 7*).

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Date, time and place at which you must attend to produce the subpoena (or a copy of it) and the documents or things specified in the Schedule of documents, unless you receive notice of a later date or time from the issuing party, in which case the later date or time is substituted:

Date:

Time:

Place:

Address, or any address, to which the subpoena (or copy of it) and documents or things may be delivered or posted:

.....

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Schedule of documents

The documents or things you must produce are as follows:

[List the documents or things. Attach list if insufficient space]

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Notes:

Informal service

1. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with its requirements if you have actual knowledge of the subpoena and of its requirements.

Addressee a corporation

2. If the subpoena is addressed to a corporation, the corporation must comply with the subpoena through its appropriate or proper officer.

Production of subpoena, or copy of it, and documents or things by delivery or post

3. If this subpoena requires production of the subpoena (or a copy of it) and documents or things, instead of attending to produce the subpoena (or a copy of it) and the documents or things, you may comply with the subpoena by delivering or sending the subpoena (or a copy of it) and the documents or things to the Registrar –
 - a) at the address specified in the subpoena for the purpose; or
 - b) if more than one address is specified, at any of the addresses –so that they are received not less than 2 clear business days before the date specified in the subpoena for attendance and productions or, if you receive notice of a later date or time from the issuing party, before the later date or time.

Objection to inspection

4. If you object to a document or thing, that is produced in response to the 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 the grounds of your objection.
5. Unless the Court otherwise orders, if you do not object to a document or thing, that is 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.

Materials produced to the Court

6. If the material you produce to the Court is or includes any original document, the Court will return all of the material to you. You must complete the Declaration which is attached to this subpoena and specify your address for the return of this

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material. If you have elected to produce copies of any subpoenaed documents and declare this when completing the Declaration, those copies will be destroyed, without further notice, 4 months after 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.

Production of a number of documents or things

7. 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

8. Unless the subpoena specifically requires you to produce an original, you are encouraged to produce only a copy of any document that the subpoena requires you to produce, and, if possible, to do this in electronic form.
9. Electronic copies of documents can be provided on a portable storage device in any of the formats mentioned in paragraph 10 below.
10. The copy of a document may be in any of the following formats:
- a) a photocopy;
 - b) any of the following electronic formats:
 - i. .doc and .docx – Microsoft Word documents
 - ii. .pdf – Adobe Acrobat documents
 - iii. .xls and .xlsx – Microsoft Excel spreadsheets
 - iv. .jpg – image files
 - v. .rtf – rich text format
 - vi. .gif – graphics interchange format
 - vii. .tif – tagged image format

Applications in relation to subpoena

11. 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 that is the subject of the subpoena.

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Loss or expense of compliance

12. 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 legal costs, reasonably incurred in complying with the subpoena.

Contempt of court – arrest

13. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.
14. Note 13 is without prejudice to any power of the Court under any Rules of Court (including any Rules of 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.

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS

NOTICE TO ADDRESSEE

The **addressee** is the person to whom the subpoena is addressed, and who will be the recipient of the subpoena.

You may produce copies of any subpoenaed documents, unless the subpoena specifically requires you to produce originals. A copy of a document may be –

- a) a photocopy; or
- b) in an electronic form that the issuing party (the party that issued the subpoena) has indicated to you will be acceptable.

You must complete the Declaration below, attach it to the subpoena (or a copy of the subpoena) and return them with the documents or things that you provide to the Court under the subpoena.

If you declare that the material you produce is copies of documents, the Registrar may, without further notice to you, destroy the copies after the expiry of 4 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.

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If the material you produce to the Court 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.

DECLARATION BY ADDRESSEE

[tick the relevant option below, (provide your address as appropriate), sign and date]

☐

All copied documents

All of the material I am providing to the Court in compliance with the attached 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 to the Court in compliance with the attached subpoena is in the form of original documents. Once the material is no longer required, all the material should be returned to me at the following address:

.....

Signed by:[insert full name of addressee]

.....

Dated:

Addressee

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FORM 39

Rule 496 and 500C(3)

SUBPOENA TO GIVE EVIDENCE AND PRODUCE DOCUMENTS OR THINGS

To: [name]
 [address]

You are ordered to attend to give evidence and produce this subpoena (or a copy of it) and the documents or things specified in the Schedule of documents. See next page for details.

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

Please read Notes 1 – 14 at the end of this subpoena.

[Seal or Stamp of the Court]

Dated:

.....

Signed by an officer acting with the authority of the Registrar

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

.....

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Details of subpoena

In so far as you are required by this subpoena to attend to give evidence, you must attend as follows, unless you receive a notice of a later date or time from the issuing party, in which case the later date or time is substituted:

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 the proceeding, or until the hearing of the matter is completed.

In so far as you are required by this subpoena to produce this 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 of documents 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 of documents below to the Registrar at the address below, or if there is more than one address below, at any one of those addresses, so that they are received not less than 2 clear business days before the date specified for attendance and production (*see Notes 3 – 7*).

Date, time and place at which you must attend to produce the subpoena (or a copy of it) and the documents or things specified in the Schedule of documents, unless you receive notice of a later date or time from the issuing party, in which case the later date or time is substituted:

Date:

Time:

Place:

Address, or any address, to which the subpoena (or copy of it) and documents or things may be delivered or posted:

.....

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Schedule of documents

The documents or things you must produce are as follows:

[List the documents or things. Attach list if insufficient space]

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Notes:

Informal service

1. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with its requirements if you have actual knowledge of the subpoena and of its requirements.

Addressee a corporation

2. If the subpoena is addressed to a corporation, the corporation must comply with the subpoena through its appropriate or proper officer.

