

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

TRIM Reference: D15/54932 Due for Review: 30 July 2025
Responsible Officer: Coordinator Early Years

Purpose

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

- explain the obligations created by subpoenas and witness summonses,
- advise Surf Coast Shire Council Early Years Services staff 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 receive a subpoena and or a witness summons.

Scope

This policy applies to all Early Years Surf Coast Shire Council staff.

Policy

Surf Coast Shire Council Early Years Services staff, students and registered volunteers 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 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; email the Department of Education (DE) Legal Division for advice and assistance in complying with the obligations (contact details below).

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

Department of Education Legal Division (DE)¹

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 DE 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:

¹ Subpoenas & Witness Summonses, DE website, retrieved 7/4/14

Address:

Legal Division
Department of Education
GPO Box 4367
Melbourne Victoria 3001

Telephone: (03) 9637 3146

Fax: (03) 9637 2750

Email: legal.services@education.vic.gov.au

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

Definitions

What is a subpoena or witness summons?²

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

- It has been issued by a Court, Tribunal or a similar body.
- It is addressed to an individual, an office holder, or a nominal person and served appropriately on that person.
- It requires an individual to produce specific documents and/or to give evidence at a court or tribunal, providing a specific date, time and place for the individual to do so.
- It relates to a legal proceeding that the individual may not be involved in.

Complying with a subpoena

Providing information to a court or tribunal in compliance with a subpoena or summons is an exemption under privacy legislation — Privacy and Data Protection Act 2014 (Vic) and the Health Records Act 2001 (Vic).

However, there are some limited circumstances in which a court may not enforce compliance with a subpoena or summons, or be comfortable with the production of redacted documents. The Legal Division can provide advice and assistance in relation to this.

There are strict time limits for compliance so it is important to obtain legal advice as soon as possible after staff have received the subpoena or summons.

There can be serious consequences for not complying with a subpoena or 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

² Subpoenas & Witness Summonses, DE website, retrieved 7/4/14

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

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

Other References

DE Subpoenas and Summonses
Education and Care Services National Law 2010
Education and Care Services National Regulations 2011
Victorian Children's Services Regulations 2020

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
6	Amendment/Review	Manager Community Strengthening – 30 August 2022
7	Amendment/Review	Manager Community Strengthening – 30 January 2024