

Info Sheet 13

Summons to Witness

What is a summons to witness?

A summons to witness is a legal document SAT can use to compel a person to attend SAT or produce a document or other material before SAT.

A summons may be issued at the request of a party, or at the initiative of SAT. A party to a proceeding can request a summons if a person is, or may be, unwilling to give evidence or to provide documents to SAT.

The summons generally requires the attendance of the person summoned at the final hearing, the time of which is stated in the summons.

Before you request a summons, you should try to get the required information by asking the person to provide it to you.

A party who is summoned is required by law to comply, and commits a criminal offence if they do not do so.

When should I request a summons to witness?

A summons is usually directed to 'third parties' – that is, people other than the parties to the proceeding.

A summons is not usually directed to the parties to a proceeding, because SAT will usually require the parties to file and give to the other party documents and witness statements during the normal course of the proceeding. Where a party desires that documents sought from a third party be produced prior to the final hearing, the party should seek an order under s 35(1) of the State Administrative Tribunal Act 2004. This may be appropriate where, for example, a large number

of documents are expected, or when you expect the documents to be particularly important for the proceedings.

What is a document?

A document doesn't just include documents such as contracts, invoices and letters. It can also include information which is stored electronically, such as emails, SMS messages and web pages.

How do I apply for a summons to witness?

A party seeking the issue of a summons to witness should submit a copy of the summons to witness form to SAT and pay the fee under Schedule 20 of the State Administrative Tribunal Regulations 2004. The summons to witness form and details of the current fee may be obtained:

- (a) from SAT's website at www.sat.justice.wa.gov.au;
- (b) by calling SAT on (08) 9219 3111 or 1300 306 017 (STD callers); or
- (c) by emailing SAT at sat@justice.wa.gov.au.

SAT will consider whether your draft summons to witness is suitable to be issued. If SAT issues your summons, we will notify you that the summons to witness is available to be collected.

It is then your responsibility to 'serve' the summons on the witness.

If your draft summons is not considered suitable, you will be notified accordingly.

What happens to summoned documents?

Any party may be given permission by SAT to view or to view and copy documents produced in accordance with a summons. The documents will be held by SAT until their release is ordered, or until the proceedings are finalised and the appeal period has expired.

Original copies of documents are not required to be produced unless specifically directed by SAT.

Serving a summons to witness

'Serving' a summons to witness means giving it to the person it is addressed to. If SAT issues the summons you requested, you must 'personally serve' it on the person it is addressed to.

Rule 31 of the State Administrative Tribunal Rules sets out the requirements for personal service. If you are serving a summons to witness on an individual, the summons to witness is personally served by physically giving a copy to the person or, if they do not accept it, leaving it with them and explaining the document. The Rules also deal with service on a corporation, an unincorporated association and individuals who do not have full legal capacity.

The party relying on the summons to witness must also serve a copy of the summons to witness on any other party to the proceeding as soon as practicable after it is served on the person to whom it is directed.

If necessary, proof of service of a summons to witness may be given by completing a declaration of service form, located on SAT's website at www.sat.justice.wa.gov.au. This may be necessary where a witness has been served with a summons to witness but fails to appear before SAT.

A party serving a summons to witness is required to provide the person being served with 'conduct money', which will usually include travel expenses, and sometimes accommodation, meal and incidental expenses.

Practice Note 11 - Conduct Money on Summoning of Witnesses explains what conduct money is and how to calculate the appropriate amount of conduct money to be provided.

What should you do if you receive a summons to witness?

If you are served with a summons to witness you should attend the hearing, produce the requested documents, or both, as required in the summons. In the case of production of documents, they can be delivered to the Executive Officer or SAT reception before the time and date on the summons to witness document.

If you have been served with a summons to witness, you can apply to have the summons set aside or to limit access to any document required by the summons. There must be proper grounds for your application. The application can be made at the hearing related to the summons or by contacting SAT before the summons is due. You should give notice of this application to the party who served the summons before the hearing. You must be ready to give evidence or produce the documents required by the summons in the event that your application is unsuccessful.

If you're unable to attend SAT on the date the hearing, notify SAT as soon as possible. Arrangements may be made to postpone the hearing or for you to attend by teleconference.