Production of subpoena, or copy of it, and documents or things by delivery or post

3. If this subpoena requires production of the subpoena (or a copy of it) and documents or things, instead of attending to produce the subpoena (or a copy of it) and the documents or things, you may comply with the subpoena by delivering or sending the subpoena (or a copy of it) and the documents or things to the Registrar –
 - a) at the address specified in the subpoena for the purpose; or
 - b) if more than one address is specified, at any of the addresses –so that they are received not less than 2 clear business days before the date specified in the subpoena for attendance and productions, or, if you receive notice of a later date or time from the issuing party, before the later date or time.

Objection to inspection

4. If you object to a document or thing, that is produced in response to the 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 the grounds of your objection.
5. Unless the Court otherwise orders, if you do not object to a document or thing, that is 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.

Materials produced to the Court

6. If the material you produce to the Court is or includes any original document, the Court will return all of the material to you. You must complete the declaration which is attached to this subpoena and specify your address for the return of this material. If you have elected to produce copies of any subpoenaed documents and

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declare this when completing your declaration, those copies will be destroyed, without further notice, 4 months after 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.

Production of a number of documents or things

7. 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

8. Unless the subpoena specifically requires you to produce an original, you are encouraged to produce only a copy of any document that the subpoena requires you to produce, and, if possible, to do this in electronic form.
9. Electronic copies of documents can be provided on a memory card or stick in any of the formats mentioned in paragraph 10 below.

10. The copy of a document may be in any of the following formats:

- a) a photocopy;
- b) any of the following electronic formats:
 - i. .doc and .docx – Microsoft Word documents
 - ii. .pdf – Adobe Acrobat documents
 - iii. .xls and .xlsx – Microsoft Excel spreadsheets
 - iv. .jpg – image files
 - v. .rtf – rich text format
 - vi. .gif – graphics interchange format
 - vii. .tif – tagged image format

Applications in relation to subpoena

11. 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 that is the subject of the subpoena.

Loss or expense of compliance

12. 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 legal costs, reasonably incurred in complying with the subpoena.

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Contempt of court – arrest

13. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.
14. Note 13 is without prejudice to any power of the Court under any Rules of Court (including any Rules of 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.

SUBPOENA TO GIVE EVIDENCE AND PRODUCE DOCUMENTS OR THINGS

NOTICE TO ADDRESSEE

The **addressee** is the person to whom the subpoena is addressed, and who will be the recipient of the subpoena.

You may produce copies of any subpoenaed documents, unless the subpoena specifically requires you to produce originals. A copy of a document may be –

- a) a photocopy; or
- b) in an electronic form that the issuing party (the party that issued the subpoena) has indicated to you will be acceptable.

You must complete the Declaration below, attach it to the subpoena (or a copy of the subpoena) and return them with the documents or things that you provide to the Court under the subpoena.

If you declare that the material you produce is copies of documents, the Registrar may, without further notice to you, destroy the copies after the expiry of 4 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 the material you produce to the Court 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.

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DECLARATION BY ADDRESSEE

[tick the relevant option below, (provide your address as appropriate), sign and date]

☐

All copied documents

All of the material I am providing to the Court in compliance with the attached 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 to the Court in compliance with the attached subpoena is in the form of original documents. Once the material is no longer required, all the material should be returned to me at the following address:

.....

Signed by:[insert full name of addressee]

.....

Dated:

Addressee

- (f) by inserting the following form after Form 83B in Part 2:

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FORM 83C

Rule 147D

NOTICE TO DEFENDANT SERVED OUTSIDE OF AUSTRALIA

To the Defendant:

1. You have been served with an originating process outside of Australia under Rules 147A to 147H of the *Supreme Court Rules 2000* of the Supreme Court of Tasmania. A copy of those Rules is enclosed for your information. They show the scope of the jurisdiction of the Court in respect of claims against persons who are served outside of Australia.
2. The grounds alleged by the plaintiff to support its claim to be entitled to serve you outside of Australia are:
[specify grounds]
3. The Court may, on application made by you in accordance with the Rules of Court, dismiss or stay the proceeding or set aside the service on you of this originating process. Without limiting the Court's powers in this regard, the Court may dismiss or stay the proceeding, or set aside the service on you, if satisfied that —
 - a) the service was not authorised by the Rules of Court; or
 - b) this Court is an inappropriate forum for the trial of the proceeding; or
 - c) the claim has insufficient prospects of success to warrant putting you to the time, expense and trouble of defending the claim.
4. Alternatively, you may file an unconditional appearance (in the form prescribed by the Rules of Court) within the time required under the Rules of Court.
5. If you file an unconditional notice of appearance, additional procedural obligations (such as an obligation to file a defence or an affidavit) may apply to you in accordance with the Rules of Court.
6. If you do not make an application to set aside service, referred to in paragraph 3, or file an unconditional notice of appearance, the Court may give leave to the plaintiff to proceed against you without further notice.

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A. M. BLOW
Chief Justice

H. M. WOOD
Puisne Judge

S. P. ESTCOURT
Puisne Judge

R. W. PEARCE
Puisne Judge

M. J. BRETT
Puisne Judge

G. P GEASON
Puisne Judge

Countersigned,

J. A. CONNOLLY
Registrar

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Printed and numbered in accordance with the *Rules Publication Act 1953*.

Notified in the *Gazette* on 20 December 2017.

EXPLANATORY NOTE

(This note is not part of the Rules of Court)

These Rules of Court amend the *Supreme Court Forms Rules 2000*, consistent with the recommendations of the Harmonisation of Rules Committee, to update the forms relating to –

- (a) subpoenas; and
- (b) service outside of Australia.