

Year	Date	Number	Title	Note
2000	2 May 2000	2/00	Non party production of documents pursuant to Order 34B	

**SUPREME COURT OF THE AUSTRALIAN CAPITAL
TERRITORY
Practice Directions**

PRACTICE DIRECTION NO. 2 OF 2000

**NON PARTY PRODUCTION OF DOCUMENTS
PURSUANT TO ORDER 34B**

Order 34B enables a party to an action to obtain access to documents in the control of a non party by way of a Notice for Non Party Production (“34B Notice”).

Most 34B Notices are given to medical practitioners. It is understood that the ACT Branch of the Australian Medical Association has raised concerns relating to the manner in which documents are required to be produced. In addition, the opportunity available for a party to make a claim for legal professional privilege or other ground of objection has not been adequately dealt with in the procedure currently being followed.

To address these problems the following procedure is to be used with respect to 34B Notices:

1. The solicitor issuing the Notice for Non-Party Production should request the respondent (the person to whom the notice is addressed) to produce or make available legible copies of the documents directly to the solicitor for the other party in the action (or to the solicitor for whichever party in the action may have a claim for privilege). This will enable the solicitor for the other party to first examine the documents produced and determine whether objection should be taken to their production on the grounds of privilege.
2. After inspection the documents may then be copied by the other party’s solicitor and forwarded to the applicant’s solicitor. The need for attendance of one or both solicitors at the premises of the respondent for inspection is then avoided.
3. A covering letter from the applicant solicitor to the respondent containing a request for this procedure to be implemented (and serving the Notice) should indicate that any expenses reasonably incurred in complying with the Notice are to be borne by the applicant and should inform the respondent that in the event of unusual expense or difficulty in complying, the respondent should contact the applicant’s solicitor so that problems can be resolved beforehand.
4. While the procedure set out in this protocol is primarily intended for use by solicitors, self represented parties may use it, but should at all times be aware that documents obtained for use in a court proceeding may be used only for the proper purposes of that proceeding. The documents and their contents may not be disclosed to others (except as strictly necessary for the purpose of the proceeding) or

used in any other proceeding. Any improper use of such documents by any person may constitute a contempt of court and may be dealt with accordingly.

Practitioners are reminded that the success of the scheme under O.34B depends upon the co-operation of non-party respondents. A respondent who does not wish to comply with a Notice for Non-Party Production is entitled to insist upon being served with a subpoena to produce documents in the ordinary way and should be so informed in appropriate cases.

By direction of the Judges.

J.E. CIRCOSTA
Deputy Registrar

2 May 2000