

# UNIFORM CIVIL PROCEDURE RULES GUIDE



THE LAW SOCIETY  
OF NEW SOUTH WALES

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This Guide is based on a Guide previously published on the NSW Government’s website. It is current as at June 2020.

# 1 INTRODUCTION

## 1.1 When should you use this Guide?

This Guide gives you information that you should use when preparing documents for use in most civil proceedings in New South Wales, including:

- the Supreme Court,
- the District Court,
- the Local Court,
- the Dust Diseases Tribunal, and
- the Land and Environment Court.

This Guide does not consider forms used in the Corporations List of the Supreme Court of New South Wales, the NSW Civil and Administrative Tribunal, or any Federal Courts and Tribunals.

**Disclaimer:** This publication provides general information of an introductory nature. It is a general guide only and is not exhaustive of issues which may be encountered. This publication is not intended and should not be relied upon as a substitute for legal or other professional advice. This publication also should not be relied upon as a substitute for referring to the current versions of the *Civil Procedure Act 2005* (NSW) and the *Uniform Civil Procedure Rules 2005* (NSW). While every care has been taken in the production of this publication, no legal responsibility or liability is accepted, warranted or implied by The Law Society of New South Wales, the authors or any person associated with the production of this publication, and any liability is hereby expressly disclaimed. Current as at June 2020.

## 1.2 Terms used in this Guide

This Guide refers to:

- The *Civil Procedure Act 2005* (NSW).
- The *Civil Procedure Regulation 2017* (NSW).
- ‘Person’ – this includes a natural person and a corporation unless the context indicates otherwise(see s 21 of the *Interpretation Act 1987* (NSW)).
- The *Uniform Civil Procedure Rules 2005* (NSW) (“UCPR”).

You can get copies of NSW Acts, Regulations and Rules of court at: [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

## 1.3 Where can I get copies of the approved forms?

You can get a copy of the approved forms from any court registry or on the NSW Government Justice website at [www.ucprforms.justice.nsw.gov.au](http://www.ucprforms.justice.nsw.gov.au).

## 1.4 What form must I use?

The Uniform Rules Committee has approved the forms to be used in civil proceedings. From time to time, it amends existing forms and approves new forms.

An approved form has a version number in the top left-hand corner. The most up to date version of a form is published on the UCPR website.

You must use the form that relates to the step you are taking in the proceedings. For example, you must use form 9 when you are preparing a statement of cross-claim.

If there is no approved form for the step that you are taking in the proceedings, you can use form 1 (“General Form”) and modify this form to suit the nature of the document you wish to file.

Any court registry can give you information about which form to use in your proceedings. You can find out the location of your nearest court registry from the court’s website:

- Supreme Court: [www.supremecourt.justice.nsw.gov.au](http://www.supremecourt.justice.nsw.gov.au)
- District Court: [www.districtcourt.justice.nsw.gov.au](http://www.districtcourt.justice.nsw.gov.au)
- Local Court: [www.localcourt.justice.nsw.gov.au](http://www.localcourt.justice.nsw.gov.au)
- Dust Diseases Tribunal: [www.dustdiseasestribunal.justice.nsw.gov.au](http://www.dustdiseasestribunal.justice.nsw.gov.au)
- Land and Environment Court: [www.lec.justice.nsw.gov.au](http://www.lec.justice.nsw.gov.au)

## 1.5 Can I change an approved form?

You can change an approved form provided your document substantially complies with the approved form (see s 80 of the *Interpretation Act 1987* (NSW)).

For example, if you are using a word processing program you can use an alternative style or layout that has the same effect (e.g. a heading could be boxed or bolded rather than shaded). In the below example, the heading is not shaded but is boxed for emphasis:

The approved forms contain instructions in square brackets [...], which are designed to help you to complete the form. The square brackets and text in 9-point font are not intended to appear in the final document and should be deleted.

The approved forms also contain optional information that may not be relevant to your proceedings. Optional information is marked with a hash (#). You should delete, or not include the words following the hash (#) if they are not relevant to your document.

<b>TITLE OF PROCEEDINGS</b>	
[First] plaintiff	[name]
#Second plaintiff	#[name #number]
#Number of plaintiffs (if more than two)	
[First] defendant	[name]
#Second defendant	#[name #number]
#Number of defendants (if more than two)	

## 2 GENERAL INFORMATION ABOUT PREPARING, FILING AND AMENDING DOCUMENTS

UCPR Part 4 outlines the requirements for preparing and filing documents. You should read those rules and this Guide before you prepare a document.

### 2.1 How should I prepare a document?

UCPR 4.3 lists the paper and writing requirements for preparing a document.

If possible, you should use a word processing program to prepare your document. However, the court will accept handwritten documents if they are clear and legible.

Forms can be downloaded in Microsoft Word and PDF format on the NSW government website at [www.ucprforms.justice.nsw.gov.au](http://www.ucprforms.justice.nsw.gov.au).

A document must:

- be on A4 paper,
- have a left margin of 25mm,
- have a top margin of 30mm,
- be one sided and stapled in the top left-hand corner OR be double sided and stapled along the left-hand side,
- have at least 3mm between the lines of writing, and
- have page numbers.

The following information must be set out in bold text:

- the name of the first plaintiff and first defendant in the title of the proceedings,
- the name of the party filing (or issuing or preparing) the document,
- on documents relating to a cross-claim, the name of the first cross-claimant and first cross-defendant in the title to the proceedings,
- on a notice of motion:
  - the name of the person or party for whom the notice is filed. This is included in the **FILING DETAILS** section of the form for the notice, and
  - the name of the person affected by the orders sought.

### 2.2 How should I describe parties and other persons in documents?

You should describe a party by the role they are given when they are initially involved in the proceedings – i.e. first plaintiff, second plaintiff or first defendant or second defendant. The party retains the name of this role throughout the proceedings.

If you are preparing a notice of motion and are not already a party in the proceedings, you should describe yourself as the applicant. If you are a party to the proceedings, you should describe yourself in the notice of motion with the role you have already been given.

If there are persons who will be affected by the motion who are not already parties in the proceedings, you should describe those persons as respondents (see UCPR 18.3).

### 2.3 How do I file a document?

See UCPR 4.10 to 4.16 (and UCPR 3.4 to 3.15 in relation to eFiling) for more information.

You can file a document by:

- lodging it with or posting it to the court registry, or
- electronically filing it with the court through the Online Registry if eFiling is available.



## 2.4 What fee do I have to pay to file a document?

You must pay a fee before you file some documents, including:

- a statement of claim,
- a summons,
- a statement of cross-claim,
- a cross-summons,
- a requisition for jury,
- most notices of motion (unless the matter is in the Small Claims Division of the Local Court),
- a notice of intention to appeal, and
- a notice of appeal.

You must also pay a fee:

- before you issue a subpoena, and
- when someone produces documents to the court in response to you serving them with a notice to produce to the court under UCPR Part 34.

Fees are charged at different rates for individuals and corporations. A party must pay fees at the corporation rate if:

- the party is a corporation with an annual turnover of \$200,000 or more (section 4(4)(a) of the *Civil Procedure Regulation 2017* (NSW)).
- The party is a corporation with an annual turnover of \$200,000 or more, which is commencing or carrying on proceedings in the name of a natural person under a right of subrogation. (s 4(4)(b) of the *Civil Procedure Regulation 2017* (NSW)).

For example, an insurance company that commences and carries on proceedings in the name of the insured person must pay fees at the corporation rate, but a corporation that demonstrates its turnover for the previous financial year was under \$200,000 may pay the individual rate.

You must tell the court if you are carrying on proceedings in the name of a natural person under the right of subrogation. See UCPR 4.16 and the *Civil Procedure Regulation 2017* (NSW) for more information.

If there is any reason (including lack of money) why you should not or cannot pay a fee, you can apply to the court to have the fee waived or postponed. You must read the fee waiver guidelines before you apply to the court. The guidelines are available at: [www.courts.justice.nsw.gov.au/Pages/cats/forms\\_fees/courts-tribunals-fees.aspx](http://www.courts.justice.nsw.gov.au/Pages/cats/forms_fees/courts-tribunals-fees.aspx) or from any court registry.

## 2.5 How do I commence proceedings?

See UCPR 6.1 and 6.2 for more information.

You generally commence proceedings by filing a statement of claim or a summons in the registry.

You must arrange for the statement of claim or summons to be served on each defendant.

If your proceedings are in the Supreme Court, the Dust Diseases Tribunal, the Land and Environment Court or the Local Court, you have six months to serve the statement of claim or summons on each defendant.

Some proceedings in the District Court have a limit of one month in which to serve the statement of claim or summons on each defendant. See UCPR 6.2(4) for more information.

If you cannot serve the statement of claim or summons within this time, you can:

- apply to the court to extend the time for serving the documents, or
- commence fresh proceedings by filing another statement of claim or summons, if the limitation period for bringing the proceedings has not expired.

## 2.6 When do I need to serve documents other than the statement of claim or summons?

Unless the court orders otherwise, you must serve a copy of any filed document on all active parties as soon as practicable after you file the document (see UCPR 10.1).

If your proceedings are in the Local Court:

- You can ask the registry to serve the originating process (i.e. statement of claim, summons, statement of cross-claim or cross-summons) on all other parties.
- The registry will charge a fee to serve the originating process (see the *Civil Procedure Regulation 2017* (NSW) for more information).
- The registry must serve the defence on all other parties unless the defence was filed in the Court through Online Registry, in which case the defence is to be served by the party filing it.
- See UCPR 10.7 and 10.8 for more information about how a court serves a document.

## 2.7 How do I amend a document that has already been filed in court?

You may amend a filed document under UCPR 19.1 and 19.2. Parties seeking to amend documents outside of those circumstances in those Rules will often require the leave of the Court.

If leave is provided (or not required) then you must file a fresh copy of the amended document on which you intend to rely. Documents must either be amended in accordance with the UCPR or under a court order (see UCPR 19.5).

When you prepare the amended document, you must show the amendments in such a manner that does not affect the legibility of the material being omitted and which distinguishes the new information. Rule 19.5 suggests:

- striking through the information which is being omitted; and
- underlining, bolding or using italics for the new information.

If a filed document is amended on more than one occasion, then on each subsequent occasion the latest amendments should also be indicated on the document in a matter that will distinguish them from previous amendments.

It is also important to amend the heading of the document on each occasion that it is amended. For example, a Defence becomes an Amended Defence, and then a Further Amended Defence, and then a Second Further Amended Defence and so on, depending on how many times the document is amended.

You must retain the existing paragraph numbering, with any additional paragraphs to be given the number of the preceding paragraph and a letter (e.g. new paragraphs between 6 and 7 would be 6A, 6B, etc.). This will mean a defendant does not need to amend its defence to an amended claim in relation to numbering, only in relation to the substantive amendments.

If you are changing or removing the solicitor of record or the address for service, you must file and serve the appropriate notice of change (forms 76-80).

You must include the following information in the amended document. An appropriate place to insert this information is beneath the title of the document on the first page.

AMENDMENT DETAILS - UCPR 19.5	
1	This document is amended pursuant to [#leave granted by the court on (date) #UCPR (rule number)].
2	The amendments are indicated as follows: (a) Omitted information is struck through. (b) New information is [#underlined #in bold text #in italics].

## 2.8 How do I prepare documents that are being filed in relation to a cross-claim?

For more information, see:

- UCPR Part 9,
- Paragraph 4.10 of this Guide for information about how to prepare a statement of cross-claim, and
- Paragraph 4.10 of this Guide for information about how to prepare a cross- summons.

When you prepare a document that is being filed in relation to a cross-claim, you must:

- Amend the title of the document to include information about the number of the cross-claim e.g. '[first] cross-claim'.
- Include the title of the cross-claim as follows:

<b>TITLE OF THIS CROSS-CLAIM</b>	
<b>[First] cross-claimant</b>	<b>[name]</b>
<b>#Second cross-claimant</b>	<b>[#name #number]</b>
<b>#Number of cross-claimants (if more than two)</b>	
<b>[First] cross-defendant</b>	<b>[name]</b>
<b>#Second cross-defendant</b>	<b>[#name #number]</b>
<b>#Number of cross-defendants (if more than two)</b>	

## 3. INFORMATION THAT IS INCLUDED IN MOST DOCUMENTS

### 3.1 Court details

Each approved form contains a section called COURT DETAILS. See UCPR 4.2 for more information.

In this section, you must include the following details:

- The name of the court in which you are bringing the proceedings.

You should refer to the court by its full title i.e. 'Supreme Court of New South Wales' not 'Supreme Court'.

You can get more information about the court in which you should bring your proceedings in the *Supreme Court Act 1970* (NSW), the *District Court Act 1973* (NSW), the *Local Court Act 2007* (NSW), the *Land and Environment Court Act 1979* (NSW), or the *Dust Diseases Tribunal Act 1989* (NSW) or from any registry.

- If relevant, the name of the division in which the proceedings are to be heard.

See UCPR 1.16 to 1.21 and UCPR Schedule 8 for how proceedings are allocated to divisions in the Supreme Court.

The District Court does not allocate proceedings to divisions. Delete this line if the proceedings are in the District Court.

In the Local Court, if your claim is for \$20,000 or less, the matter will normally be listed in the Small Claims Division. All other proceedings are listed in the General Division.

- If relevant, the name of the list in which the proceedings are intended to be entered should be stated on the form.

See UCPR Part 45 and Schedule 9 for how proceedings are entered in specialist lists in the Supreme Court and District Court. See also the current practice note applicable for that list.

Local Courts do not enter proceedings in specialist lists. Delete this line if the proceedings are in the Local Court.

- The location of the registry.

If you are preparing a statement of claim or summons, you must include the location of the registry of the place where you want the proceedings to be heard.

You can find out the location of your nearest court registry from the court's website.

If you are preparing a document other than a statement of claim or summons:

- copy the registry location from the statement of claim or summons, or
- if relevant, include details of the registry location where the court has transferred the proceedings.

In the Supreme Court, the Dust Diseases Tribunal and the Land and Environment Court, the registry will always be Sydney.

- The case number of the proceedings.

Leave this field blank if you are preparing a statement of claim or summons. The court will allocate a number. If it is being filed at a Registry in person, the Registry will write it on the document.

If you are preparing a document other than a statement of claim or summons, copy this number from another document that has been filed in the proceedings.

### 3.2 Title of proceedings

Each approved form contains a section called TITLE OF PROCEEDINGS. See UCPR 4.2 for more information.

The court uses the TITLE OF PROCEEDINGS to describe the proceedings in its computer system, court lists, orders and other documents.

In this section, you must include details about:

- The full name of the plaintiff or, if there is more than one plaintiff, the first plaintiff. You must include this information in bold text.
- If the (first) plaintiff is a person, include the person's first name followed by their family name.
- If the (first) plaintiff is a company, include the full name of the company.
- The number of plaintiffs if there are more than two plaintiffs or the name of the second plaintiff in the proceedings if there are two plaintiffs. Delete this line if there is only one plaintiff.
- The full name of the defendant or, if there is more than one defendant, the first defendant. You must include this information in bold text.
- If the (first) defendant is a person, include the person's first name followed by their family name.
- If the (first) defendant is a company, include the full name of the company.
- The number of defendants if there are more than two defendants or the name of the second defendant in the proceedings if there are two defendants. Delete this line if there is only one or no defendant.
- Some proceedings that are commenced by summons will not have a defendant. You can delete the references to defendant in this section.

See UCPR 7.19 to 7.22 for more information where one of the parties is operating under a business name.

Do not include the names of any other parties in the title of proceedings. Here are some examples:

(1) where there is one plaintiff and one defendant:

TITLE OF PROCEEDINGS	
Plaintiff	<b>Peter Plaintiff</b>
Defendant	<b>Diana Defendant</b>

(2) where there are two plaintiffs and three defendants (e.g. on an originating process document):

TITLE OF PROCEEDINGS	
First Plaintiff	<b>Peter Plaintiff</b>
Second plaintiff	<b>P. Plaintiff Pty Limited</b>
First defendant	<b>Diana Defendant</b>
Number of defendants	<b>3</b> <b>Refer to Party Details at rear for full list of parties</b>

(3) where there is one plaintiff and two defendants:

TITLE OF PROCEEDINGS	
Plaintiff	<b>Peter Plaintiff</b>
First defendant	<b>Diana Defendant</b>
Second defendant	<b>D. Defendant Pty Limited</b>

(4) where there are two plaintiffs and two defendants:

TITLE OF PROCEEDINGS	
First plaintiff	<b>Peter Plaintiff</b>
Second plaintiff	<b>P. Plaintiff Pty Limited</b>
First defendant	<b>Diana Defendant</b>
Second defendant	<b>D. Defendant Pty Limited</b>

### 3.2.1 Additional information

You may need to include additional information in the title of proceedings if your proceedings are to be entered into the following lists:

- Probate.
- Adoption.
- Protective.
- Or if you are bringing your proceedings under a particular Act, for example, the *Confiscation of Proceeds of Crime Act 1989* (NSW).

