

FORM 41B

WITNESS SUMMONS TO PRODUCE AND TO ATTEND TO GIVE EVIDENCE

Rule 9(1)(c)

Children, Youth and Families Act 2005

Court Reference [ ]

To the witness [name] Gender [ ]

Address [ ]

DETAILS OF THE CASE

Name of child [ ]

Venue [ ]

Type of hearing: [ ] Protection application [ ] Irreconcilable differences application [ ] Intervention order proceeding [ ] Other [specify] [ ]

Name of applicant [ ]

Agency and address [ ]

Email address [ ]

Phone [ ]

If this witness summons relates to an intervention order proceeding:

Name of respondent [ ]

[ ] Name of affected family member or protected person [ ]

WITNESS SUMMONS TO PRODUCE AND TO ATTEND TO GIVE EVIDENCE

YOU ARE ORDERED both to attend to give evidence and to produce this witness summons or a copy of it and the documents or things specified in the Schedule of documents: see below for details.

Failure to comply with this witness summons without lawful excuse is a contempt of court and may be dealt with accordingly.

You should read all of the Notes set out in this witness summons. Also, you must complete the Declaration by Addressee (Witness Summons Recipient) set out at the end of this witness summons.

This witness summons must be served a reasonable time before the return date (See Note 1).

Issued at: [ ] Date: [ ]

Issued by: [ ]

\*Registrar/\*Judge/\*Magistrate

[Seal of the Court]

[Seal of the Court]

Issued at the request of  whose address for service is:

Place

Email

**DETAILS OF WITNESS SUMMONS**

In so far as you are required by this witness summons to attend to give evidence, you must attend as follows unless you receive notice of a later date or time from the issuing party, in which case the later date or time is substituted:

**Date:**

**Time:**

**Place: Children’s Court of Victoria at**

You must continue to attend from day to day unless excused by the Court or the person authorised to take evidence in this proceeding or until the hearing of the matter is completed.

In so far as you are required by this witness summons to produce the witness summons or a copy of it and documents or things, you must comply with this witness summons by attending to produce this witness summons or a copy of it and the documents or things specified in the Schedule of documents below—

- (a) at the date, time and place specified for attendance and production; or
- (b) by attending to produce this witness summons or a copy of it and the documents or things specified in the Schedule of documents below to the registry at the address below, or if there is more than one address below, at any one of those addresses, so that they are received not later than 2 clear business days before the first date specified for attendance and production.

Date, time and place at which to attend to produce the witness summons or a copy of it and the documents or things unless you receive notice of a later date or time from the issuing party, in which case, the later date or time is substituted:

**Date:**

**Time:**

**Place: Children’s Court of Victoria at**

**Address, or any address, to which the witness summons (or copy) and documents or things may be delivered or sent:**

**The Registry**  
**Children’s Court of Victoria at**

## SCHEDULE OF DOCUMENTS

The documents and things you must produce are as follows:

[ List the documents or things. Attach list if insufficient space.]

### NOTES

#### **Last day for service**

1. Subject to Note 2, you need not comply with the witness summons unless it is served on you a reasonable time before the date specified in the witness summons to produce documents or things and to attend to give evidence.

#### **Service**

2. This witness summons may be served—
  - (a) by delivering a true copy of the witness summons to you personally; or
  - (b) by leaving a true copy of the witness summons for you at your last or most usual place of residence or business with a person who apparently resides or works there and who apparently is not less than 16 years of age.

#### **Addressee a corporation**

3. If the witness summons is addressed to a corporation, the corporation must comply with the witness summons by its appropriate or proper officer.

#### **Conduct money**

4. You are excused from complying with the witness summons unless conduct money is given or tendered to you at the time of service of the witness summons or a reasonable time before the day on which your attendance is required.
5. However you are not entitled to conduct money if you will not reasonably incur any expenses in complying with the witness summons.

#### **Production of witness summons or copy of it and documents or things to registrar**

6. Unless the Court or the registrar issuing the witness summons otherwise directs, instead of producing a document or thing required to be produced at the hearing, you may produce the document or thing, together with a copy of the witness summons, to the registrar so that the document or thing is received not later than 2 clear business days before the first date specified in the witness summons for production.
7. Production of a document or thing to the registrar in compliance with a witness summons to produce and to attend to give evidence does not remove the requirement on you to attend for the purpose of giving evidence.

#### **Objection to inspection**

8. If you object to a document or thing produced in response to this witness summons being inspected by a party to the proceeding or any other person, you must, before the return date specified in the witness summons, notify the registrar in writing of your objection and of the grounds of your objection.

#### **Production of a number of documents or things**

9. If you produce more than one document or thing, you must, if requested by the registrar, produce a list of the documents or things produced.

#### **Production of copy instead of original**

10. Unless the witness summons specifically requires you to produce an original, you may produce a copy of any document that the witness summons requires you to produce.
11. Electronic copies of documents can be provided on a USB or CD-ROM in any of the formats referred to in Note 12(b) below.
12. A copy of a document may be—
  - (a) a photocopy; or
  - (b) in an electronic form in any of the following electronic formats—
    - .doc and .docx—Microsoft Word documents
    - .pdf—Adobe Acrobat documents
    - .xls and .xlsx—Microsoft Excel spreadsheets
    - .jpg—image files
    - .rtf—rich text format
    - .gif—graphics interchange format
    - .tif—tagged image format; or

- (c) in any other appropriate form or format, or on any other appropriate form of storage—  
(i) directed or ordered by the Court; or  
(ii) in accordance with any relevant practice direction, statement or note.

**Applications in relation to witness summons**

13. You have the right to apply to the Court for an order setting aside the witness summons (or a part of it) or for relief in respect of the witness summons.

**Return of documents and things produced**

- 13A. Unless the Court orders otherwise, the registrar may return to you any document or thing produced by you in response to the witness summons.

**Disposal of documents produced**

14. After the conclusion of the proceeding, the registrar may cause to be destroyed all the documents produced by you in compliance with the witness summons which were declared by you to be copies.  
15. If documents produced by you become exhibits in the proceedings, and have been declared to be copies by you, the registrar may cause those documents to be destroyed when they are no longer required in connection with the proceeding, including on any appeal.

**Contempt of court—arrest**

16. Failure to comply with a witness summons without lawful excuse is a contempt of court and may be dealt with accordingly.

**DECLARATION BY ADDRESSEE (WITNESS SUMMONS RECIPIENT)**

**You must complete the declaration below. The completed declaration must be included in the witness summons or in the copy of the witness summons when you produce the witness summons or the copy with the documents required by the witness summons.**

If you declare that the material you produce is copies of documents, the registrar may, without further notice to you, destroy the copies after 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, including on any appeal.

If you declare that the material you produce is or includes any original document, the Court will return all of the material to you at the address specified by you in the Declaration below.

*[Tick the relevant option below, provide your address as appropriate, sign and date]*

**All copied documents**

All of the material I am providing in compliance with this witness summons is copies of documents and—

- I acknowledge that the Court will destroy the copies once they are no longer required, without further notice to me; or  
 once the copies are no longer required, they should be returned to me at the following address—

[insert address for return of material]

**All or some original documents**

- All or some of the material I am providing in compliance with this witness summons is an original document. Once the material is no longer required, all of the material should be returned to me at the following address—

[insert address for return of material]

**Date**

**Name of addressee**

**Signature of addressee**