



**Children's Court
Victoria**

PRACTICE DIRECTION

No. 5 of 2018

SUBPOENAS RELATING TO CONFIDENTIAL COMMUNICATIONS

This Practice Direction is issued pursuant to section 592 of the *Children, Youth and Families Act 2005*.

Preamble


This practice direction applies with respect to criminal proceedings which relate wholly or partly to a charge for a sexual offence. It clarifies the procedure to apply for leave to compel the production of and to produce documents containing confidential communications.

Directions

1. Leave is required for the issue of a subpoena that seeks to compel production of a document likely to contain a 'confidential communication' as defined in section 32B of the *Evidence (Miscellaneous Provisions) Act 1958* ('the Act')
2. An application seeking leave for the issue of a subpoena as described in paragraph 3 shall be heard in the Sexual Offences List unless the court otherwise orders or the proceedings are listed at a regional venue of the Children's Court of Victoria.
3. A party who intends to make an application for leave must foreshadow this at the contest mention and note it on the Sex Offence List Contest Information Form A. The application shall be listed at least 6 weeks before the contested hearing and served not less than 14 days before the hearing date of the application unless the Court fixes a shorter period or waives the notice requirement.
4. Notice of the application must be given in accordance with section 32C(2) of the Act and must:
 - Include a brief outline of submissions in support of the application and a draft of the proposed subpoena

- Inform the protected confider, medical practitioner or counsellor that on the return date they may seek leave to appear and make submissions to the Court.
5. If leave to issue a subpoena is granted, unless the court otherwise orders, the subpoena must be made returnable at least 3 days before the special mention, for submissions to be made regarding the release of the documents. The issuing party must attach a notice to the subpoena advising the producing party that they may attend on the return date to make submissions as to the release of the documents.
 6. If a general subpoena is to be issued which might produce a confidential communication (e.g. DHHS or school records) the subpoena must specify that documents containing confidential communications are excluded from the material sought under the subpoena.

This Practice Direction commences on 4th June 2018


Magistrate Jennifer Bowles
Acting President
Children's Court of Victoria
1st June 2018