

# EARLY YEARS POLICY

<b>Responding to Subpoenas &amp; Witness Summons Policy</b>	Policy No:	<b>QA 7.9</b>
	Document No:	D15/54392
	Approved Date:	1 April, 2014
	Approved By:	Manager Aged and Family
	Review Date:	9 February 2021
Responsible Officer:		Coordinator Early Years
Authorising Officer:		Manager Community Strengthening

## 1. Purpose

The purpose of this policy is 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.

## 2. Scope

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.

## 3. Application

All Surf Coast Shire Council staff and Family Day Care (FDC) educators.

## 4. Definitions

### What is a subpoena or witness summons?<sup>1</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.*

## 5. Policy & Procedure

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:

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

- 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.**

## **5.1 Department of Education and Training Legal Division (DET)<sup>2</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.

### **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.

## **5.2 Municipal Association of Victoria**

#### **Contact:**

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

## **6. Records**

Below are records that can be subpoenaed;  
Records shall be retained for at least the period shown below.

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

<b>Record</b>	<b>Retention / Disposal Responsibility</b>	<b>Retention Period</b>	<b>Location</b>
Surf Coast Shire Early Years Incident, Injury, Trauma & Illness Record	Records	26 years	Off site
Surf coast Shire Early Years Child Enrolment Record	Records	26 years	Off site
Surf Coast Early Years' service attendance record	Records	21 years	Off site

## 7. Attachments

Not applicable

## 8. 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

### 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

<b>Approval Date:</b>	01/04/2014	<b>Approved by:</b>	General Manager Culture and Community
<b>Amendment/Review 1:</b>	23/06/2017	<b>Approved by:</b>	Manager Aged and Family
<b>Amendment/Review 2:</b>	20/11/2017	<b>Approved by:</b>	Manager Aged and Family
<b>Amendment/Review 3:</b>	09/08/2019	<b>Approved by:</b>	Manager Community Strengthening