## 3.3 Filing, issuing or preparation details

Most approved forms contain a section called **FILING DETAILS**. See UCPR 4.2 and 4.10 to 4.14 for more information.

In this section, you must include details about:

- the name and role of the party for whom the document is being filed. The role of the party means the role that a person takes in the main proceedings and in any cross-claim e.g.
  - **Angus Jones**, first defendant and cross-defendant to the first cross-claim.
  - **D & B Association Pty Limited**, second defendant and cross-claimant in the first cross-claim.
- if relevant, the legal representative of the party, i.e. the name of the solicitor on the record, and legal representative firm's name.
- if desired, the legal representative's reference number, i.e. any internal matter number or file reference number the legal representative uses.
- if relevant, the name of the person who may be contacted about the proceedings, i.e.
  - if the party is legally represented, the contact solicitor, i.e. the person with the day to day conduct of the proceedings (if a different person to the solicitor on the record),
  - if the party is an unrepresented natural person, the party, or
  - if the party is a corporation that is unrepresented, the party's authorised officer.
- the telephone number of:
  - if the party is legally represented, the contact solicitor, or
  - if the party is an unrepresented natural person, the party, or
  - if the party is a corporation that is unrepresented, the party's authorised officer.

The following row ('filed in relation to') may be deleted unless the form is being eFiled through Online Registry:

#Filed in relation to [e.g. plaintiff's claim, (number) cross-claim]  
[include only if form to be eFiled]

Some forms are not filed in court. In these forms, e.g. List of documents, **FILING DETAILS** is replaced with **PREPARATION DETAILS**. See form 11:

<b>PREPARATION DETAILS</b>	
Prepared for	[name] [role of party e.g. plaintiff]
#Legal representative	[solicitor on record] [firm]
#Legal representative reference	[reference number]
Contact name and telephone	[name] [telephone]

In other forms, e.g. a subpoena form, **FILING DETAILS** is replaced with **ISSUING DETAILS**. See forms 25 – 27A:

<b>ISSUING DETAILS</b>	
Issued at request of	[name] [role of party e.g. plaintiff]
#Legal representative	[solicitor on record] [firm]
#Legal representative reference	[reference number]
Contact name and telephone	[name] [telephone]
Address for service	

### 3.4 Signature

Most approved forms contain a section called **SIGNATURE**. This section includes options for the various people who can sign a document for a party.

UCPR 4.4 lists who can sign a document for a party.

If a party is represented by a solicitor, the party must not sign the document. Instead, the document must be signed by:

- the party's solicitor, or
- another solicitor acting as agent for the party's solicitor, or
- another solicitor belonging to the same firm or organisation as the party's solicitor or the party's solicitor's agent.

If a party does not have a solicitor, the document can be signed by:

- the party, or
- by a person who is authorised by UCPR 7.1 to commence proceedings on behalf of the party.

In proceedings in the Local Court, some documents can also be signed by:

- A commercial agent with respect to debt collection (within the meaning of the *Commercial Agents and Private Inquiry Agents Act 2004* (NSW)). A commercial agent may sign a statement of claim or summons and also documents in relation to proceedings on an application for an instalment order, an examination order, a writ of execution, a garnishee order or a notice of motion for default judgment in matters in the Small Claims Division.

- A person holding a licence as a real estate agent, strata managing agent or on-site residential property manager (within the meaning of the *Property, Stock and Business Agents Act 2002* (NSW)). These persons may sign a statement of claim or summons and also documents in relation to proceedings on an application for an instalment order, an examination order, a writ of execution, a garnishee order, the filing of a certificate under s 51 of the *Consumer, Trader and Tenancy Tribunal Act 2001* (NSW) (now replaced by s 78 of the *Civil and Administrative Tribunal Act 2013* (NSW)).

You must include a date of signature on some documents.

A number of forms contain the following section. You must not sign in this section as it will be completed by the court.

<b>SEAL &amp; SIGNATURE</b>
Court seal
Signature
Capacity
Date

### 3.5 Certificate under the Legal Profession Uniform Law Application Act 2014

Where proceedings include a claim for damages, a legal practitioner must certify that there are reasonable prospects of success as required by clause 4 of Schedule 2 of the *Legal Profession Uniform Law Application Act 2014* (NSW). A party who is not legally represented does NOT need to complete this certificate. A number of forms provide for a suitable certificate to be given or in the alternative a statement that the proceedings do not require a certificate of reasonable prospects of success. For example:

<b>#SIGNATURE OF LEGAL REPRESENTATIVE</b>
<b>#This statement of claim does not require a certificate under clause 4 of Schedule 2 to the Legal Profession Uniform Law Application Act 2014.</b>
<b>#I certify under clause 4 of Schedule 2 to the Legal Profession Uniform Law Application Act 2014 that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.</b>
<b>I have advised the plaintiff[s] that court fees may be payable during these proceedings.</b>
<b>These fees may include a hearing allocation fee.</b>
<b>Signature</b>
<b>Capacity</b> [e.g. solicitor on record, contact solicitor]
<b>Date of signature</b>

A legal practitioner must complete either the certificate or the statement as required (see UCPR 4.2(3A)).

The final paragraph of the certificate is included in forms as a reminder to legal practitioners to inform their client about hearing allocation and other court fees.

See the *Civil Procedure Regulation 2017* (NSW), in particular clauses 9 and 10, for information on court fees.



### 3.6 Verification of pleadings

You must read this section if you are filing pleadings (i.e. a statement of claim, a defence, a statement of cross-claim or a reply) in the Supreme Court or the District Court.

You must verify your pleadings unless your claim relates to:

- defamation,
- malicious prosecution,
- false imprisonment,
- trespass to the person,
- death, or
- personal injury.

See UCPR Part 14, Div 4 for more information.

You verify pleadings by affidavit which must be included in the document which contains your pleading. Some of the approved forms contain this affidavit. For example, the Statement of Claim (Forms 3A and 3B) and the defence (Forms 7A and 7B).

In the affidavit you will swear or affirm that:

- the allegations of fact in the pleading are true;
- the allegations of fact in the pleading which you deny are untrue; and
- you do not know whether the allegations of fact in the pleading, which you do not admit, are true.

See UCPR 35.3 and paragraph 4.42 of this Guide as to who may make an affidavit including an affidavit verifying a pleading.

If you are verifying a pleading on behalf of a party, you must replace paragraph 1 in the affidavit with the following information:

- 1 I am [give details of the capacity of the person making the affidavit and the facts that qualify the person to make the affidavit].

For example, if the plaintiff is a corporation, insert the words:

‘I am [an officer e.g. director] of [name of corporation] and am authorised to verify this statement of claim on its behalf.’

### 3.7 Party details

You must complete the **PARTY DETAILS** section when you are preparing a statement of claim, summons, statement of cross-claim and cross-summons in proceedings where there are more than two plaintiffs/cross-claimants and/or more than two defendants/cross-defendants.

The **PARTY DETAILS** section lists the parties in the proceedings.

See paragraph 4.2 of this Guide for more information about the List of parties form (form 2) that must also be filed.

### 3.8 Further details about filing party

In some forms you must complete further details about the parties. For example:

- You must complete the **FURTHER DETAILS ABOUT PLAINTIFF[S]** section when you are preparing a statement of claim (form 3A or 3B) or a summons (form 4A or 4B).
- You must complete the **FURTHER DETAILS ABOUT FILING PARTY** section when you are preparing an appearance (form 6A or 6B) or a defence (form 7A or 7B) (unless already included in an appearance).
- You must complete the **FURTHER DETAILS ABOUT APPLICANT** section if you are preparing a notice of motion (form 20) and are not already a party to the proceedings.

The **FURTHER DETAILS** section provides additional information about:

- the filing party,
  - if the filing party is a natural person, include the person’s first name followed by their family name,
  - if the filing party is a company, include the full name and ACN (i.e. the Australian Company Number) of the company.
- if relevant, the filing party’s legal (or other) representative (see UCPR 4.4 and 7.1 for information about other representatives that are permitted in certain Local Court proceedings),
- if relevant, the filing party’s authorised officer (see UCPR 7.1 and 7.2 - only provide these details if the filing party has no legal or other representative),

The forms provide for addresses to be set out in the following format.

<b>Address</b>	#[unit/level number]		#[building name]	
	[street number]	[street name]		[street type]
	[suburb/city]		[state/territory]	[postcode]
	#[country (if not Australia)]			

In forms that are not completed by filling out answers online via the Online Registry you may set out address information without separating each piece of information into fields. For example:

<b>Firm</b>	Law Firm & Co
<b>Address</b>	Legal Towers 21 Chambers Lane SYDNEY NSW 2000

If the filing party’s representative has an agent, the section of the form headed **Legal representative for plaintiff[s]** or **Legal representative for filing party** should be repeated and headed **Legal representative for plaintiff[s] agent** or **Legal representative for filing party’s agent**.

You only have to provide the additional information about yourself in the first document you file in the proceedings. For example, if you provided the additional information in the statement of claim, you do not have to provide it again in the reply.

If any of the details relating to you change during the proceedings, you must file a notice advising the court of the change in details (forms 76 - 80).

### 3.8.1 Address for service

The detailed information includes your address for service. This is the address where other parties can serve you with documents in the proceedings. See UCPR 4.5 and 4.6 for more information about the address for service and changing your address for service.

If you are willing to be contacted by email, provide an ‘Email address’, which may be a personal address and is distinct from an ‘Electronic service address’.

If you are willing for documents to be served on you by email, provide an ‘Electronic service address’. See UCPR 3.8 and 10.5(2)(c).

If you wish to make it clear that you may be contacted by email (e.g., for convenience), but do not wish to accept service by email (e.g., you do not monitor your inbox sufficiently regularly), you may either delete the 'Electronic service address' row, or complete as follows:

Email	name@emailaddress.com.au
Electronic service address	Not applicable

### 3.9 Details about other parties

In some forms you must complete details about other parties. For example:

- you must complete the **DETAILS ABOUT DEFENDANT[S]** sections when you are preparing a statement of claim (form 3A or 3B) or a summons (form 4A or 4B) (unless there is no defendant)
- you must complete the **DETAILS ABOUT CROSS-DEFENDANTS THAT ARE NEW PARTIES** section when you are preparing a statement of cross-claim (form 9) or cross-summons (form 10) and are making a cross-claim against a person who is not already a party to the proceedings
- you must complete the **FURTHER DETAILS ABOUT RESPONDENT[S]** section if you are preparing a notice of motion (form 20) and there are persons who will be affected by the motion that are not already parties in the proceedings

You must include the party's name and address:

- if the party is a natural person, include the person's first name followed by their family name,
- if the party is a company, include the full name and ACN (i.e. the Australian Company Number) of the company.

The forms provide for addresses to be set out in the following format.

Address	#[unit/level number]		#[building name]
	[street number]	[street name]	[street type]
	[suburb/city]	[state/territory]	[postcode]
	#[country (if not Australia)]		

In forms that are not completed by filling out answers online via the Online Registry, you may set out address information without separating each piece of information into fields. For example:

Name	Diana Defendant
Address	12 Green Street, GREEN TOWN NSW 2999

### 3.10 Frequent user identifier

You must include your frequent user identifier if you are registered with the court as a frequent user. You may delete the provision for 'frequent user identifier' from the forms if this does not apply to you.

### 3.11 Special Forms for Corporations Act matters

If your matter is brought under the *Corporations Act 2001* (Cth), such as an application to wind-up a company, you must use the forms prescribed under the *Supreme Court (Corporations) Rules 1999* (NSW), where available. Those forms are in a different format to the general UCPR forms. They also require the name of the company to which the proceedings relate (which may be the plaintiff or the defendant) to be specified in a title line, such as "In the matter of ABC Pty Limited (ACN 123 456 789)".

## 4 INFORMATION ABOUT SPECIFIC UCPR FORMS

Index of approved forms and the current versions at the time of publication of this Guide.

Form number	Version	Form Name
1	4	General Form
2	3	List of Parties
3A	7	Statement of Claim – filing party legally represented
3B	6	Statement of Claim – filing party acting in person or by authorised officer
4A	4	Summons – filing party legally represented
4B	4	Summons – filing party acting in person or by authorised officer
5	3	Notice to Occupier
6A	1	Appearance
6B	1	Submitting Appearance
7A	5	Defence – filing party legally represented
7B	4	Defence – filing party acting in person or by authorised officer
8	5	Reply
9	6	Statement of Cross-claim
10	6	Cross-summons
11	3	List of documents
12	2	Statement of issues
13	2	Scott schedule
14	2	Statement of particulars – personal injury proceedings
15	2	Statement of particulars – compensation to relatives proceedings
16	2	Notice to plead facts – money claims
17	2	Notice to admits facts and authenticity of documents
18	2	Notice disputing facts and authenticity of documents
19	2	Notice to produce for inspection
20	3	Notice of motion
21	2	Interrogatories
22	3	Statement of answers to interrogatories
23A	3	Notice of intention to elect trial by jury in defamation proceedings
23B	3	Requisition for trial by jury
24	3	Notice to produce to court
25	2	Subpoena to attend to give evidence
26A	4	Subpoena to produce with subpoena notice and declaration
27A	3	Subpoena to give evidence and produce with subpoena notice and declaration
29	4	Order for production
30	3	Consent to act as tutor
31	1	Arbitrator award and registrar’s notice
32	2	Notice of motion – rehearing after arbitration
33	2	Notice of discontinuance
34	2	Notice of payment
35	3	Acknowledgement of liquidated claim
36	6	Notice of motion – default judgment on claim for possession of land

Form number	Version	Form Name
36A	4	Notice of Motion – default judgment on claim for possession of land and liquidated claim
37	3	Notice of motion – default judgment for detention of goods
38	4	Notice of motion – default judgment for liquidated claim
39	3	Notice of motion – default judgment for unliquidated damages
40	5	Affidavit
41	2	Affidavit of service
42	1	Exhibit certificate
43	3	Judgment or order
44	3	Consent judgment or order
45	4	Registration/filing of certificate of judgment or order
46	4	Notice of motion to pay by instalments – individual
47	4	Notice of motion to pay by instalments – corporation
48	2	Instalment order and notice
49	2	Order refusing instalment application and notice
50	3	Notice of motion – objection to instalment order or order refusing instalment application
51	3	Examination notice – individual
52	3	Examination notice – corporation
53	3	Notice of motion – examination order
54	3	Examination order
55	1	Registrar’s examination – individual
56	1	Registrar’s examination – corporation
57	3	Notice of motion – arrest warrant for examination
58	1	Arrest warrant
59	6	Notice of motion – writ for possession of land
60	4	Writ of possession
61	3	Notice of motion – writ for restitution
62	2	Writ of restitution
63	3	Notice of motion – writ for the delivery of goods
64	3	Writ of delivery
65	4	Notice of motion – writ for the levy of property
66	2	Writ for levy of property
67	2	Judgment creditor’s notice
68	2	Notice of sale
69	7	Notice of motion – garnishee order
70	7	Garnishee order for debts
71	5	Garnishee order for wages or salary
71B	2	Garnishee Order for Rent
72	2	Garnishee’s statement that no debt due or accruing or no wage or salary payable
73	4	Notice of motion – charging order
74	2	Charging order
75	4	Notice to sheriff of disputed property
76	2	Notice of change of address for service
77	2	Notice of change of solicitor or appointment of solicitor
78	2	Notice of removal of solicitor

