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| eCase: electronic subpoenas |
| **Practice note** |

**DOCUMENT CONTROL**

**Details**

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| --- | --- |
| **Document type** | Practice note |
| Reference number | PNCI 8–2020 |
| Division | Common Law and Commercial Division |
| Reviewed by | Judge Tsalamandris |
| Authorised by | Judge Tsalamandris |
| Notes |  |

**Release history**

|  |  |  |  |
| --- | --- | --- | --- |
| Version | Date | Author | Summary of changes |
| 1.0 | 28/08/20 | Judge Tsalamandris | Document created |

**Related documents**

|  |  |
| --- | --- |
| Document title | Version |
| Common Law subpoenas practice note – reference number PNCLD 9–2020 | 1.0 |
| Notice to practitioners – Commercial Division response to COVID-19 | 1.2 |
| Commercial Division practice note – reference number PNCO 1–2019 | 1.0 |
| Commercial Division Building Cases List practice note – reference number PNCO 2-2019 | 1.0 |

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# eCase

* 1. The Court has implemented a new electronic platform for the digitisation of the subpoena process, named **eCase**. eCase is the Court’s preferred method for the submission of subpoena responses, objections, objection withdrawal, inspection requests and inspection itself. From 31 August 2020, parties, practitioners and addressees should use eCase to complete the tasks and actions under paragraph 1.4 and 1.5 in all civil proceedings, unless it is impractical to do so.
  2. This practice note sets out the guidelines for responding to subpoenas; making objections; and requesting inspection, electronically via eCase. It complements the County Court Civil Procedure Rules 2018 (“the Rules”) and should be read in conjunction with the following practice notes:
     1. PNCLD 9-2020 Common Law Subpoenas
     2. PNCO 1-2019 Commercial Division
     3. PNCO 2-2019 Building Cases List
     4. Commercial Division Response to COVID-19
  3. This practice note prevails to the extent of any inconsistency between the above practice notes and this practice note. In particular, part 37 of the Commercial Division Practice Note (PNCO 1-2019) and part 2.4 of the Commercial Division Response to COVID-19 are affected by this practice note.
  4. Subpoenaed addressees can use eCase to:
     1. produce subpoenaed material in response to the subpoena;
     2. advise the Court and the parties if no material was found in response to the subpoena;
     3. advise the Court that the addressee is objecting to comply with the subpoena and provide the ground for their objection;
     4. lodge an objection to the inspection of produced material and provide the ground for their objection; and
     5. withdraw a previous objection.
  5. Parties, their solicitor, or other persons with a sufficient interest can use eCase to:
     1. lodge an objection to the inspection of subpoena material and provide the ground for their objection; and
     2. withdraw a previous objection.
  6. Parties or their solicitor can also use eCase to:
     1. view subpoena material produced by the Addressee (where permitted by the Rules); and
     2. download subpoena material produced by the Addressee (where permitted by the Rules).
  7. Subpoenas cannot be issued via eCase. The existing procedures for issuing subpoenas continue to apply.
  8. Subpoenas issued pursuant to Order 7A of the County Court Civil Procedure Rules 2018 (Trans-Tasman subpoenas) and applications made pursuant to Section 32C of the *Evidence (Miscellaneous Provisions) Act* 1958 are **not** available in eCase. The existing procedures for production and inspection of subpoenaed material continue to apply to these subpoenas.
  9. For the best user experience, the Court encourages users to access eCase via one of the following supported browsers:
     1. Google Chrome
     2. Mozilla Firefox
     3. Apple Safari 10+

Users may also access eCase via Microsoft Edge or Internet Explorer, however this is discouraged as some functions may not be available.

* 1. Addressees and inspecting persons and parties are encouraged to register an account with eCase. Until this account registration has been approved, users may only respond to up to five subpoenas and file up to two objections. There is no limit for approved account holders. Users may not request to inspect any subpoena material until their account has been approved.
  2. Law firms are encouraged to create “an organisation” in eCase. Once the organisation is approved by the Court any person registering with an email address with the same email domain will automatically be approved. Further, the organisation may be managed by the firm’s admin user, enabling them to deactivate users within their firm as required.
  3. The first time a user accesses eCase the portal will walk the user through all functionality available in the platform. Users are encouraged to complete this walkthrough before actioning any tasks using eCase. Additional guided walkthroughs are available to assist users in navigating eCase at any time.
  4. Audit history will be maintained throughout the lifecycle of the solution.

