



New South Wales

Justices (Attendance of Witnesses and Production of Evidence) Rule 1999

under the

Justices Act 1902

1 Citation

This Rule may be cited as the Justices (Attendance of Witnesses and Production of Evidence) Rule 1999.

2 Commencement

This Rule commences on

3 Definition

(1) In this rule:

“the Act” means the *Justices Act 1902*

(2) In this Rule, a reference to a form is a reference to a form set out in Schedule 1.

4 Conduct Money

The amount mentioned in section 100AJ of the Act shall be, in respect of a person duly served with a subpoena in any proceedings, the amount which would be payable in respect of that person if the party issuing the subpoena were entitled to claim witness' expenses in respect of that person as costs in the proceedings.

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5 Subpoena may be set aside

- (1) For the purposes of section 100AL of the Act, a Notice of Application to Set Aside the subpoena wholly or in part is to be in or to the effect of Form 1.
- (2) A copy of Form 1 must be served on the party on whose request the subpoena issued either personally or by forwarding a copy by post to the address of the party as shown on the subpoena by the applicant.
- (3) A copy of Form 1 must also be filed by the applicant with the Local Court before which the subpoena is returnable.
- (4) Unless leave is granted by the Local Court, the time for filing and serving the Form 1 by the applicant in accordance with this Rule is not less than 3 days before the date that the subpoena is returnable.
- (5) The applicant, to set aside a subpoena, must appear before the Local Court on the date that the subpoena is returnable to allow the Local Court to deal with the application.
- (6) Where substituted service is ordered, a copy of the such order (Form 3) is to be served with the subpoena.

6 Inspection of Subpoenaed documents or things

For the purposes of section 100AM(3) of the Act, notification of an objection to the inspection of subpoenaed documents or things may be raised orally before the Local Court on the return date of the subpoena.

7 Service of Subpoena

- (1) Service of a subpoena may be effected by handing it to the person named.
- (2) If, on tender of a subpoena to the person named, the person refuses to accept it, the subpoena may be served by putting it down in the persons presence after the person has been told of the nature of the subpoena.
- (3) Where the person named in a subpoena is a party and has a solicitor in the proceedings, the subpoena may, with the consent of the solicitor, be served on the person named by leaving it at the solicitor's address for service.

- (4) Where the person named in a subpoena is a medical practitioner:

 - (a) service of a subpoena may be effected at a place where the practice is carried on, by handing it to some person apparently engaged (whether as a servant or otherwise) in the practice and apparently of or above the age of 16 years; and
 - (b) if, on the tender of the subpoena to the person named in paragraph (a), that person refuses to accept it, the subpoena may be served by putting it down in the persons presence after the person has been told of the nature of the subpoena.
- (5) Service of a subpoena on a corporation may be effected by serving the subpoena in accordance with sub rule (1) or sub rule (2), as the case may require, on the mayor, chairperson or president, or on the town clerk, clerk, secretary, treasurer or other similar officer of the corporation or, where provision is made by or under any Act for service of a document on a corporation, by serving the subpoena in accordance with that provision.
- (6) Service may be otherwise effected in any manner directed by the Local Court or Registrar either on oral or written application by the parties. Written application under this provision is to be in the form or effect of Form 2. An application made under this provision may be dealt with by the Local Court or Registrar in chambers, unless the Registrar or Local Court otherwise directs.

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SCHEDULE 1—FORMS

Form 1

Notice of Application to Set Aside Subpoena

Justices Act 1902, Section 100AL

Applicant: (name of applicant)
Address: (address of applicant)
Respondent: (name of respondent)
Party to whom issued: (name)
Date Subpoena issued: (date)
Issuing Party: (name)
In proceedings between: (name of parties to the proceedings)
Date Subpoena Returnable: (date for attendance or production of documents indicated on subpoena)
Place of hearing: (name and address of court)
Offence: (short description of offence)
Case No: (case reference number)

I hereby give notice that I apply under section 100AL of the Justices Act 1902 for the above subpoena to be set aside in part/wholly.

I rely on the following grounds:

(state grounds on which application made)

This application will be heard at the place and time at which the subpoena is returnable unless otherwise advised by the Local Court.

Dated at (place) this (date)

Applicant: (applicant)

Address: (address of applicant)

To: *Respondent

*Local Court

Form 2

Application for Substituted Service of a Subpoena

Justices Act 1902, Section 100AM(3)(b)

Applicant: (name of applicant)

Address: (address of applicant)

Respondent: (name of respondent)

Party to whom issued: (name)

Date Subpoena issued: (date)

Issuing Party: (name)

In proceedings between: (name of parties to the proceedings)

Date Subpoena Returnable: (date for attendance or production of documents indicated on subpoena)

Place of hearing: (name and address of court)

Offence: (short description of offence)

Case No: (case reference number)

I hereby apply to the Local Court for an order that service of the subpoena issued to (name of person) dated (date) returnable (date) be effected in the following manner:

(state the manner in which substituted service to be effected)

I rely on the following grounds:

(state grounds upon which application made)

Dated at (place) this (date)

Applicant: (name of applicant)

Address: (address of applicant)

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To: Registrar, Local Court at (place)

Application granted/not granted

Subpoena is to be served in the following manner:

(state manner in which substituted service is to be effected)

Copy of Order for Substituted Service (Form 3) is to be served with the Subpoena

Registrar, Local Court

Date: (date)

Form 3

Order for Substituted Service

Justices Act 1902, Section 100AM(3)(b)

Applicant:	(name of applicant)
Address:	(address of applicant)
Respondent:	(name of respondent)
To whom issued:	(name)
Date Subpoena Issued:	(date)
Issuing Party:	(name)
In proceedings between:	(name of parties to the proceedings)
Date Subpoena Returnable:	(date for attendance or production of documents indicated on subpoena)
Place of hearing:	(name and address of court)
Offence:	(short description of offence)
Case No:	(case reference number)

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The application is granted/not granted

Subpoena is to be served in the following manner:

(state manner in which substituted service is to be effected)

A copy of this Order for Substituted Service is to be served with the Subpoena

Registrar, Local Court

Date: (date)

At: (place)

BY AUTHORITY