Form number	Version	Form Name
79	3	Notice of intention to file notice of ceasing to act
80	3	Notice of ceasing to act
81	3	General form (Part 50 appeal)
82	3	List of parties (Part 50 appeal)
83	2	Notice of contention (Parts 49 or 50)
84	6	Summons commencing an appeal (Part 50) / Summons seeking leave to appeal (Part 50)
85	3	Summons (Judicial Review)
91	1	Request for service abroad of judicial documents and certificate
92	1	Summary of the document to be served
93	1	Possession of land coversheet
101	3	General form (Court of Appeal)
102	3	List of parties (Court of Appeal)
103	3	Notice of intention to appeal (Court of Appeal)
104	5	Summons seeking leave to appeal (Court of Appeal)
105	7	Notice of appeal (Court of Appeal)
106	3	Notice of contention (Court of Appeal)
107	3	Summons (Supervisory Jurisdiction)
111	4	Summons for probate, administration, administration with the will annexed or reseal
112	2	Grant of probate, letters of administration or letters of administration with the will annexed
113	1	Reseal
114	4	Notice of Intended distribution
115	2	Opt out notice
116	2	Notice of intended application for probate, administration or reseal
117	1	Inventory of property
118	3	Affidavit of executor
119	4	Affidavit of applicant for administration
120	3	Affidavit of applicant for administration with the will annexed
121	3	Affidavit of applicant for resealing
122	3	Affidavit of applicant for administration for the purposes of the <i>Family Provision Act 1982</i> (repealed) or Chapter 3 of the <i>Succession Act 2006</i>
123	3	Renunciation of probate
124	2	Renunciation in favour of NSW Trustee & Guardian
125	4	Consent to Administration
126	4	Affidavit that deceased was not in a de facto relationship
127	3	Affidavit as to de facto relationship
128	2	Notice of intended application for administration where there may be a de facto spouse or domestic partner
129	3	Affidavit relating to domestic partnership
130	2	Administration bond
131	3	Affidavit of surety
132	3	Affidavit of attesting witness
133	5	Affidavit of consent to distribution of a gift
134	4	Consent of affected person

Form number	Version	Form Name
135	2	Notice to affected persons
136	2	Notice to apply for administration
137	2	Answer to notice to apply for administration
138	2	Notice to apply for probate
139	2	Answer to notice to apply for probate
140	2	Notice of proceedings
141	2	Caveat
142	2	Notice of withdrawal of caveat
143	2	Notice of intended objection to accounts
144	1	Notice of filing of accounts
145	2	Notice of appointment of executor or administrator
146	2	Deed of appointment of executor or administrator
147	2	Notice of objection to appointment of executor or administrator
148	3	Affidavit of additional assets
149	2	Acknowledgment under s 83 of the Probate and Administration Act 1898 (NSW)
150	1	Notice of Motion for Order Passing Accounts
151	1	Affidavit Confirming Service of Notice of Proceedings
160	1	Indemnity Certificate ( <i>Suitors Fund Act 1951</i> (NSW))
161	1	Service outside of jurisdiction
162	1	Consent to act as proper defendant

#### 4.1 Form 1 – General form

If there is no approved form for the step that you are taking in the proceedings, you can use form 1 and modify this form to suit the nature of the document you wish to file and the requirements of the rules.

#### 4.2 Form 2 – List of parties

See UCPR 4.2A for more information.

Where there are more than two plaintiffs or more than two defendants, the list of parties must be filed and served by the plaintiff with the originating process. It must be updated, re-filed and re-served by the relevant party with any document that first records a change in the parties to the proceedings.

None of the approved forms has all the parties listed on the front (unless there are no more than two plaintiffs, and two defendants), so the list of parties form is intended to be a convenient reference document for the court and parties to retain at the front of the pleadings folder in any multi-party matter.

It will be helpful to the court and all parties to update, re-file and re-serve the list of parties whenever any of the information in the document changes (e.g. when all appearances or defences have been filed, when a party changes its representative etc), in addition to the occasions mandated by UCPR 4.2A.

In the **PARTY AND CONTACT DETAILS** section of the form, you should provide the contact details of the person with the day to day conduct of the matter (if the party is legally represented), which is the information that parties should provide at ‘contact name and telephone’ in the **FILING DETAILS** section on the front of all filed forms.

It is appropriate for parties to co-operate with each other to update the list of parties by exchanging electronic copies of the completed form, to avoid the need to re-create it when new parties are added or contact details are changed. One up-to-date version of this form will be of mutual benefit to the parties and the court.

### 4.3 Form 3 – Statement of claim

- Form 3A - Statement of claim - filing party legally represented
- Form 3B - Statement of claim - filing party acting in person or by authorised officer

See UCPR Parts 6 and 7 for more information.

The statement of claim is one type of ‘originating process’ (i.e. a document used to start proceedings).

#### Type of claim

You must include information about the **main** type of claim that you are making. This information is collected by the courts for statistical purposes only and does not impact on how the proceedings will be dealt with by the Court. A complete list of Types of Claims can be obtained from the link below:

[www.ucprforms.justice.nsw.gov.au/Documents/ucpr%20guide%20section%206.pdf](http://www.ucprforms.justice.nsw.gov.au/Documents/ucpr%20guide%20section%206.pdf)

If there is no type of claim listed that matches your claim, leave this field blank and it will be completed by the court.

#### Relief claimed

See UCPR 6.12 for more information.

You must include information about the relief that you are claiming (i.e. what orders you are asking the court to make). For example, you may be seeking damages for personal injury or a breach of a contract.

##### (a) Liquidated Claims

If you are making a liquidated claim, you must include the following information under the heading **RELIEF CLAIMED**:

Amount of claim	\$
Interest	\$
Filing fees	\$
Service fees	\$
Solicitor's fees	\$
TOTAL	\$

In this table, set out the amounts claimed for each item. You must set out the orders you are asking the court to make and the details of any claim for interest in numbered paragraphs below the table.

You can find out more information about the interest you can claim in paragraph (d) below.

You can find out the amount of the filing fee from the *Civil Procedure Regulation 2017* (NSW).

You can find out the amount of the service fee charged by the Sheriff from the *Civil Procedure Regulation 2017* (NSW). If you use a process server, you may claim the amount charged by the process server. If the process server's rate is higher than the Sheriff's fee you may need to justify the amount claimed.

You can find out the amount that can be claimed for solicitor's costs in Part 5 of the *Legal Profession Uniform Law Application Regulation 2015* (NSW).

##### (b) Detention of Goods

If your claim relates to the detention of goods, you must state whether you are seeking judgment for:

- delivery of the goods to the plaintiff and for costs, or
- payment to the plaintiff of the value of the goods and for costs. You may also seek damages for the detention of the goods.



(c) Unliquidated Damages

See UCPR 14.13 for more information.

If you are claiming damages, you must not specify a monetary amount in your statement of claim (e.g. a claim for damages for personal injury).

However, if your proceedings are in the District Court or the Local Court, you can claim a specific amount for unliquidated damages if:

- the claim is for the recovery of:
  - the cost of repair to a motor vehicle, or
  - the value, less any salvage value, of a motor vehicle, or
  - the towing of a motor vehicle,where the repair, loss or towing is a consequence of damage alleged to have been sustained as a result of the negligence of the defendant or the defendant's servant or agent, or
- the claim is for the recovery of:
  - the cost of repair to property other than a motor vehicle, or
  - the value, less any salvage value, of property other than a motor vehicle,where the repair or loss is a consequence of damage alleged to have been sustained as a result of the negligence of the defendant or the defendant's servant or agent in driving, riding or controlling a motor vehicle.

(d) Interest

If you are seeking an order for interest up to judgment, you must specifically claim interest.

The claim may specify the rate or rates at which interest is claimed. If no rate of interest is specified, then the rate will be:

- the rate provided for under UCPR 6.12 (8), or
- the amount, if any, which was agreed under a contract between the parties.

For example, for liquidated claims you may ask the court to make an order to the following effect:

An order that the [role of party e.g. defendant] pay interest to the [role of party e.g. plaintiff] on [amount of claim (in liquidated claims table at (a) above)] pursuant to section 100 of the *Civil Procedure Act 2005 (NSW)* calculated at [rate]% [#the rate provided under sub-section 6.12 (8) of the *Uniform Civil Procedure Rules 2005* #(other, e.g. the rate under the contract on which you rely)] from [date] to [today's date], being \$[total amount of interest], and continuing at the rate of \$[daily amount] per day.

You may show the calculations of your claim for interest, e.g.:

$$\frac{[\text{number of days}]}{[365 \text{ (or 366 in a leap year)}]} \times [\text{rate}] \% \times [\text{amount of claim}] \text{ and continuing at } \frac{1}{365 \text{ (or 366)}} \times [\text{rate}] \% \times [\text{amount of claim}] \text{ per day}$$

In the Local Court, the court will not award interest up to judgment if the amount of the claim is less than \$1,000. See UCPR 36.7(2).

### Pleading and Particulars

See UCPR Parts 14 and 15 for more information.

You must outline the facts on which you rely to support your claim. You must provide sufficient information so that the other party will be able to identify and respond to your claim.

You must state each fact or issue in separate numbered paragraphs.

If your claim relates to one of the following money claims, you can briefly state the facts using the words referred to below:

- goods sold and delivered by the plaintiff to the defendant,
- goods bargained and sold by the plaintiff to the defendant,
- work done or materials provided by the plaintiff for the defendant at the defendant's request,
- money lent by the plaintiff to the defendant,
- money paid by the plaintiff for the defendant at the defendant's request,
- money had and received by the defendant for the plaintiff's use,
- interest on money due from the defendant to the plaintiff, and forborne at interest by the plaintiff at the defendant's request,
- money found to be due from the defendant to the plaintiff on accounts stated between them.

If you briefly state your claim using one of these sentences, the defendant can require you to provide a more detailed statement of your claim by filing and serving a notice to plead facts (see form 16).

### Registry address

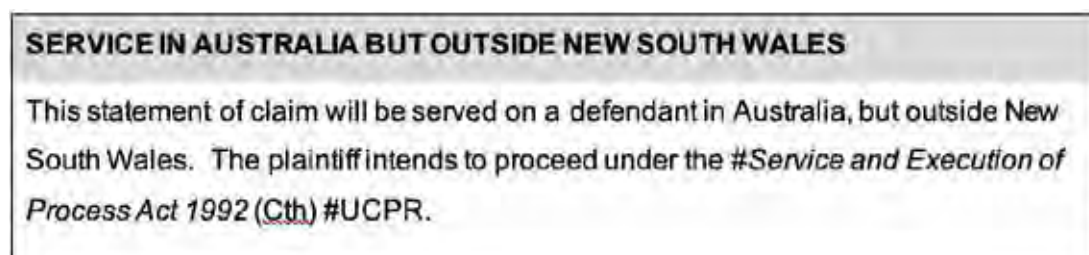
You must include the street address, postal address and telephone number of the court registry of the place where you want the proceedings to be heard.

You can find out the street address, postal address and telephone number of your nominated court registry from the court's website.

### Service of statement of claim on a defendant in Australia but outside New South Wales

See UCPR 10.3 and 10.4.

A statement of claim can be served on a defendant who is in Australia, but outside New South Wales, under the *Service and Execution of Process Act 1992* (Cth) ("SEPA") or the UCPR.



A convenient location for this statement is after the **NOTICE TO DEFENDANT** section of the form.

If you intend to proceed under the SEPA, you must attach a copy of SEPA form 1 'Notice to Defendant' to your statement of claim. See *Service and Execution of Process Regulations 1993* (Cth) at [www.comlaw.gov.au/](http://www.comlaw.gov.au/).

You can only proceed under the UCPR if your proceedings are in the Supreme Court.

### Service of a statement of claim on a defendant outside Australia

See UCPR Part 11 for more information.

A statement of claim can be served on a defendant outside Australia:

- if your proceedings are in the Supreme Court, and
- in the circumstances referred to in UCPR Schedule 6.

You must also serve the other party with a copy of form 161 at the time of serving the originating process.

## 4.4 Form 4 – Summons

- Form 4A - Summons - filing party legally represented
- Form 4B - Summons - filing party acting in person or by authorised officer.

See UCPR Parts 6 and 7 for more information.

The summons is one type of ‘originating process’ (i.e. the document used to start proceedings).

See paragraph 3.2.1 of this Guide for additional information you may need to include in the title of proceedings.

### Type of claim

You must include information about the main type of claim that you are making. This information is collected by the courts for statistical purposes only and does not impact on how the proceedings will be dealt with by the Court.

If there is no type of claim listed that matches your claim, leave this field blank and it will be completed by the court.

### Registry address

You must include the street address, postal address and telephone number of the court registry of the place where you want the proceedings to be heard.

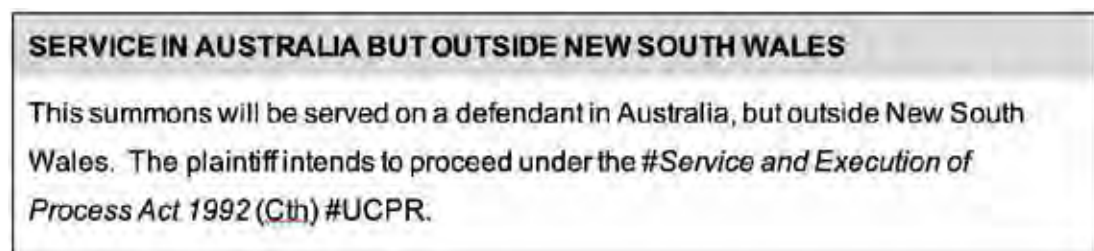
You can find out the street address, postal address and telephone number of your nominated court registry from the court’s website.

### Service of summons on a defendant in Australia but outside New South Wales

See UCPR 10.3 and 10.4.

A summons can be served on a defendant who is in Australia, but outside New South Wales, under the SEPA or the UCPR.

You must include a statement to the following effect in your summons:



A convenient location for this statement is after the **NOTICE TO DEFENDANT** section of the form.

If you intend to proceed under SEPA, you must attach a copy of SEPA form 1 ‘Notice to Defendant’ to your summons. See *Service and Execution of Process Regulations 1993* (Cth) at [www.comlaw.gov.au/](http://www.comlaw.gov.au/).

You can only proceed under the UCPR if your proceedings are in the Supreme Court.

### Service of a summons on a defendant outside Australia

See UCPR Part 11.

A summons can be served on a defendant outside Australia:

- if your proceedings are in the Supreme Court, and
- in the circumstances referred to in UCPR Schedule 6.

You must also serve the other party with a copy of form 161 at the time of serving the originating process.

## Hearing details

If your proceedings are to be entered in the Probate list of the Supreme Court, you must substitute the information in the hearing details section with the following statement:

The proceedings will be dealt with in the absence of the parties.

## 4.5 Form 5 – Notice to occupier

See UCPR 6.8 for more information. You must prepare this document if:

- you are claiming possession of land, and
- you have not named the current occupier of the land as a defendant in the statement of claim.

UCPR 4.7A sets out how you are to describe the land in the notice.

You must arrange for a copy of the statement of claim and notice to occupier to be served on the occupier of the land.

The documents may be served on the occupier personally or by leaving the documents on the land concerned. Documents that are left on the land must be addressed to the occupier by name or addressed to ‘the occupier’.

See UCPR Part 10 for more information about how to personally serve documents.

## 4.6 Form 6A – Appearance

See UCPR 6.1 and 6.9 - 6.11 for more information.

If you have been served with a statement of claim or summons, you must enter an appearance before you can take any step in the proceedings (including appearing in court) unless:

- the court gives you leave to take a step without entering an appearance,
- you are acting for a defendant who is applying to set aside the originating process under UCPR 12.11,
- you are acting for a defendant who makes an application in relation to setting aside or enforcing any judgment.

You can include a statement of submission in the appearance if you want to submit (i.e. agree) to the court:

- making all of the orders that have been sought in the statement of claim or summons,
- making all of the orders that have been sought in the statement of claim or summons save as to costs, or
- giving or entering judgment in respect of all of the claims made in the statement of claim.

You do not have to file an appearance if you have filed a defence in the proceedings. See UCPR 6.9.

If you are appearing for more than one party, e.g. if two defendants share legal representation, or an individual defendant is the authorised officer for a defendant corporation, in the appearance form, you should repeat the **Filing party** details for every party appearing:

<b>Name</b>			
<b>Address</b> [The filing party must give the party's address.]	<b>#[unit/level number]</b>	<b>#[building name]</b>	
	<b>[street number]</b>	<b>[street name]</b>	<b>[street type]</b>
	<b>[suburb/city]</b>	<b>[state/territory]</b>	<b>[postcode]</b>
	<b>#[country (if not Australia)]</b>		
<b>#Frequent user identifier</b>	<b>[include if the filing party is a registered frequent user]</b>		

before completing either the section headed **#Legal representative for filing party** or **#Contact details for filing party acting in person or by authorised officer**, whichever is applicable.