# Notice to be served with subpoena

* 1. Any party that has issued a subpoena to produce documents, must serve the [eCase electronic subpoenas: notice to addressees](https://www.countycourt.vic.gov.au/practice-notes?filters%5bkeyword%5d=eCase%20electronic%20subpoenas:%20notice%20to%20addressees) together with the subpoena. Parties should encourage addressees to respond to the subpoena by eCase. By correctly responding to a subpoena via eCase, the addressee will comply with Rules 42.06(4) and 42A.05(1) of the *County Court Civil Procedure Rules* 2018.

# Responding to a subpoena

* 1. Subpoenaed addressees should use eCase to respond to a subpoena unless it is impractical to do so. Subpoenaed addressees are able to respond to a subpoena via eCase in any of the following ways:
     1. Complying with the subpoena by producing the subpoena material, without objecting to the inspection of any of this material;
     2. Complying with the subpoena by producing the subpoena material, while objecting to the inspection of any or all of this material;
     3. Complying with the subpoena by advising that none of the subpoenaed material has been found; or
     4. Objecting to complying with the subpoena.
  2. If an addressee does not have any material to produce in response to the subpoena, the addressee should select “No Material Found”. The addressee should then upload a cover letter explaining that no material was found.
  3. If an addressee has subpoenaed material to produce in response to the subpoena, (even if the addressee is objecting to producing some of the documents sought, or objecting to inspection), the addressee should select “Produce Materials (Inc. any objection to inspection)”.
  4. The following documents should then be uploaded by the addressee:
     1. The documents produced in response to the subpoena;
     2. A cover letter, where required to explain the grounds for an objection (see section 4 below) or to explain that some documents have not been found; and
     3. A copy of the Form 42B, Form 42C or Form 42AA subpoena with the “declaration by addressee” completed.
  5. If an addressee refuses to produce all of the material, then the addressee should select “Object to comply options”. In such circumstances, the addressee will have to provide grounds for the objection and upload a covering letter explaining the grounds of objection to production.
  6. Addressees may produce subpoenaed material via eCase in any of the following formats:
     1. .doc and .docx – Microsoft Word documents
     2. .pdf – Adobe Acrobat documents
     3. .xls and .xlsx – Microsoft Excel spreadsheets
     4. .jpg – image files
     5. .rtf – rich text format
     6. .gif – graphics interchange format
     7. .tif – tagged image format.

If an addressee wishes to produce material in any file format other than listed above, the addressee may contact the Court’s Subpoena Team for alternative ways to comply with the subpoena.

* 1. An addressee may classify material produced in response to a subpoena as:
     1. “objected”: for more information, see section 4 of this practice note;
     2. “redacted”: the addressee will then be prompted to advise if it will also produce an unredacted version of the file. An addressee providing both a redacted and an unredacted version of the same material will be taken to have objected to inspection of the unredacted version and is requested to provide a ground for the objection. If an addressee provides a redacted version only and does not classify the material as ‘objected’, the Court will assume no objection is made to the release of the document;
     3. “medical material”: medical material includes but is not limited to: hospital and medical practitioner records, treatment records, history cards, clinical notes, Medicare records, discharge summaries, HR sick leave records, x-ray and x-ray reports, pathology, pharmacist records, psychology reports, diagnostic test results, worker’s compensation records, physiotherapist reports, TAC records, insurance, correspondence, doctor referrals, specialists reports and operation reports.

