

## Early Years Services – QA7.9 Responding to Subpoenas and Witness Summons

TRIM Reference: D15/54932 Due for Review: 8 October 2022  
Responsible Officer: Coordinator Early Years

### Purpose

This policy outlines Surf Coast Shire Council's (Council) commitment to:

- explain the obligations created by subpoenas and witness summonses,
- advise Surf Coast Shire Council Early Years Services staff, and Family Day Care (FDC) educators of the legal resources available to assist them to comply with these obligations.

### Policy Principles

To ensure a process is adhered to when Surf Coast Shire staff and Family Day Care Contractors receive a subpoena and or a witness summons.

### Scope

This policy applies to all Surf Coast Shire Council staff and Family Day Care (FDC) educators.

### Policy

Surf Coast Shire Council Early Years Services staff, students, formal volunteers and FDC educators are NOT to provide a written statement, produce documents, or give evidence in a legal proceeding unless they have received a subpoena or witness summons or have been advised by the Governance Unit at Surf Coast Shire Council.

Any staff member, or FDC educator who receives a request to provide a written statement, produce documents, or give evidence, AND / OR who has been served with a subpoena or witness summons is to:

- i) Contact the relevant Early Years Services Team Leader or the Coordinator Early Years as soon as possible.
- ii) In conjunction with the relevant Early Years Services Team Leader or Coordinator Early Years; contact the Department of Education and Training (DET) Legal Division for advice and assistance in complying with the obligations.
- iii) For matters relating to the Maternal and Child Health (MCH) Service, contact should be made with the MCH Policy Advisor at the Municipal Association of Victoria who will then liaise as necessary with their legal counsel and the Department of Health and Human Services Legal Division.

**After a summons, subpoena etc. has been received, Governance will be notified immediately – Risk Management & Legal Services Coordinator will act as your liaison with Council's insurers or seek advice as required.**

### Department of Education and Training Legal Division (DET)<sup>1</sup>

#### Role of the Legal Division

All legal matters, including subpoenas, writs, claims, demands and any other legal matters or correspondence should be immediately referred to the DET Legal Division and the Surf Coast Shire Council Governance Department should be informed.

<sup>1</sup> Subpoenas & Witness Summonses, DET website, retrieved 7/4/14

### Contacting the Legal Division

The contact details for the Legal Division are as follows:

**Address:**

Legal Division  
Department of Education and Training  
GPO Box 4367  
Melbourne Victoria 3001

**Telephone:** (03) 9637 3146

**Fax:** (03) 9637 2750

**Email:** legal.services@edumail.vic.gov.au

The Legal Division operates a duty lawyer phone service from Monday to Friday 8:30am – 5:30pm.

Municipal Association of Victoria

Contact:

Kim Howland  
MCH Policy Advisor  
khowland@mav.asn.au  
(03) 9667 5563

## Definitions

### What is a subpoena or witness summons?<sup>2</sup>

*A subpoena or witness summons is a legal document that meets the following criteria:*

- *It has been issued by a Court or a Tribunal.*
- *It is addressed to an individual, an office holder, or a nominal person.*
- *It requires an individual to produce documents and/or to give evidence and provides a specific date, time and place for the individual to do so.*
- *It relates to a legal proceeding to which the individual is not a party.*

*The obligation to comply with the subpoena or witness summons overrides any obligations that staff may have under privacy legislation (e.g. Information Privacy Act 2000 and the Health Records Act 2001) or Departmental policy. However, there are also some rules about when staff may not be required to comply with the subpoena or witness summons. There are strict time limits so it is important to obtain legal advice as soon as practicable after staff have received the subpoena or witness summons. There are also serious consequences for not complying with a subpoena or witness summons.*

## Related Procedure

Nil.

## References

### Related Surf Coast Shire Council and Early Years Services Policies

OHS 9.0	Injury/Incident Reporting Policy
MPP-006	Complaints Handling
MPP-005	Privacy and Data Protection
D14/105413	Incident, Injury, Trauma & Illness Policy
MPP-052	Child Safe Organisation Policy

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<sup>2</sup> Subpoenas & Witness Summonses, DET website, retrieved 7/4/14

### Related Surf Coast Shire Council Early Years Services Work Instructions and Forms

D14/49020 DET Serious Incident Form- completed via the NQA IT system  
D15/63330 Surf Coast Shire Early Years Incident, Injury Trauma Record Form

### Other References

DET Subpoenas and Witness Summonses  
Education and Care Services National Law 2010  
Education and Care Services National Regulations 2011  
Victorian Children's Services Regulations 2009  
Maternal and Child Health Service Guidelines 2011  
Maternal and Child Health Service Program Standards 2009

### Document History

Version	Document History	Approved by – Date
1	Approved	General Manager Culture and Community – 1 April 2014
2	Amendment/Review	Manager Aged and Family – 23 June 2017
3	Amendment/Review	Manager Aged and Family – 20 November 2017
4	Amendment/Review	Manager Community Strengthening – 9 August 2019
5	Amendment/Review	Manager Community Strengthening – 8 April 2021