#### **4.7 Form 6B – Submitting Appearance**

A defendant may enter an appearance in proceedings by filing a notice of appearance (see UCPR 6.9(1)). A defendant who files a defence in proceedings is taken to have entered an appearance in the proceedings (UCPR 6.9(2)).

A defendant who intends to take no active part in proceedings may include in the defendant's notice of appearance a statement to the effect that the defendant submits to the making of all orders sought and the giving or entry of judgment in respect of all claims made, to which may be added the words "save as to costs" (UCPR 6.11(1)). If a defendant files a notice of this kind they may only file a defence or affidavit or take any other step in the proceedings with the leave of the court (UCPR 6.11(2)).

#### **4.8 Form 7 – Defence**

- Form 7A - Defence - filing party legally represented
- Form 7B - Defence - filing party acting in person or by authorised officer

See UCPR Part 14 for more information.

If you are filing a defence to a cross-claim, see paragraph 2.8 of this Guide for information about how to modify a form of defence for use in a cross-claim.

##### **Staying or transferring the proceedings**

If a court of a state or territory other than New South Wales is the appropriate court to determine the statement of claim, you may be able to have the proceedings stayed or transferred by applying to the court that issued the statement of claim.

In the case of proceedings issued in the Supreme Court of New South Wales you may be able to apply for the proceedings to be transferred as appropriate to the Supreme Court of another state or territory or to the Federal Court or the Family Court.

In the case of proceedings issued in the Local Court you may file an application to transfer proceedings to an appropriate Local Court at the same time as filing a defence (see form 85).

#### **4.9 Form 8 – Reply**

See UCPR Part 14 for more information.

In Local Court proceedings, a plaintiff may file a reply to a defence only by leave of the court.

#### **4.10 Form 9 – Statement of cross-claim**

See UCPR Part 9 for more information.

If you are acting for a defendant in the proceedings, you may want to make a cross-claim against a plaintiff, another defendant or another person who is not a party to the proceedings.

If a statement of claim has been filed in the proceedings, you can make a cross-claim by filing a statement of cross-claim.

##### **Title of the statement of cross-claim**

Each cross-claim is numbered in the order in which the statements of cross-claims are filed.

The title of the statement of cross-claim includes the number of your cross-claim.

Leave this field blank unless you know the number of your cross-claim. The registry will fill in this information.

### **Registry address**

You must include the street address, postal address and telephone number of the court registry. You should:

- copy the registry street address, postal address and telephone number from the statement of claim, or
- if relevant, include details of the street address, postal address and telephone number of the registry where the court has transferred the proceedings.

#### **4.11 Form 10 – Cross-summons**

See UCPR Part 9 for more information.

If a summons has been filed in the proceedings, you can make a cross-claim by filing a cross-summons.

You must include the street address, postal address and telephone number of the court registry. You should:

- copy the registry street address, postal address and telephone number from the statement of claim or summons, or
- if relevant, include details of the street address, postal address and telephone number of the registry where the court has transferred the proceedings.

#### **4.12 Form 11 – List of documents**

See UCPR 21.3 for more information.

You must prepare a list of documents when you comply with an order for discovery.

You should refer to the *Evidence Act 1995* (NSW) Part 3.10 for more information in relation to the types of privilege and the circumstances under which any privilege you intend to claim in respect of any documents referred to in your list of documents arises.

You must prepare an affidavit verifying your list of documents - see UCPR 21.4 for more information.

See UCPR 21.5 for more information about your obligations to keep and make available for inspection the documents referred to in your list of documents. You may be requested to produce those documents for inspection under UCPR 21.5. You may be required to provide facilities in order that those documents can be inspected and photocopied.

You may also be obliged to provide assistance to the inspecting party with the location and identification of documents in your list. You will usually be entitled to the reimbursement of your reasonable expenses incurred in providing photocopies.

If it is more convenient to set out Parts 1 and 2 of the list of documents in ‘landscape’ format, you may do so.

#### **4.13 Form 12 – Statement of issues**

See UCPR 14.2 for more information.

If this is an agreed statement of issues, it must be signed by, or on behalf of each party to the proceedings.

#### **4.14 Form 13 – Scott schedule**

See UCPR 15.2 for more information.

You must number each item in the schedule and give details of:

- the particulars of the item claimed, and
- the amount claimed.

When the other party completes the form, the other party must include details of:

- the particulars of their answer to the item claimed, and
- the amount that is conceded.

Modify the form as appropriate if there is more than one other party responding.

If it is more convenient to set out the schedule in ‘landscape’ format, you may do so.

#### **4.15 Form 14 – Statement of particulars – personal injury proceedings**

See UCPR 15.12 for more information.

You must prepare this statement if you are claiming damages for personal injuries other than where you are making a claim under the *Compensation to Relatives Act 1897* (NSW).

You must serve the statement and copies of all of the documents listed in UCPR 15.12:

- on the defendant or on the defendant’s insurer or solicitor
- when you serve the statement of claim or as soon as practicable after you serve the statement of claim.

If you are not able to serve copies of any of the documents listed in UCPR 15.12, you must include your reasons in the statement.

#### **4.16 Form 15 – Statement of particulars - compensation to relatives proceedings**

See UCPR 15.13 for more information.

You must serve the statement and copies of all of the documents listed in UCPR 15.13:

- on the defendant or on the defendant’s insurer or solicitor
- when you serve the statement of claim or as soon as practicable after you serve the statement of claim.

If you are not able to serve copies of any of the documents listed in UCPR 15.13, you must include your reasons in the statement.

#### **4.17 Form 16 – Notice to plead facts - money claims**

See UCPR 14.12 for more information.

You can ask the plaintiff to plead their claim more fully (i.e. give more information about their claim) if the plaintiff used the following words to claim money in the statement of claim:

- goods sold and delivered by the plaintiff to the defendant,
- goods bargained and sold by the plaintiff to the defendant,
- work done or materials provided by the plaintiff for the defendant at the defendant’s request,
- money lent by the plaintiff to the defendant,
- money paid by the plaintiff for the defendant at the defendant’s request,
- money had and received by the defendant for the plaintiff’s use,
- interest on money due from the defendant to the plaintiff, and forborne at interest by the plaintiff at the defendant’s request,
- money found to be due from the defendant to the plaintiff on accounts stated between them

You must file the notice to plead facts within 28 days of being served with the statement of claim or such other time as the court directs for you to file a defence (see UCPR 6.2).

You must serve a copy of the notice on the plaintiff.

The plaintiff then has 28 days to file an amended statement of claim pleading the facts on which he or she relies in full. The amended statement of claim must include a note to the effect that the statement of claim has been amended in response to the notice. See paragraph 2.7 of this Guide for more information.

If you have not filed a defence before you serve a notice to plead facts, you do not have to file your defence until 14 days after you are served with the plaintiff's amended statement of claim.

#### **4.18 Form 17 – Notice to admit facts and authenticity of documents**

See UCPR 17.3 and 17.4 for more information.

You must list the facts or documents that you are requiring the other party to admit.

#### **4.19 Form 18 – Notice disputing facts and authenticity of documents**

See UCPR 17.3 and 17.4 for more information.

You must list the facts or documents set out in the Notice to Admit Facts which you are disputing within 14 days or you will be deemed to have admitted all facts set out in the Notice to Admit Facts. Such admissions can only be withdrawn with leave of the Court.

#### **4.20 Form 19 – Notice to produce for inspection**

For more information, see UCPR 21.9 to 21.13 and 42.33. A notice to produce to another party for inspection:

- requires a party to produce documents or things for inspection,
- must clearly identify the documents or things to be produced for inspection. The documents or things must be referred to in any originating process, pleading, affidavit or witness statement filed or served by the party required to produce the document or things or be relevant to a fact in issue (see UCPR 21.10(1)),
- does not have to be filed. This means that the court will not know that a notice to produce has been served, and
- may be served at any time before a hearing.

The parties will arrange how the documents are to be inspected e.g. they will agree that the documents should be inspected at one of their offices.

The party who produces the documents or things for inspection may request that you pay the amount of any reasonable loss or expense that they incur in complying with the notice to produce for inspection.

You should attempt to agree with the other party on the amount of any reasonable loss or expense. If you cannot agree, the court may be asked to make an order about the amount that you must pay.

#### **4.21 Form 20 – Notice of motion**

See UCPR Part 18 for more information.

Unless the UCPR provide otherwise, you must prepare a notice of motion if you are making an interlocutory or other application in the proceedings (see UCPR 18.1).

The courts receive large numbers of some types of application (e.g. an application for default judgment on a liquidated claim). The Uniform Rules Committee has approved specific forms for the more common types of notice of motion. You must use the specific form if one has been approved for the type of application you are making to the court.

The UCPR allow the court to deal with some notices of motion in the absence of the parties.

In the notice of motion, you must:

- state whether the application is to be dealt with in the absence of the parties (i.e. not in the court room), if relevant, or



- provide for a hearing date, if the application is to be dealt with in court. The registry will insert the hearing date and time, but you may insert this information if known (e.g. if the court has adjourned a matter for hearing of a motion on a particular date).

See UCPR 18.2, 18.4 and 18.5 for more information about how and when to serve a notice of motion.

See UCPR 18.3 and paragraph 2.2 of this Guide for more information about how to describe the persons who are filing or who are affected by a notice of motion.

Unless the court orders otherwise, a notice of motion must be served at least 3 clear business days before the hearing date of the motion. You must include the following information if the court orders that the notice of motion has to be served by a particular time.

<b>TIME FOR SERVICE</b>
<p><b>This notice of motion is to be served on or before [time and date] as ordered by the court on [date].</b></p>

You must include the street address, postal address and telephone number of the court registry. You should:

- copy the registry street address, postal address and telephone number from the statement of claim or summons, or
- if relevant, include details of the street address, postal address and telephone number of the registry where the court has transferred the proceedings.

#### **4.22 Form 21 – Interrogatories**

See UCPR Part 22 for more information.

You can ask the court to order a party to answer interrogatories (i.e. questions about the issues in dispute between the parties in the proceedings) by filing:

- a notice of motion, or
- the proposed interrogatories (see UCPR 22.1).

The court will not order interrogatories unless it is satisfied that:

- such an order is necessary at the time it is made (see UCPR 22.1(4)), and
- in the case of proceedings on a claim for damages arising out of the death or bodily injury to a person or on a claim for contribution in relation to damages so arising, it is satisfied that special reasons exist that justifies the making of the order (see UCPR 22.1(3)).

#### **4.23 Form 22 – Statement of answers to interrogatories**

See UCPR Part 22 for more information.

You can only object to being ordered to answer interrogatories if:

- the interrogatory does not relate to any issue in dispute between that party and the party seeking the order,
- the interrogatory is vexatious or oppressive, or
- the answer to the interrogatory could disclose privileged information (see UCPR 22.2).

If you do not sufficiently answer or fail to answer an interrogatory, the court may make further orders against you including:

- an order that you attend to be orally examined (see UCPR 22.4),
- giving judgment against you (see UCPR 22.5),
- if you are acting for a plaintiff, an order that your proceedings be stayed or dismissed (see UCPR 22.5), or
- if you are acting for a defendant, an order that your defence be struck out (see UCPR 22.5).

#### 4.24 **Form 23A – Notice of intention to elect trial by jury in defamation proceedings**

Rule 29.2A provides that an election for defamation proceedings to be tried by jury must be made by filing a notice of election for a jury trial and serving the notice on each other active party in the proceedings.

A party may file and serve a notice of election for jury trial only if (see UCPR 29.2A(2)):

- (a) the party has served a notice of intention to file the notice of election on each other active party before a date has been fixed for the hearing; and
- (b) a notice of motion has not been filed by the other active parties seeking an order that the proceedings not be tried by jury (such notice must be made within 21 days of being served with the notice of intention), or if such a notice of motion has been filed, the court has refused to make the order sought.

A party who serves a notice of intention to file a notice of election for a jury trial must inform the court that the notice has been served before a date has been fixed for the hearing (UCPR 29.2A(3)).

An application for proceedings other than defamation proceedings to be heard by jury must be made by notice of motion (see UCPR 29.2). Such applications are extremely rare.

#### 4.25 **Form 23B – Requisition for jury**

For more information, see:

- s 85 of the *Supreme Court Act 1970* (NSW).
- s 76A of the *District Court Act 1973* (NSW).
- s 21 of the *Defamation Act 2005* (NSW).
- UCPR 29.2.

See the *Civil Procedure Regulation 2017* (NSW) for information about the fees charged for jury trials.

#### 4.26 **Form 24 – Notice to produce to court**

For more information, see UCPR Part 34 and 42.33. A notice to produce to court:

- requires a party to produce documents or things to the court:
  - on any hearing date in the proceedings,
  - at any time fixed by the court for return of subpoenas,
  - by leave of the court, at some other specified time,
- must clearly identify the documents or things to be produced to the court,
- does not have to be filed,
- may be served at any time,
- does not have to be personally served, and
- does not have to be served on all the other parties, unless the court so orders.

The court will generally not know that a notice to produce has been served until documents or things are produced to the court, unless the court has appointed a special time for the return of the notice to produce.

The court will charge a fee when the documents or things are produced to the court. The party that served the notice to produce to court has to pay this fee.

The party who produces the documents or things to court may request that you pay the amount of any reasonable loss or expense that they incur in complying with the notice to produce to court.

You should attempt to agree with the party producing the documents on the amount of any reasonable loss or expense. If you cannot agree, the court may be asked to make an order about the amount that you must pay.

#### **4.27 Form 25 – Subpoena to attend to give evidence**

See UCPR Part 33, the notes in the form and the notes in paragraph [4.26](#) of this Guide for more information.

See UCPR 31.32 and 31.33 for more information if you are issuing a subpoena against a medical expert.

#### **4.28 Form 26A – Subpoena to produce with subpoena notice and declaration**

See UCPR Part 33 and 42.33 for more information.

These rules and the form of subpoena are harmonised nationally with other jurisdictions. The nationally harmonised form of subpoena is a combined form and provides three separate options for different types of subpoena (i.e. subpoena to produce, subpoena to attend to give evidence, subpoena to attend to give evidence and to produce). Feedback has indicated that retaining all three options without deleting the options that are not relevant to the individual subpoena has resulted in a longer document giving rise to potential confusion for the person receiving it.

Therefore, a separate form has been approved for each type of subpoena to:

- increase user friendliness
- make it clear what is required of the person receiving the subpoena
- save on wasted paper.

You can indicate in the subpoena if you agree to the person receiving the subpoena to produce copies (rather than originals) of the documents to the court (see UCPR 33.7).

You should note that a subpoena will not be issued:

- if the court has made an order, or there is a rule of the court, having the effect of requiring that the proposed subpoena:
  - not be issued, or
  - not be issued without leave of the court and that leave has not been given (see UCPR 33.2).
- requiring the production of a document or thing in the custody of the court or another court (see UCPR 33.2)
- without the leave of the court, if the party is not represented by a solicitor or in proceedings in the Small Claims Division of the Local Court (see UCPR 7.3).

See UCPR 31.32 and 31.33 for more information if you are issuing a subpoena for the production of medical reports.

After the subpoena has been issued, you must arrange for:

- the subpoena to be served on the person to whom it is addressed not less than 5 clear working days before the date on the subpoena to produce. You must seek leave of the court if you wish to serve a subpoena a shorter time before the return day.
- a copy of the subpoena to be served on each other active party in the proceedings (see UCPR 33.5).

See UCPR Part 10 for more information about how to serve a subpoena or other document. A Supreme Court subpoena is required to be served personally.

The person who produces the documents or things to the court may request that you pay the amount of any reasonable loss or expense that they incur in complying with the subpoena to produce.

You should attempt to agree with the person producing the documents on the amount of any reasonable loss or expense. If you cannot agree, the court may be asked to make an order about the amount that you must pay.

#### **4.29 Form 27A – Subpoena to attend to give evidence and to produce with subpoena notice and declaration**

See UCPR Part 33 and the notes in paragraphs [4.25](#) and [4.26](#) of this Guide for more information.

See UCPR 31.32 and 31.33 for more information if you are issuing a subpoena against a medical expert.

#### **4.30 Form 29 – Order for production**

See s 68 of the *Civil Procedure Act 2005* (NSW) for more information.