# Objections

* 1. Where an addressee objects to producing documents in response to a subpoena via eCase:
     1. any such objection must be made on or before the production date provided in the subpoena;
     2. the addressee must upload a cover letter in support; and
     3. the addressee will be prompted to select a ground for objection. If the addressee has multiple grounds for its objection or a ground that is not listed, the addressee may user the “other” ground option and enter the reason/s for objection in the text field; and
     4. the matter will then be referred to a Judicial Officer.
  2. Where an addressee objects to the inspection of any material produced in response to the subpoena:
     1. any such objection must be made on or before the date for production provided in the subpoena;
     2. the addressee must upload a cover letter explaining the grounds for objection and the documents to which it applies;
     3. the addressee should combine all documents with the same ground for objection in one file before uploading it to eCase.
     4. addressees will be prompted to select a ground for objection. If the addressee has multiple grounds for objection or a ground that is not listed, the addressee may user the “other” ground and enter the reason/s for objection in the text field; and
     5. the matter will then be referred to a Judicial Officer. Where an objection to inspection has been made, the relevant documents will not be released for inspection without a Court order.
  3. Where a party or person with a sufficient interest objects to inspection of any material produced in response to the subpoena via eCase:
     1. any objection to the inspection of medical material must be made within 14 days after the production date by the Plaintiff, or by 4pm on the day before the production date by any other party or other person with a sufficient interest;
     2. the objector must upload a cover letter explaining the grounds for objection and identifying the particular documents to which the objection applies;
     3. an affidavit in support can also be uploaded, or (if the objector is a party) can be filed via CITEC or the Self-Represented Litigant Case Managers;
     4. the objector will be prompted to select a ground for objection. If the party has multiple grounds for its objection or a ground that is not listed, the party may user the “other” ground and enter the reason/s for objection in the text field.
     5. the matter will then be referred to a Judicial Officer. Once an objection to inspection has been made, the relevant documents will not be released for inspection without a Court order.
  4. If a party other than the plaintiff has subpoenaed the production of medical records concerning the plaintiff, the plaintiff has a right to inspect before any other party, provided the plaintiff does so within 14 days after the date for production specified in the subpoena. If an addressee has not yet produced material by the date for production, the Plaintiff may lodge a non-compliance objection via eCase after the production date in order to reserve its right to first inspection.
  5. Any addressee or party seeking to withdraw an objection lodged via eCase must do so via eCase. The addressee or party must provide a reason for the withdrawal of the objection. Once the objection withdrawal is approved by the Court, the objection will no longer be active and the material subject to the objection may be released for inspection.
  6. Case Party objections can be lodged and withdrawn via the “Case Party objections” page in eCase.

# Inspection of subpoenaed material

* 1. A party can check whether documents have been produced to the Court in response to a subpoena via [Court Connect](http://cjep.justice.vic.gov.au).
  2. Before a party can inspect subpoena material via eCase, they (or if there is a solicitor on the record, their solicitor) must register for an account and this account must be approved by the Court.
  3. A party can lodge a request to inspect any subpoenaed material via the “Inspect Subpoenaed Documents” page in eCase.
  4. Where an objection to inspection of subpoenaed material has been made, those documents cannot be inspected without a Court order.
  5. If a party is seeking to inspect documents on five or more subpoenas at once, they may request inspection of electronic documents via email to the Subpoena Team rather than submitting a request for each subpoena via eCase. If the request is approved, the Subpoena Team will release material for all subpoenas via a OneDrive link.
  6. Any electronic request for the inspection of subpoenaed documents is deemed a “search for electronic files with copy” for which a fee of $14.80 is payable under item 26 of the *County Court (Fees) Regulations* 2018. If a fee applies to an inspection request, the Court will contact the requesting party to arrange for payment via telephone.
  7. Once a request for inspection via eCase is approved by the Court, the party will be able to view the documents by accessing the subpoena in the “My Inspections” list and clicking “View”. If downloading is permitted, the party may download a copy of the document to a local source by clicking on the “…” at the top right of the document.
  8. Any person viewing or downloading documents via eCase is reminded of the continuing obligation to keep the documents secure and not use them for a collateral or ulterior purpose unconnected to the proceedings in which the subpoena was issued (the *Harman* obligation in law[[1]](#footnote-1)). Examples of collateral or ulterior purposes include using the documents in different proceedings, using the documents for a business reason, or disclosing the information in documents to persons unrelated to the proceeding.

# Destruction of subpoenaed material

* 1. A document produced via eCase is a copy document, not an original document. Documents produced via eCase will be destroyed by the Registrar after the expiry of four 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.
  2. Documents produced via eCase will be deleted from all of the Court’s systems in accordance with paragraph 5.1. However, historical data will remain available.

# Contact details

* 1. For further information regarding Subpoenas and eCase, please contact the Subpoena Team on 03 8636 6525 or email [subpoenas@countycourt.vic.gov.au](mailto:subpoenas@countycourt.vic.gov.au).

1. *Harman v Secretary of State for Home Dept* [1983] 1 AC 280. [↑](#footnote-ref-1)