You must use this form if the court has made an order for the production of documents or things and you wish to serve a copy of the order on the party to whom it is addressed.

##### **Schedule**

You must list the documents or things that are to be produced under the order for production.

##### **Costs and expenses**

The party who produces the documents or things to the court may request that you pay the amount of any reasonable loss or expense that they incur in complying with the order for production, if you sought the order.

You should attempt to agree with the party producing the documents on the amount of any reasonable loss or expense. If you cannot agree, the court may be asked to make an order about the amount that you must pay.

#### **4.31 Form 30 – Consent to act as tutor**

See UCPR 7.13 to 7.18 for more information.

A tutor must commence and carry on proceedings for a person under a legal incapacity. A person under a legal incapacity means someone who is under a legal incapacity in relation to the conduct of legal proceedings. Unless the court orders otherwise, a solicitor must represent the tutor.

You must file this document before you commence or carry on proceedings on behalf of a person under a legal disability.

#### **4.32 Form 31 – Arbitrator’s award and registrar’s notice**

See UCPR 20.11 for more information.

This form is prepared and issued by the registry.

#### **4.33 Form 32 – Notice of motion - rehearing after arbitration**

See s 42 of the *Civil Procedure Act 2005* (NSW) and UCPR 20.12 for more information.

The application may (but need not) request that the rehearing be a full rehearing or a limited rehearing.

An order for rehearing will not be made unless the amount claimed in the proceedings, or the value of the property to which the proceedings relate, exceeds \$10,000 (see s 43(2) of the *Civil Procedure Act 2005* (NSW)).

You must include the street address, postal address and telephone number of the court registry. You should:

- copy the registry street address, postal address and telephone number from the statement of claim or summons
- if relevant, include details of the street address, postal address and telephone number of the registry where the court has transferred the proceedings.

#### **4.34 Form 33 – Notice of discontinuance**

See UCPR 12.1 for more information.

A plaintiff may discontinue proceedings, either as to all claims for relief or as to all claims for relief so far as they concern a particular defendant:

- with the consent of each other active party to the proceedings, or
- with the leave of the court.

A plaintiff who discontinues proceedings (as distinct from having those proceedings dismissed) is not prevented from claiming the same relief in fresh proceedings, subject to the terms of the discontinuance (see UCPR 12.3 for more information).

The notice of discontinuance must include a certificate by the plaintiff or by the plaintiff's solicitor to the effect that the plaintiff does not represent any other person.

See UCPR 42.19 for more information about the plaintiff's liability to pay the defendant's costs when the plaintiff files a notice of discontinuance.

#### **4.35 Form 34 – Notice of payment**

See UCPR 6.17 for more information.

If you are served with a statement of claim and agree that you owe the amount being claimed, you may pay the plaintiff all of the money and interest claimed. You may then file this form to inform court that you have made such a payment.

Once you have filed the notice, further proceedings against you will be stayed unless the court otherwise orders.

#### **4.36 Form 35 – Acknowledgement of liquidated claim**

See UCPR 20.34 for more information.

If you are served with a statement of claim and agree that you owe the amount being claimed, you may file an acknowledgment of claim for the full amount including interest, fees and solicitor's costs.

You cannot file an acknowledgement if you have already filed a defence or if the plaintiff has filed an application for default judgment under UCPR Part 16.

Once you have filed the acknowledgment, the court will enter judgment for the full amount.

If you wish to apply to pay the debt by instalments, you may also file form 46 - notice of motion to pay by instalments - individual or form 47 for corporations. The court will consider your application to pay by instalments after it has entered judgment for the full amount. See UCPR 37.2 for more information.

#### **4.37 Form 36 – Notice of motion - default judgment for possession of land**

See UCPR 16.3, 16.4 and 36.8 for more information.

You can only obtain a judgment for possession of land in the Supreme Court or the District Court.

You can apply for judgment using form 36 if:

- you have made a claim for possession of land in your statement of claim, and
- the defendant is 'in default' in relation to the claim (see UCPR 16.2). UCPR 4.7A sets out how you are to describe the land in the notice of motion.

Form 36 includes an affidavit in support of your application. The affidavit should be made by the person or persons who have knowledge of the facts that are included in the affidavit or include reference to the source of the person's knowledge and belief.

See paragraph [4.5](#) of this Guide for more information about the notice to occupier which is referred to in the affidavit.

You must also file an affidavit of service deposing that the defendant was served with the statement of claim more than 28 days before you file the notice of motion. See form 41 for the form of the affidavit of service. The date the affidavit of service is sworn or affirmed must be not be more than 14 days before the date on which the notice of motion is filed.

The registrar will deal with your application in the absence of the parties.

Schedule 2 of the *Civil Procedure Regulation 2017* (NSW) sets out the amount you are entitled to claim for solicitors' fees.

#### **4.38 Form 36A – Notice of Motion – default judgment on claim for possession of land and liquidated claim**

See UCPR rr 16.3, 16.4, 16.6 and 36.8 for more information.

You can only obtain a judgment for possession of land in the Supreme Court or the District Court.

You can apply for judgment using form 36A if:

- you have made a claim for possession of land in conjunction with a claim for a liquidated debt, and
- the defendant is ‘in default’ in relation to the claim (see UCPR 16.2).

UCPR 4.7A sets out how you are to describe the land in the notice of motion.

Form 36A includes an affidavit in support of your application. The affidavit should be made by the person or persons who have knowledge of the facts that are included in the affidavit or include reference to the source of the person’s knowledge and belief.

See paragraph [4.5](#) of this Guide for more information about the notice to occupier which is referred to in the affidavit.

See paragraph [4.3.2\(d\)](#) of this Guide for further information and examples of how to set out details of your claim for interest.

You must also file an affidavit of service deposing that the defendant was served with the statement of claim more than 28 days before you file the notice of motion.

See form 41 for the form of the affidavit of service. The date the affidavit of service is sworn or affirmed must be not be more than 14 days before the date on which the notice of motion is filed.

The registrar will deal with your application in the absence of the parties.

Schedule 2 of the *Civil Procedure Regulation 2017* (NSW) sets out the amount you are entitled to claim for solicitors’ fees.

#### **4.39 Form 37 – Notice of motion - default judgment for detention of goods**

See UCPR 16.3 and 16.5 for more information.

You can apply for judgment using form 37 if:

- you have made a claim for the detention of goods in your statement of claim, and
- the defendant is ‘in default’ in relation to the claim (see UCPR 16.2).

You can seek orders for:

- the delivery of the detained goods and for costs, or
- payment of the value of the goods and for costs.

Form 37 includes an affidavit in support of your application. The affidavit should be made by the person or persons who have knowledge of the facts that are included in the affidavit and include reference to the source of the person’s knowledge and belief, if appropriate.

You must also file an affidavit of service deposing that the defendant was served with the statement of claim more than 28 days before you file the notice of motion. See form 41 for the form of the affidavit of service. The date the affidavit of service is sworn or affirmed must be not be more than 14 days before the date on which the notice of motion is filed.

The registrar will deal with your application in the absence of the parties.

If you are applying for judgment for payment of the value of the goods, then the registrar will list the matter so that the value of the goods can be assessed. See UCPR Part 30.

Schedule 2 of the *Civil Procedure Regulation 2017* (NSW) sets out the amount you are entitled to claim for solicitors’ fees in the District and Local Courts.

#### 4.40 **Form 38 – Notice of motion - default judgment for liquidated claim**

See UCPR 16.3 and 16.6 for more information.

You can apply for judgment using form 38 if:

- you have claimed a specific amount of money in your statement of claim, and
- the defendant is ‘in default’ in relation to the claim (see UCPR 16.2).

Form 38 includes an affidavit in support of your application. The affidavit should be made by the person or persons who have knowledge of the facts that are included in the affidavit or include reference to the source of the person’s knowledge and belief.

See paragraph [4.3.2\(d\)](#) of this Guide for further information and examples of how to set out details of your claim for interest.

You must also file an affidavit of service deposing that the defendant was served with the statement of claim more than 28 days before you file the notice of motion. See form 41 for the form of the affidavit of service. The date the affidavit of service is sworn or affirmed must be not be more than 14 days before the date on which the notice of motion is filed.

The registrar will deal with your application in the absence of the parties.

Schedule 2 of the *Civil Procedure Regulation 2017* (NSW) sets out the amount you are entitled to claim for solicitors’ fees.

#### 4.41 **Form 39 – Notice of motion - default judgment for unliquidated damages**

See UCPR 16.3 and 16.7 for more information.

You can apply for judgment using form 39 if:

- you have claimed an unspecified amount for damages in your statement of claim, and
- the defendant is ‘in default’ in relation to the claim (see UCPR 16.2).

Form 39 includes an affidavit in support of your application. The affidavit should be made by the person or persons who have knowledge of the facts that are included in the affidavit and include reference to the source of the person’s knowledge and belief, if appropriate.

You must also file an affidavit of service deposing that the defendant was served with the statement of claim more than 28 days before you file the notice of motion. See form 41 for the form of the affidavit of service. The date the affidavit of service is sworn or affirmed must be not be more than 14 days before the date on which the notice of motion is filed.

The registrar will deal with your application in the absence of the parties.

If the registrar enters judgment in your favour, the registrar will then refer the motion to the court to quantify the amount of the damages.

Schedule 2 of the *Civil Procedure Regulation 2017* (NSW) sets out the amount you are entitled to claim for solicitors’ fees in the District and Local Courts.

#### 4.42 **Form 40 – Affidavit**

See UCPR Part 35 for more information. If you are preparing an affidavit of service you should use form 41.

##### **Who can make an affidavit on behalf of a party?**

See UCPR 35.3.

If a party is required to file an affidavit or verify any matter by affidavit, the affidavit must be made by:

- the party
- if the party is a person under legal incapacity, by the party’s tutor
- if the party is a corporation, by a member or officer of the corporation or (if it is in liquidation) by its liquidator

- if the party is a body of persons lawfully suing or being sued:
  - in the name of the body, or
  - in the name of any member or officer of the body, or
  - in the name of any other person associated with the body, by a member or officer of the body
- if the party is the Crown or an officer of the Crown suing or being sued in his or her official capacity, by an officer of the Crown
- if the proceedings are being brought in the plaintiff's name by some other person pursuant to a right of subrogation:
  - by that other person, or
  - if that other person is a corporation, by a member or officer of the corporation or (if it is in liquidation) by its liquidator.

If the proceedings are in the Local Court, the affidavit can also be made:

- by the party's solicitor, or by *a commercial agent* with respect to debt collection (within the meaning of the *Commercial Agents and Private Inquiry Agents Act 2004* (NSW)), in relation only to proceedings on an application for:
  - an instalment order, or
  - an order for examination, or
  - a writ of execution, or
  - a garnishee order, or
  - default judgment (but only in the Small Claims Division), or
- by a person holding a licence as a real estate agent, strata managing agent or on-site residential property manager (within the meaning of the *Property, Stock and Business Agents Act 2002* (NSW)), in relation only to proceedings on an application for:
  - an instalment order, or
  - an order for examination, or
  - a writ of execution, or
  - a garnishee order, or
  - default judgment (but only in the Small Claims Division), or
  - the filing of a certificate under s 78 of the *Civil and Administrative Tribunal Act 2013* (NSW).

When you make an affidavit, you must:

- have knowledge of the facts being deposed to (i.e. stated) in the affidavit
- set out the facts that qualify you to make the affidavit (e.g. you are making the affidavit as tutor for the plaintiff).

### **Title of an affidavit**

The title of the affidavit must include:

- the name of the deponent (i.e. the person making the affidavit), and
- the date on which the affidavit is made (i.e. sworn or affirmed).

The Supreme Court Rules require additional information to be included in the title of some affidavits that are prepared for Supreme Court proceedings. For example, 'AFFIDAVIT OF EXECUTOR', 'AFFIDAVIT RELATING TO DE FACTO RELATIONSHIPS'.



## Preparing an affidavit

When you are preparing an affidavit, you must make sure that you have at least one paragraph of the body of the affidavit on the page that contains the following information.

#SWORN #AFFIRMED at	
Signature of deponent	
Signature of witness	
Name of witness	
Address of witness	
Capacity of witness	#Justice of the peace #Solicitor #Barrister #Commissioner for affidavits #Notary public

## How do I make an affidavit?

You (the deponent) make an affidavit by swearing or affirming that the affidavit's contents are true before a witness who must be one of the following:

- a justice of the peace ("JP")
- a solicitor
- a barrister
- a commissioner for affidavits
- a notary public.

You must:

- sign in the presence of the witness
- sign the foot of each page (excluding annexures)
- initial any alterations, additions or erasures.

You or the witness must:

- write or type the date in the title at the top of the front page of the affidavit and in the introductory paragraph of the affidavit
- delete the word 'Affirmed', if you have taken an oath OR delete the word 'Sworn', if you have made an affirmation.

Following this, the witness must sign:

- underneath the words 'Sworn (or Affirmed) at [place]'
- at the foot of each page of the affidavit (although there is no need for the witness or deponent to sign the first page if it is only the title page of the affidavit, containing none of the substance)
- the certificate endorsed on any annexure
- the certificate attached to any exhibit.

The witness must initial any alterations, additions or erasures (see UCPR 35.5). The affidavit must include:

- the witnesses' name and address
- the JP's registration number, if relevant.

If the witness is a JP, the JP may provide his or her registration number as a JP in place of the JP's address. JPs must write their registration number on any document they sign or witness as a JP in accordance with the "Guidelines for Justices of the Peace" developed in accordance with requirements under the *Justices of the Peace Act 2002* (NSW) and the *Justices of the Peace Regulation 2014* (NSW) and outlined in the Justices of the Peace Handbook.

If the witness is a notary public, the notary public must apply his or her seal.

Where an affidavit or witness statement is being taken and the deponent or the witness requires an interpreter, the interpreter must give a certification in the form contained within the forms.

### Annexures to an affidavit

See UCPR 35.6 for more information.

If you are annexing documents to an affidavit, you must include a certificate on the annexure that contains the following information. The certificate must not be on a separate page from the annexure.

This is the annexure marked '[identifying mark]' referred to in the affidavit of [name] #sworn/#affirmed before me on [date].	
Signature of witness	
Name of witness	
Address of witness	
Capacity of witness	#Justice of the peace #Solicitor #Barrister #Commissioner for affidavits #Notary public

The pages of the affidavit and the annexures must be consecutively numbered in a single series of numbers.

### Filing an affidavit

See UCPR 35.9.

You must not file an affidavit unless:

- the UCPR require you to file the affidavit
- the rules or practice note of the court in which you are filing the affidavit require you to file it
- the court gives you leave to file the affidavit.

#### 4.43 Form 41 – Affidavit of service

See UCPR Part 10 and 35.8 for more information.

You can prepare an affidavit of service if you need to prove to the court that a document has been served on another person.

You must include the following information in the affidavit of service:

- a statement as to when, where, how and by whom service was effected,
- a statement as to what, if anything, was said by the recipient at the time service was effected,
- a statement that the person effecting service is over the age of sixteen years, and
- a statement identifying the document that was served.

You should only attach a copy of the served document to your affidavit of service where that document has NOT been filed in court.

#### 4.44 Form 42 – Exhibit certificate

See UCPR 35.6 for more information.

The form must be attached to an exhibit to an affidavit. The form must identify the affidavit it relates to and have an identifying mark.

The person who witnessed the affidavit must sign and date the certificate.

#### 4.45 Form 43 – Judgment / order

See UCPR 36.11 and 36.12 for more information.

You may use this form to obtain a sealed copy of any judgment or order made by the court.

Judgments or orders are public documents, so you must include the ACN (i.e. the Australian Company

Number) of all parties that are companies:

- Include this information (i.e. the company name plus ACN) in the **TITLE OF PROCEEDINGS** section if there are up to two plaintiffs and up to two defendants.
- Include this information (i.e. the company name plus ACN) in the **PARTY DETAILS** section if there are more than two plaintiffs and/or more than two defendants and/or any cross-claims.

You may be required to pay a fee under the *Civil Procedure Regulation 2017* (NSW) if the court furnishes a sealed or certified copy of a judgment or order.

Try to ensure that some text appears above the seal, and that a new page does not start with a court seal, so that the court is not asked to stamp an otherwise blank page.

You may specify 'Judgment' or 'Order' rather than 'Judgment / Order' in the title of the form and in the **DATE** and **TERMS** headings in the form if it is appropriate to do so.

On some occasions a non-party may require a copy of a judgment or order. In that instance, the non-party e.g. a trustee in bankruptcy, must provide an address where the sealed copy of the judgment or order may be sent.

#### 4.46 Form 44 – Consent judgment / order

See UCPR 36.1A, 36.11 and 36.12 for more information.

##### When to use this form

You must use this form if you are preparing draft orders that you will ask the court to make, for example, where parties have agreed on directions or are seeking directions from the registrar or judge. These orders are usually prepared in consultation with the other parties in the proceedings.

Judgments or orders are public documents, so you must include the Australian Company Number ("ACN") of all parties that are companies:

- Include this information (i.e. the company name plus ACN) in the **TITLE OF PROCEEDINGS** section if there are up to two plaintiffs and up to two defendants.
- Include this information (i.e. the company name plus ACN) in the **PARTY DETAILS** section if there are more than two plaintiffs and/or more than two defendants and/or any cross-claims.

You may specify 'Consent judgment' or 'Consent order' rather than 'Consent judgment/order' in the title of the form and in the **TERMS** heading in the form if it is appropriate to do so.

There is no approved form called 'short minutes of order' although some courts, practitioners or practice notes use this expression. Where a court requests that 'short minutes of order' be filed, prepare a consent judgment / order (form 44) or judgment/order (form 43) instead and adapt the form accordingly.

Form 44 is also the form to use for settlements (i.e. consent judgments). There is no approved form called 'terms of settlement', although some courts and practitioners use this expression.

A signed copy of a consent judgment or order may be handed up in court and the court may make and enter the orders. If this occurs, you will not receive a sealed copy of the consent judgment or order for your records as a matter of course.

You can apply for a sealed copy of a consent judgment or order at the registry. See the *Civil Procedure Regulation 2017* (NSW) for the fee if the court furnishes a sealed or certified copy of a judgment or order.

##### Agreements between parties that the terms shall not be disclosed other than according to law

Unless the court, for special reasons, otherwise orders, the court must refuse to give judgment, or order that judgment be entered, in terms that restrict, or purport to restrict, any disclosure of the terms of the judgment or order (see UCPR 36.1A).

However, the parties may agree that they will keep confidential or not disclose the terms of the judgment or order and this agreement could be recorded in a separate deed, agreement or undertaking. The agreement could be noted in the judgment or order.

#### **4.47 Form 45 – Registration or filing of (certificate of) judgment / order**

See s 133 (2) of the *Civil Procedure Act 2005* (NSW) and UCPR 36.11 or 36.10 for more information.

You must use form 45 to register or file a certificate, judgment or order from another court, tribunal, or costs assessor.

Once you have registered a certificate, judgment, or order, you can enforce that certificate, judgment, or order as a judgment of the court in which it is registered. For example, you would be able to apply for a writ for the levy of property.

Except where a costs assessor's certificate is filed in the proceedings to which it relates under UCPR 36.10(1)(a):

- when a judgment or order is registered, new proceedings are created in the court
- regardless of a person's title in the original proceedings:
  - the plaintiff will be the person seeking to enforce the judgment (generally the person in whose favour the judgment was given or the order was made),
  - the defendant will be the person against whom the judgment was given or against whom the order was made.

#### **4.48 Form 46 – Notice of motion to pay by instalments - individual**

See UCPR 37.2 for more information. You must use this form if:

- you are acting for a judgment debtor and want to apply to the court for an order to pay the judgment debt by instalments,
- you have been served with a statement of claim, have filed the acknowledgement of the claim (see form 35), and want to apply to the court for an order to pay the amount of the claim by instalments.

You can ask to pay the instalments:

- weekly,
- fortnightly,
- monthly, or
- in a lump sum by a particular date.

Form 46 also includes a financial statement. You must fill out each section of the financial statement and sign the affidavit stating that the information you completed in the financial statement is true.

You must swear or affirm the affidavit before a JP, a solicitor, a barrister, a commissioner for affidavits or a notary public.

#### **4.49 Form 47 – Notice of motion to pay by instalments - corporation**

See UCPR 37.2 for more information. You must use form 47 if:

- you are authorised to act on behalf of the company,
- the judgment debtor is a company and it wishes to apply to the court for an order to pay the judgment debt by instalments,
- the company has been served with a statement of claim, has filed the acknowledgement of the claim (see form 35), and wishes to apply to the court for an order to pay the amount of the claim by instalments.

Form 47 also includes a financial statement. An authorised officer of the corporation must fill out each section of the financial statement and sign an affidavit stating that the information that he or she completed in the financial statement is true.

The authorised officer must swear or affirm the affidavit before a justice of the peace, a solicitor, a barrister, a commissioner for affidavits or a notary public.

#### **4.50 Form 48 – Instalment order and notice**

See UCPR 37.3 for more information.

The registrar will issue form 48 to advise the parties of a decision to grant an application for an instalment order.

#### **4.51 Form 49 – Order refusing instalment application and notice (formerly registrar’s refusal to make instalment order)**

See UCPR 37.3 for more information.

The registrar will issue form 49 to advise the parties of a decision to refuse an application for an instalment order.

#### **4.52 Form 50 – Notice of motion - objection to instalment order or order refusing instalment order**

See UCPR 37.3 for more information.

You must use form 50 if the registrar has made an order making or refusing an application for an instalment order and you wish to object to the order and to have it reviewed.

You must file your objection within 14 days after the registrar has made the order.

#### **4.53 Form 51 – Examination notice - individual**

See UCPR 38.1 for more information.

Use form 51 if you have a judgment for the payment of money and you want to obtain information about the judgment debtor’s financial circumstances.

The examination notice requires the judgment debtor to:

- answer questions about their financial circumstances, and
- provide you with copies of documents about their financial circumstances.

You must issue an examination notice before you can apply for an order for examination, unless your proceedings are in the Supreme Court, (see s 108(3) of the *Civil Procedure Act 2005* (NSW) and UCPR 38.3).

You do not have to file the examination notice or get the court’s permission to issue the examination notice. You can post the examination notice to the judgment debtor’s address.

You must give the judgment debtor at least 28 days to respond to the examination notice.

You can apply to the court for an examination order if the judgment debtor does not, within the time you have allowed:

- respond to the examination notice, or
- sufficiently respond to your questions and requests for information.

#### **4.54 Form 52 – Examination notice - corporation**

See UCPR 38.1 for more information.

Use form 52 if you have a judgment for the payment of money against a corporation and you want to obtain information about the corporation’s financial circumstances.

The examination notice requires an authorised officer of the judgment debtor corporation to:

- answer questions about the corporation’s financial circumstances, and
- provide you with copies of documents about the corporation’s financial circumstances.

You must issue an examination notice before you can apply for an order for examination, unless your proceedings are in the Supreme Court, (see s 108(3) of the *Civil Procedure Act 2005* (NSW) and UCPR 38.3).

You do not have to file the examination notice or get the court's permission to issue the examination notice. You can post the examination notice to the judgment debtor's address.

You must give the judgment debtor corporation at least 28 days to respond to the examination notice.

You can apply to the court for an examination order if an authorised officer of the judgment debtor corporation does not, within the time you have allowed:

- respond to the examination notice, or
- sufficiently respond to your questions and requests for information.

#### **4.55 Form 53 – Notice of motion - examination order**

See UCPR 38.2 for more information.

You can apply to the court for an examination order if:

- a judgment debtor does not respond or sufficiently respond to an examination notice, or
- you have a Supreme Court judgment for the payment of money and you want to obtain information about the judgment creditor's financial circumstances.

If the court makes an examination order, the judgment debtor will be ordered to attend court to be examined about his or her financial circumstances.

If you want the judgment debtor to produce copies of any documents at the examination you must describe the documents.

Form 53 includes an affidavit in support of your application. The affidavit should be made by the person or persons who have knowledge of the facts that are included in the affidavit and include reference to the source of the person's knowledge and belief, if appropriate.

You can find out the amount of the filing fee from the *Civil Procedure Regulation 2017* (NSW).

Schedule 2 of the *Civil Procedure Regulation 2017* (NSW) sets out the amount you are entitled to claim for solicitors' fees in the District and Local Courts.

If the Court grants the notice of motion the registrar will issue an examination order. Unless the court orders otherwise you or your legal representative must attend court to examine the judgment debtor.

If you are not legally represented and have difficulties attending the examination you should contact the registrar. In certain circumstances, the registrar may conduct the examination on your behalf.

#### **4.56 Form 54 – Examination order**

See UCPR 38.3 for more information.

If your notice of motion for an examination order is granted, the registrar will issue the examination order requiring the judgment debtor to attend court to be examined about his or her financial circumstances.

You must arrange for a copy of the examination order to be served on the judgment debtor at least 14 days before the date on which he or she is required to attend court for examination.

#### **4.57 Form 55 – Registrar's examination - individual**

See UCPR 38.5 for more information.

Form 55 is the standard form of questions that a registrar will use when examining a judgment debtor who is an individual.

You may use form 55 as a guide if you (as judgment creditor) are required to examine the judgment debtor.

#### **4.58 Form 56 – Registrar’s examination - corporation**

See UCPR 38.5 for more information.

Form 56 is the standard form of questions that a registrar will use when examining a person in relation to a judgment debtor who is a corporation.

You may use form 56 as a guide if you (as judgment creditor) are required to examine a person in relation to a judgment debtor who is a corporation.

#### **4.59 Form 57 – Notice of motion - arrest warrant for examination**

See UCPR 38.6 for more information.

You must use form 57 if the judgment debtor has failed to attend court for an examination and you wish to apply for an arrest warrant that will authorise the Sheriff’s officer to bring the judgment debtor to court to be examined.

Form 57 includes an affidavit in support of your application. The affidavit should be made by the person or persons who have knowledge of the facts that are included in the affidavit and include reference to the source of the person’s knowledge and belief, if appropriate.

You may apply for an arrest warrant at least 14 days, but no later than 3 months, after the court has served a notice on the judgment debtor that failure to attend for examination may result in the person’s arrest.

#### **4.60 Form 58 – Arrest warrant**

See UCPR 38.6 for more information.

Form 58 is prepared and issued by the registrar.

#### **4.61 Form 59 – Notice of motion - writ for possession of land**

See s 104 of the *Civil Procedure Act 2005* (NSW) and UCPR 39.1 - 39.3 for more information.

UCPR 4.7A sets out how you are to describe the land in the notice of motion.

Form 59 must be used if you are applying for a writ for possession of land. You can only apply for a writ for possession of land if the court has given you a judgment for the possession of land.

Form 59 includes an affidavit in support of your application. The affidavit should be made by the person or persons who have knowledge of the facts that are included in the affidavit and include reference to the source of the person’s knowledge and belief, if appropriate.

If you obtained judgment by default, you still need to swear a separate affidavit in support of the application for writ, even though the evidence required is almost the same.

You can find out the amount of the Sheriff’s execution fee from the *Civil Procedure Regulation 2017* (NSW).

Schedule 2 of the *Civil Procedure Regulation 2017* (NSW) sets out the amount you are entitled to claim for solicitors’ fees.

This form asks you to provide additional information to assist the Sheriff if the writ is granted. You should include, where known:

- a short description of the claim e.g. failure to pay mortgage,
- a list of persons in occupation,
- the telephone number of the occupier(s) (if known), and
- details of any animals or anything else at the address where the writ is to be executed that might pose a threat to the health and safety of the Sheriff’s officers.

#### **4.62 Form 60 – Writ of possession**

See s 104 of the *Civil Procedure Act 2005* (NSW) and UCPR 39.1 - 39.3 for more information.

A writ of possession authorises the Sheriff to enter the land described in the writ and cause the person named in the writ to have possession of it.

#### **4.63 Form 61 – Notice of motion - writ of restitution**

A writ of restitution can be issued if a defendant resumes possession of a property after a writ of possession has been executed. A writ of restitution can also be issued where a defendant is successful in having a judgment for possession and a writ of possession set aside.

Form 61 includes an affidavit in support of your application. The affidavit should be made by the person or persons who have knowledge of the facts that are included in the affidavit and include reference to the source of the person's knowledge and belief, if appropriate.

This form asks you to provide additional information to assist the Sheriff if the writ is granted. You should include, where known:

- a short description of the claim,
- a list of persons in occupation,
- the telephone number of occupier(s) (if known), and
- details of any animals or anything else at the address where the writ is to be executed that might pose a threat to the health and safety of the Sheriff's officers.

#### **4.64 Form 62 – Writ of restitution**

A writ of restitution authorises the Sheriff to enter the land described in the writ and cause possession of it to be restored to the person named in the writ.

#### **4.65 Form 63 – Notice of motion - writ for delivery of goods**

See s 105 of the *Civil Procedure Act 2005* (NSW) and UCPR 39.2 - 39.3 for more information.

Form 63 must be used if you are applying for a writ for delivery of goods. You can only apply for a writ for delivery of goods if the court has given you a judgment for the delivery of goods.

Form 63 includes an affidavit in support of your application. The affidavit should be made by the person or persons who have knowledge of the facts that are included in the affidavit and include reference to the source of the person's knowledge and belief, if appropriate.

You must clearly identify the goods that are to be delivered to you and the address(es) where you allege the goods are located. An execution fee must be paid before the Sheriff attempts to execute the writ. The fee is payable for each address at which, and each occasion on which, execution is effected or attempted.

You can find out the amount of the Sheriff's execution fee from the *Civil Procedure Regulation 2017* (NSW).

Schedule 2 of the *Civil Procedure Regulation 2017* (NSW) sets out the amount you are entitled to claim for solicitors' fees.

This form asks you to provide additional information to assist the Sheriff if the writ is granted. You should include, where known:

- a short description of the claim,
- the best time of day to contact the defendant,
- the telephone number of the defendant (if known), and
- specific details of any property owned by the defendant
- details of any animals or anything else at the address where the writ is to be executed that might pose a threat to the health and safety of the Sheriff's officers.



#### 4.66 Form 64 – Writ of delivery

See s 105 of the *Civil Procedure Act 2005* (NSW) and UCPR 39.2 for more information.

A writ of delivery authorises the Sheriff to seize the goods specified in the writ and deliver them to the person named in the writ.

Form 65 – Notice of motion - writ for levy of property

See UCPR 39.2 - 39.3 for more information.

You must use form 65 if you are applying for a writ for the levy of property. The court must give a judgment in your favour before you can apply for a writ for levy of property.

Form 65 includes an affidavit in support of your application. The affidavit should be made by the person or persons who have knowledge of the facts that are included in the affidavit and include reference to the source of the person's knowledge and belief, if appropriate.

You must identify the address(es) where you want a Sheriff's officer to attend to attempt to seize property that is owned by the judgment debtor. An execution fee must be paid before the Sheriff attempts to execute the writ. The fee is payable for each address at which, and each occasion on which, execution is effected or attempted.

If known, you should also include information about any property that is owned by the judgment debtor that may be located at this address.

You can find out the amount of the Sheriff's execution fee from the *Civil Procedure Regulation 2017* (NSW).

Schedule 2 of the *Civil Procedure Regulation 2017* (NSW) sets out the amount you are entitled to claim for solicitors' fees.

This form asks you to provide optional additional information to assist the Sheriff's office if the writ is granted. You should include, where known:

- a short description of the claim,
- the best time of day to contact the judgment debtor,
- the telephone number of the judgment debtor (if known),
- specific details of any property owned by the judgment debtor that may be seized, and
- details of any animals or anything else at the address where the writ is to be executed that might pose a threat to the health and safety of the Sheriff's officers.

#### 4.68 Form 66 – Writ for levy of property

See s 106 of the *Civil Procedure Act 2005* (NSW) and UCPR 39.2 for more information.

A writ for levy of property authorises the Sheriff to seize and sell property that is owned by the judgment debtor.

The proceeds of the sale will be paid to:

- the Sheriff, to cover the Sheriff's fees and expenses in executing the writ,
- the judgment creditor, for money outstanding on the judgment debt, and
- the judgment debtor, if there is any money remaining.

If the Sheriff receives more than one writ for the levy of property against the judgment debtor, the Sheriff will pay the judgment creditors in the order in which the Sheriff received the writs.

#### **4.69 Form 67 – Judgment creditor’s notice**

See UCPR 39.21 for more information.

You must use a judgment creditor’s notice if you:

- have registered a writ for the levy of property in the Register kept under s 105 of the *Real Property Act 1900* (NSW) or in the General Register of Deeds kept under s 186 of the *Conveyancing Act 1919* (NSW)
- have received notice from the Sheriff that the debt cannot be satisfied against goods owned by the judgment debtor
- want the judgment debtor’s land to be sold to satisfy the judgment debt. UCPR 4.7A sets out how you are to describe the land in the notice.

Before you file the notice, you must file an affidavit that verifies that the writ has been registered and that you have received notice from the Sheriff that the debt cannot be satisfied against goods owned by the judgment debtor.

You must file two copies of the judgment creditor’s notice at the court where the writ for levy of property was issued. The court will seal the notice and you must serve a copy on the judgment debtor.

#### **4.70 Form 68 – Notice of sale**

See UCPR 39.22 for more information.

You must use form 68 if you want the Sheriff to proceed with the sale of land owned by the judgment debtor, and.

Form 68 may be filed if:

- you have served a copy of the judgment creditor’s notice on the judgment debtor, and
- four weeks have elapsed and the debt remains unpaid.

UCPR 4.7A sets out how you are to describe the land in the notice.

You must file six copies of the notice of sale with the court that issued the judgment creditor’s notice. The court will seal the documents and return them to you. You must send the documents to the Sheriff.

The Sheriff will then fix a date for the sale of land and insert it in the six copies of the notice of sale. The Sheriff will then return two copies of the notice of sale to you. At least one week before the date for the sale of the land you must serve a copy of the notice of sale, in which the date for the sale of the land has been inserted, on the judgment debtor.

#### **4.71 Form 69 – Notice of motion - garnishee order**

See UCPR 39.34 and 39.35 for more information.

You must use form 69 if you are applying for a garnishee order. The court must give a judgment in your favour before you can apply for a garnishee order.

A garnishee order is an order that directs a person who owes a debt or holds money payable to the judgment debtor to pay that money to you in satisfaction of the judgment debt. This person is referred to as the garnishee. A garnishee order may be directed to an employer, a bank manager or any other person who holds money payable to the judgment debtor.

You must include the name and address of the garnishee and the grounds for believing that such a debt between the garnishee and judgment creditor is reasonably likely to exist.

You must indicate whether the money payable is wages or salaries or some other debt due to the judgment debtor.

Form 69 includes an affidavit in support of your application. The affidavit should be made by the person or persons who have knowledge of the facts that are included in the affidavit and include reference to the source of the person’s knowledge and belief, if appropriate.

#### 4.72 Form 70 – Garnishee order for debts

See ss 117, 118A, 121, 122 and 123 of the *Civil Procedure Act 2005* (NSW) and UCPR 39.36 for more information.

A garnishee order for debt directs a person (the garnishee) who holds money payable to the judgment debtor to pay that money to the judgment creditor in satisfaction of the judgment debt.

You must serve a copy of the garnishee order for debts on the garnishee.

##### **Amount not to be garnisheed**

See s 118A of the *Civil Procedure Act 2005* (NSW) for more information.

Any amount paid under one or more garnishee orders must not reduce the amount of the debt from the garnishee to the judgment debtor to less than 447.70, being the standard workers compensation weekly benefit (the amount prescribed by Division 6 of Part 3 of the *Workers Compensation Act 1987* (NSW), as adjusted from time to time under s 82). The objective of this requirement is that any person whose bank accounts are garnished will continue to hold some funds.

See the Important information for the garnishee sheet attached to the rear of the form, under the heading ‘Making payments’, in particular:

Any amount paid under one or more garnishee orders must not, in total, reduce the amount of the aggregate debt that is due and accruing from the garnishee to the judgment debtor to less than the standard workers compensation weekly benefit (section 118A of the *Civil Procedure Act 2005* (NSW)). This amount is adjustable – refer to the [WorkCover NSW website](http://www.workcover.nsw.gov.au) <http://www.workcover.nsw.gov.au> to determine the applicable rate.

#### 4.73 Form 71 – Garnishee order for wages or salary

See ss 119, 121, 122 and 123 of the *Civil Procedure Act 2005* (NSW) and UCPR 39.37 for more information.

A garnishee order for wages or salary directs a person (the garnishee) to make payments from any wage or salary that is payable by the garnishee to the judgment debtor to the judgment creditor in satisfaction of the judgment debt.

You must serve a copy of the garnishee order for wages or salary on the garnishee.

The garnishee order for wages or salary will continue to operate until the judgment debt is paid.

##### **Amount not to be garnisheed**

See s 122 of the *Civil Procedure Act 2005* (NSW) for more information.

The amounts attached under one or more garnishee orders must not, in total, reduce the net weekly amount of any wage or salary received by the judgment debtor from the garnishee to less than \$447.70, being the standard workers compensation weekly benefit (the amount prescribed by Division 6 of Part 3 of the *Workers Compensation Act 1987* (NSW), as adjusted from time to time under s 82). The objective of this requirement is that any person whose wages or salary is garnisheed may continue to receive some income.

See the Important information for the garnishee sheet attached to the rear of the form, under the heading ‘Making payments’, in particular:

Any amount paid under one or more garnishee orders must not, in total, reduce the net weekly amount of any wage or salary received by the judgment debtor to less than the standard workers compensation weekly benefit (section 122 of the *Civil Procedure Act 2005* (NSW)). This amount is adjustable – refer to the [WorkCover NSW website](http://www.workcover.nsw.gov.au) [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au) to determine the applicable rate

### **Amounts garnishee may retain**

Section 123 of the *Civil Procedure Act 2005* (NSW) provides that a garnishee may, after the payment of each amount attached under the garnishee order, retain up to the amount prescribed by the uniform rules to cover the garnishee's expenses in complying with the garnishee order. The amount retained by the garnishee is in addition to the amount attached under the order. Currently, this amount is set at \$13.00.

If sufficient funds are not available to cover the prescribed amount, the garnishee may retain that amount as soon as sufficient funds become available.

See the "Important information for the garnishee" sheet attached to the rear of the form, under the heading 'Making payments', for details of the amount a garnishee may retain to cover the expense of complying with a garnishee order.

### **4.74 Form 71B – Garnishee Order for Rent (by Owners Corporation)**

See ss 122B, 122E of the *Civil Procedure Act 2005* (NSW) and UCPR 39.43A for more information.

This form only applies to situations where an application is made by an owner's corporation for a garnishee order for rent, where the debt arises from unpaid contributions.

#### **Amount not to be garnisheed**

Section 122E provides that if a judgment debtor satisfies a court that rent attached by a garnishee order is the only source of income of the judgment debtor, then the garnishee order must not reduce the net weekly amount of rent received to less than \$447.70, being the standard workers compensation weekly benefit (the amount prescribed by Division 6 of Part 3 of the *Workers Compensation Act 1987* (NSW), as adjusted from time to time under s 82).

See the Important information for the garnishee sheet attached to the rear of the form, under the heading 'Making payments', in particular:

**If a judgment debtor satisfies a court that rent attached by a garnishee order is the only source of income for the judgment debtor, any amount paid under one or more garnishee orders must not, in total, reduce the net weekly amount of any wage or salary received by the judgment debtor to less than the standard workers compensation weekly benefit (section 122E of the *Civil Procedure Act 2005* (NSW)). NSW website [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au) to determine the applicable rate.**

### **4.75 Form 72 – Garnishee's statement that no debt due or accruing or no wage or salary payable**

See UCPR 39.40 for more information.

You must use form 72 if a garnishee order is served on you and you believe that there is no debt payable to the judgment debtor at the time of service of the order or that there are no wages or salaries that will become payable to the judgment debtor.

You must include information about the grounds on which you believe that there is no debt, wage or salary due or accruing. This information must be verified by affidavit.

You must serve this statement on the judgment creditor.

### **4.76 Form 73 – Notice of motion - charging order**

See s 126 of the *Civil Procedure Act 2005* (NSW) and UCPR 39.44 and 39.45 for more information.

You must use form 73 if you are applying for a charging order against security interests owned by the judgment debtor.

You may only apply for a charging order in proceedings in the Supreme Court or the District Court.

Security interests include stocks and shares in a company and any equitable interest in property. They do not include legal interests in land and so do not include the interest of a registered proprietor under a certificate of title.

Form 73 includes an affidavit in support of your application. The affidavit should be made by the person or persons who have knowledge of the facts that are included in the affidavit and include reference to the source of the person's knowledge and belief, if appropriate.

#### **4.77 Form 74 – Charging order**

See UCPR 39.44 for more information.

A charging order operates as a charge on the property specified in the order and restrains the chargee from dealing with the property other than in accordance with the judgment creditor's directions.

#### **4.78 Form 75 – Notice to Sheriff of disputed property**

See UCPR 43.3 for more information. You must use form 75 if:

- the Sheriff has taken, or intends to take, possession of property under a writ of execution, and
- you claim that the property is owned by you and not by the judgment debtor or that you have a claim in respect of the proceeds of the sale or the value of the property.

The notice to Sheriff of disputed property must include information about your claim in respect of the property. You must lodge the notice with the Sheriff.

#### **4.79 Form 76 – Notice of change of address for service**

See UCPR 4.6 for more information.

You must file and serve a copy of form 76 on all active parties in the proceedings if:

- the address for service changes
- the legal representative's details change (e.g. the name of the firm changes).

It is not sufficient to send a letter to the other parties and the court notifying them of the change of details.

#### **4.80 Form 77 – Notice of change or appointment of solicitor**

See UCPR 7.26 and 7.28 for more information.

You must file and serve a copy of form 77 on all active parties in the proceedings if a party's legal representation changes, e.g. where:

- an unrepresented party appoints a solicitor
- a party changes firms of solicitors (and the address for service changes)
- a solicitor's agent changes.

A party who changes solicitor or whose solicitor changes agents must also serve a copy of form 77 on the former solicitor or agent, if practicable.

Where a legal practitioner who is the solicitor on the record retires from a partnership or an employed solicitor leaves the employment of a legal firm and another solicitor or partner in the **same** legal firm assumes the conduct of the proceedings, it is not necessary to file and serve a notice of change or appointment of solicitor (form 77). As a matter of courtesy, all parties and the court should be informed as soon as practicable either at the next occasion when the parties are in court or by letter to the Judge's associate or registrar and copied to all active parties or where parties are legally represented, copied to their legal representatives.

#### **4.81 Form 78 – Notice of removal of solicitor**

See UCPR 7.27 for more information.

You must file and serve a copy of form 78 on all active parties in the proceedings if you:

- have terminated the authority of a solicitor to act on your behalf
- are now representing yourself.

You must also serve a copy of form 78 on your former solicitor, if practicable.

#### **4.82 Form 79 – Notice of intention to file and serve notice of ceasing to act**

See UCPR 7.29(2) for more information. This form applies to legal representatives.

Unless you have the leave of the court, you must serve a copy of form 79 on the registrar and on your client before you can file a notice of ceasing to act. This form is not exempt from the usual rule that all filed documents must be served as soon as possible on all active parties (rule 10.1).

- If a trial date has been fixed, you must serve form 79 at least 28 days before you file and serve a notice of ceasing to act (see form 80).
- If a trial date has not been fixed, you must serve form 79 at least 7 days before you file and serve a notice of ceasing to act (see form 80).

A ‘trial’ is defined under s 3 of the *Civil Procedure Act 2005* (NSW) as any hearing which is not an interlocutory hearing.

If the name of party for whom you are ceasing to act does not appear in the title of proceedings section (e.g. a third defendant) it will be helpful to include the party’s name as well as the party’s role in the proceedings in the **NOTICE** section of form 79.

#### **4.83 Form 80 – Notice of ceasing to act**

See UCPR 7.29 for more information. This form applies to legal representatives.

Unless you have the leave of the court, you must have served a notice of intention to file and serve notice of ceasing to act (see form 79) before you can file form 80.

You must file and serve a copy of form 80 on all active parties.

#### **4.84 Form 81 – General form (Part 50 appeal)**

See forms numbered 101 - 106 if you require forms for use in the Court of Appeal.

For Part 50 appeal proceedings, if there is no approved form for the step that you are taking, you can use form 81 and modify it to suit the nature of the document you wish to file and the requirements of the rules.

Other approved forms may be used and adapted as necessary in Part 50 appeal proceedings. For example, an appearance (form 6), a notice of motion (form 20) and an affidavit (form 40) may be adapted so that the front cover of these forms appears in the format of the general form for Part 50 appeals (form 81).

#### **4.85 Form 82 – List of parties (Part 50 appeal)**

See UCPR 4.2A and paragraph [4.2](#) of this Guide for more information.

#### **4.86 Form 83 – Notice of contention (Parts 49 and 50)**

See UCPR 49.13 and 50.11 for more information.

You must use form 83 if you are:

- a party to an appeal under UCPR Part 49 Division 3
- a defendant to an appeal (other than an appeal to the Court of Appeal, an appeal against a conviction or sentence in the Local Court or an appeal from the decision of a liquidator, receiver or manager)

and contend that the decision of an associate Judge of the Supreme Court or court below (as applicable) should be affirmed on grounds other than those relied on by the associate Judge or court below, but do not seek a discharge or variation of any part of the decision.

#### **4.87 Form 84 – Summons commencing an appeal**

##### **(Part 50) / Summons seeking leave to appeal (Part 50)**

See UCPR 50.4, 50.12 and 50.13 for more information.

You must use form 84 if you are filing a summons commencing an appeal (other than an appeal to the Court of Appeal, an appeal against a conviction or sentence in the Local Court or an appeal from the decision of a liquidator, receiver or manager) or summons seeking leave to appeal or cross appeal.

A summons commencing an appeal must include information about the grounds relied on in support of the appeal and in particular, any grounds on which it is contended that there is an error of law in the decision of the court below (UCPR 50.4).

A summons seeking leave to appeal must include information about:

- the nature of the case,
- the reasons why leave should be given,
- if applicable, the reason why time for leave to appeal should be extended, and
- the grounds relied on in support of the appeal and in particular, any grounds on which it is contended that there is an error of law in the decision of the court below (UCPR 50.12).

A summons seeking leave to cross-appeal must include information about:

- the nature of the case
- the reasons why leave should be given
- if applicable, the reason why time for leave to cross-appeal should be extended
- the grounds relied on in support of the cross-appeal and in particular, any grounds on which it is contended that there is an error of law in the decision of the court below (UCPR 50.13).

#### **4.88 Form 85 – Summons (Judicial Review)**

See UCPR 6.2, 59.1 and 59.4 for more information.

This form is used to commence proceedings for Judicial Review for:

- proceedings under section 65 and 69 of the *Supreme Court Act 1970* (NSW) and other proceedings in the supervisory jurisdiction of the Supreme Court, and
- proceedings for or in the nature of judicial review in the Class 4 or Class 8 jurisdiction of the Land and Environment Court.

The summons must state:

- the orders sought,
- if there is a decision in respect of which relief is sought, the identity of the decision-maker,
- the terms of the decision to be reviewed,
- whether relief is sought in relation to the whole of the decision or only a part of the decision and, if only a part, which part, and
- specify the grounds on which the relief is sought.

The decision-maker below should not be a party to the summons. The parties should be the same as in the court or tribunal.

#### **4.89 Form 91 – Request for service abroad of judicial documents and certificate**

For more information see UCPR 11A.4 and 11A.6.

This form is only applicable to proceedings in the Supreme Court.

This form is used to request the Supreme Court to facilitate service under the Hague Convention in a Convention country of a local judicial document.

A local judicial document means a commencing pleading, such as a summons or a statement of claim.

The form is completed by the person seeking the Registrar to arrange service, but is not to be signed.

#### **4.90 Form 92 – Summary of the document to be served**

See paragraph 4.89 above.

This form is to be used in conjunction with Form 91 in providing a summary of the documents to be served.

#### **4.91 Form 93 – Possession of land coversheet**

See UCPR 6.8A.

This is a form that operates as a notice from the Supreme Court to advise a person that if they do not respond to the statement of claim they may be evicted from their property and the lender may take action to sell the property. This form is a coversheet and there are no fields to complete.

#### **4.92 Form 101 – General form (Court of Appeal)**

The Court of Appeal rules are contained in UCPR Part 51.

If there is no approved form for the step that you are taking in Court of Appeal proceedings, you can use form 101 and modify this form to suit the nature of the document you wish to file and the requirements of the rules.

Other approved forms may be adapted for use in the Court of Appeal (e.g. an appearance (form 6), a notice of motion (form 20), a notice of discontinuance (form 33) and an affidavit (form 40) may be adapted so that the front cover of these forms appears in the format of the general form (Court of Appeal) (form 101).

#### **4.93 Form 102 – List of parties (Court of Appeal)**

See UCPR 4.2A and paragraphs [4.2](#), [4.104.2](#) and [4.105.4](#) of this Guide for more information.

You must file a list of parties with a summons seeking leave to appeal and notice of appeal.

#### **4.94 Form 103 – Notice of intention to appeal (Court of Appeal)**

See UCPR 51.6 for more information.

A notice of intention to appeal is a notice that the applicant intends to file a notice of appeal or, if necessary, a summons seeking leave to appeal within three months after the material date. It replaces the holding summons and notice of appeal without appointment under the old appeal rules.

You must file the notice of intention to appeal within 28 days after the material date. ‘Material date’ is defined in UCPR 51.2 and is usually the date of judgment in the court below (see UCPR 51.2).

You cannot file a notice of intention to appeal if a summons seeking leave to appeal or a notice of appeal has been filed, or an Act or statutory rule (other than the UCPR) specifies the period within which the appeal or an application for leave to appeal must be commenced.

The filing of a notice of intention to appeal does not have the effect of commencing proceedings in the Court (UCPR 51.9(3)). A filing fee is payable, but no case number will be allocated, so the court will leave this row of the form blank. A record of the filings of notices of intention to appeal will be maintained on a separate Court of Appeal registry database.

You must file or lodge a copy of the notice of intention to appeal with the court below (UCPR 51.42).

#### **4.95 Form 104 – Summons seeking leave to appeal (Court of Appeal)**

See UCPR 51.10 for more information.

If you need leave to appeal:

- you must file a summons seeking leave to appeal within 28 days after the material date unless you have filed and served a notice of intention to appeal



- if you have filed a notice of intention to appeal, you must file and serve a summons seeking leave to appeal within three months *after the material date* (not the date of filing of the notice of intention to appeal) (UCPR 51.6). For example, if the material date is 1 December 2007, then you must file the summons seeking leave to appeal by 2 March 2008, but as that is a Sunday, then filing the originating process by Monday 3 March 2008 would be acceptable (see UCPR 1.11 - reckoning of time).

You must also file or lodge a copy of the summons with the court below (UCPR 51.42).

### **Details of application for leave to appeal**

You must state the statutory provision under which the application for leave to appeal is brought. See paragraph 4.105.1 of this Guide for more information.

### **List of parties**

You must file and serve a list of parties (form 102) with a summons seeking leave to appeal. Its purpose is to set out:

- the parties in the Court of Appeal and in the court below
- the contact details of parties in the Court of Appeal.

### **White folder**

You must file three copies of a folder of supporting documents (“White folder”) and serve the folder with the summons seeking leave to appeal. See UCPR 51.12 for more information.

### **Cross-appeals**

See paragraph [4.105.3](#) of this Guide for more information.

## **4.96 Form 105 – Notice of appeal (Court of Appeal)**

See UCPR 51.16, 51.18, 51.20 for more information.

You must file and serve a notice of appeal:

- If the notice is filed pursuant to leave to appeal - within seven days after leave is given.
- If you have filed a notice of intention to appeal - within three months after the material date.
- If you have not filed and served a notice of intention to appeal and the notice of appeal is not filed pursuant to leave - within 28 days after the material date.

You must also file or lodge a copy of the notice of appeal with the court below (UCPR 51.42).

### **Details of appeal**

You must identify the statutory provision under which the right of appeal arises.

Even where an appeal may be brought as of right under a particular provision, attention should be paid to any qualification requiring leave in particular circumstances. Where leave is required, you must file a summons seeking leave to appeal (form 104) or summons seeking leave to cross appeal (see paragraphs 2.8 and 4.105.3 of this Guide for guidance on how to modify form 104 for a cross appeal).

In relation to appeals from Tribunals or other bodies, the matters assigned to the Court of Appeal are identified in s 48 of the *Supreme Court Act 1970* (NSW).

The scope of appellate jurisdiction may be limited, for example as to questions of law, or subject in certain cases to the grant of leave to appeal.

The main provisions creating appellate jurisdiction in the Court of Appeal and stating when leave to appeal is required are:

- appeals from Supreme Court: Part 7 *Supreme Court Act 1970* (NSW), ss 101 (general provision, including matters requiring leave in s 101(2)), 101A (question of law concerning criminal contempt), 102 (appeal after Supreme Court jury trial), 103 (appeal from separate decision in Supreme Court),

- appeals from Land and Environment Court: *Land and Environment Court Act 1979* (NSW), ss 57, 58. See also *Supreme Court Act 1970* (NSW) s 48(1)(a)(i),
- appeals from Dust Diseases Tribunal: *Dust Diseases Tribunal Act 1989* (NSW) s 32. See also *Supreme Court Act 1970* (NSW) s 48(1)(a)(ia),
- appeals from District Court: *District Court Act 1973* (NSW) ss 127, 142N. See also *Supreme Court Act 1970* (NSW) s. 48(1)(a)(iv),
- appeals from Workers Compensation Commission constituted by Presidential member: *Workplace Injury Management and Workers Compensation Act 1998* (NSW) s 353, and
- appeals from other Tribunals (including certain orders made by NCAT): If the relevant statute confers a right of appeal to the Supreme Court and if s 48(1)(a)(vii) or (viii) *Supreme Court Act 1970* (NSW) applies, the appeal is assigned to the Court of Appeal.

### Orders sought

You must identify the orders made by the court below which are the subject of challenge.

Appeals are brought from orders, not from the reasons of the court below. You must identify the orders you want set aside or varied and the orders you seek in their place.

If part or all of the judgment has been paid, you must identify that fact, together with any consequential order sought with respect to repayment (including any claim for interest) if the appeal succeeds (see UCPR 51.19).

### Cross-appeals

See UCPR 51.17 for more information.

There is no separate form for cross-appeal or cross-summons seeking leave to cross-appeal. Forms in cross-appeals (or applications for leave to cross-appeal) may be prepared based on other approved appeal forms, and modified in accordance with paragraph 2.8 of this Guide, with the following additional modifications:

- replace ‘cross-claim’ with ‘cross-appeal’ (or ‘cross-summons’, as applicable),
- replace references to ‘cross-claimant’ with ‘cross-appellant’ (or ‘cross-applicant’, as applicable), and
- replace references to ‘cross-defendant’ with ‘cross-respondent’.

### List of parties

You must file and serve a list of parties (form 102) with a notice of appeal. Its purpose is to set out:

- the parties in the Court of Appeal and in the court below, and
- the contact details of parties in the Court of Appeal.

## 4.97 Form 106 – Notice of contention (Court of Appeal)

See UCPR 51.40 for more information.

You must use form 106 if you are acting for a respondent and contend that the decision below should be affirmed on grounds other than those relied on by the court below, but do not seek a discharge or variation of any part of the orders of the court below.

You must state briefly, but specifically, the grounds relied on in support of the contention.

A notice of contention must be filed and served within 28 days after service of the notice of appeal.

## 4.98 Form 107 – Summons (Supervisory Jurisdiction)

See UCPR 51.45 and 59.4 for further information.

#### 4.99 Probate forms (Form 111 to Form 151)

Refer to the Supreme Court website 'Probate' page for further information and guidance about completing these forms at

[www.supremecourt.justice.nsw.gov.au/Pages/sco2\\_probate/sco2\\_probate.aspx](http://www.supremecourt.justice.nsw.gov.au/Pages/sco2_probate/sco2_probate.aspx)

These forms are:

Form 111	Summons for probate, administration, administration with the will annexed or reseal
Form 112	Grant of probate, letters of administration or letters of administration with the will annexed
Form 113	Reseal
Form 114	Notice of Intended distribution
Form 115	Opt out notice
Form 116	Notice of intended application for probate, administration or reseal
Form 117	Inventory of property
Form 118	Affidavit of executor
Form 119	Affidavit of applicant for administration
Form 120	Affidavit of applicant for administration with the will annexed
Form 121	Affidavit of applicant for resealing
Form 122	Affidavit of applicant for administration for the purposes of the Family Provisions Act 1982 or Chapter 3 of the Succession Act 2006
Form 123	Renunciation of probate
Form 124	Renunciation in favour of NSW Trustee & Guardian
Form 125	Consent to Administration
Form 126	Affidavit that deceased was not in a de facto relationship
Form 127	Affidavit as to de facto relationship
Form 128	Notice of intended application for administration where there may be a de facto spouse or domestic partner
Form 129	Affidavit relating to domestic partnership
Form 130	Administration bond
Form 131	Affidavit of surety
Form 132	Affidavit of attesting witness
Form 133	Affidavit of consent to distribution of a gift
Form 134	Consent of affected person
Form 135	Notice to affected persons
Form 136	Notice to apply for administration
Form 137	Answer to notice to apply for administration
Form 138	Notice to apply for probate
Form 139	Answer to notice to apply for probate
Form 140	Notice of proceedings
Form 141	Caveat
Form 142	Notice of withdrawal of caveat
Form 143	Notice of intended objection to accounts
Form 144	Notice of filing of accounts
Form 145	Notice of appointment of executor or administrator
Form 146	Deed of appointment of executor or administrator
Form 147	Notice of objection to appointment of executor or administrator
Form 149	Acknowledgment under s.83 of the Probate Act
Form 150	Notice of Motion for Order Passing Accounts
Form 151	Affidavit Confirming Service of Notice of Proceedings

#### **4.100 Form 160 – Indemnity Certificate (Suitors Fund Act 1951)**

Form 160 is required to petition the Court under ss 6, 6A, and 6B of the *Suitors' Fund Act 1951* (NSW) to grant an indemnity certificate. An indemnity certificate may be granted to the unsuccessful respondent of an appeal, may be granted to an unsuccessful respondent on appeal where that appeal arises out of the death or protracted illness of a Judge or magistrate, may be granted to the unsuccessful respondent of an appeal regarding excessive costs - where costs are incurred by no fault of the respondent.

#### **4.101 Form 161 – Service outside the Jurisdiction**

This form is required by Rule 11.7 of the UCPR, which requires a notice in accordance with the Approved Form must be served when an originating process is served on a defendant who is ordinarily resident outside of Australia.

#### **4.102 Form 162 – Consent to Act as Proper Defendant**

This form is required by Rule 7.4 of the UCPR. The form allows for consent to be provided by a proper defendant on behalf of an unincorporated organisation in child abuse proceedings.

## 5 LAND AND ENVIRONMENT COURT SPECIFIC UCPR FORMS

### 5.1 Practice Notes

The Land and Environment Court of New South Wales has a variety of practice notes which apply to proceedings within its jurisdiction. These practice notes mandate the use of various forms, and require the use of various documents.

For a full list of the Court's practice notes go to:

[www.lec.justice.nsw.gov.au/Pages/practice\\_procedure/practice\\_notes.aspx](http://www.lec.justice.nsw.gov.au/Pages/practice_procedure/practice_notes.aspx)

The main practice notes for the purposes of this Guide are:

- The Class One Residential Practice Note ("RPN"):  
[www.lec.justice.nsw.gov.au/Documents/Practice%20Notes/PN\\_Class%201%20Residential%20Development%20Appeals.pdf](http://www.lec.justice.nsw.gov.au/Documents/Practice%20Notes/PN_Class%201%20Residential%20Development%20Appeals.pdf)
- The Class One Development Appeals Practice Note ("Class 1 PN"):  
[www.lec.justice.nsw.gov.au/Documents/Practice%20Notes/PN\\_Class\\_1\\_Development\\_Appeals.pdf](http://www.lec.justice.nsw.gov.au/Documents/Practice%20Notes/PN_Class_1_Development_Appeals.pdf)
- The Class One, Two and Three Miscellaneous Appeals Practice Note ("Misc PN"):  
[www.lec.justice.nsw.gov.au/Documents/Practice%20Notes/PN\\_Classes123\\_Miscellaneous\\_Appeals.pdf](http://www.lec.justice.nsw.gov.au/Documents/Practice%20Notes/PN_Classes123_Miscellaneous_Appeals.pdf)

### 5.2 Policies

The Court also issues Policies which dictate how various documents will be prepared.

While there is no specific form allocated, use a Form A cover sheet with the matter details (parties, plaintiff no. Class) attached to the body of the document.

For a link to the Court's Policies go to:

[www.lec.justice.nsw.gov.au/Pages/practice\\_procedure/policies.aspx](http://www.lec.justice.nsw.gov.au/Pages/practice_procedure/policies.aspx)

The main policies for the purposes of this Guide are:

- Conference of Expert Witnesses Policy ("Expert Policy"):  
[www.lec.justice.nsw.gov.au/Documents/Policies/Conference%20of%20Expert%20Witnesses%20Policy.pdf](http://www.lec.justice.nsw.gov.au/Documents/Policies/Conference%20of%20Expert%20Witnesses%20Policy.pdf)
- Joint Experts Report ("JER"):  
[www.lec.justice.nsw.gov.au/Documents/Policies/Joint%20Expert%20Report%20Policy.pdf](http://www.lec.justice.nsw.gov.au/Documents/Policies/Joint%20Expert%20Report%20Policy.pdf)

### 5.3 Form A – General form (use Form 1 in the UCPR)

If there is no approved form for the step that you are taking **in** the proceedings, you can use form A and modify this form to suit the nature of the document you wish to file and the requirements of the rules.

### 5.4 Statement of Facts and Contentions ("SOFAC")

This document is prepared by the Council in Class One and Residential appeal matters; and by the applicant in Miscellaneous matters in certain circumstances (see Misc PN clauses 16, 17 and 18).

Requirements for a SOFAC by the Respondent Council (see RPN Schedule B; Class 1 PN Schedule B; and Misc PN Clause 16ff):

- (1) The statement is to be as brief as reasonably possible.
- (2) The statement is to be divided into two parts: Part A Facts and Part B Contentions.
- (3) An authorised officer of the respondent consent authority is to sign and date the statement.

## **Part A Facts**

In Part A Facts, the respondent consent authority is to:

- (a) The application: identify the application for development consent or approval by application number and date of lodgment.
- (b) The site: identify the site by street address and lot and deposited plan, and describe the site including lot dimensions, site area, topographic features, existing vegetation and existing improvements on the site.
- (c) The proposal – briefly describe the proposed development or modification.
- (d) The locality: briefly describe the locality including the type and scale of existing surrounding development.
- (e) The statutory controls: identify the relevant provisions of the applicable statutory instruments (State environmental planning policies, local environmental plans and development control plans) and any draft statutory instruments, the zoning of the site and any other applicable designation (such as foreshore scenic protection area or heritage conservation area).
- (f) Compliance with statutory controls: briefly describe (if appropriate, in tabular form) the extent of compliance of the proposal with the relevant statutory controls.
- (g) Actions of the respondent consent authority: provide details of any notification process and its results, details of any consultation and its results, the decision of the respondent and the reasons for refusal.

Part A Facts is not to include matters of opinion.

## **Part B Contentions**

In Part B Contentions, the respondent consent authority is to identify each fact, matter and circumstance that the respondent contends require or should cause the Court, in exercising the functions of the consent authority, to refuse the application or impose certain conditions.

In Part B Contentions, the respondent consent authority is to:

- (a) focus on issues genuinely in dispute;
- (b) have a reasonable basis for each contention;
- (c) identify the nature of each contention with an appropriate short heading; and
- (d) present its contentions clearly, simply and without repetition and not by way of submission.

Part B Contentions should be divided into three parts:

- (a) B1 Contentions that the application be refused,
- (b) B2 Contentions that may be resolved by conditions of consent,
- (c) B3 Contentions that there is insufficient information to assess the application.

### **B1 – Contentions that the application be refused**

Part B1 is to identify those contentions which the respondent contends either must result or ought result in the Court refusing consent or approval to the application.

If the respondent contends that the application must be refused, it is to identify the factual and/ or legal basis for that contention. An example of such a contention is that the proposal is prohibited or that a jurisdictional pre-condition to the grant of consent or approval has not been satisfied. Any such contention is to be made at the beginning of Part B1 and is to be clearly identified as a contention that the application must be refused.

If the respondent contends that the application ought to be refused, it is to identify each ground on which the respondent so contends.

For each contention, the respondent should identify the contention with a short heading, identify the relevant statutory controls and give particulars.

### **The contention heading**

Each contention is to commence by identifying the nature of the issue in a word or two and be succinct. For example, if an issue is the height of a proposed building, the contention should identify the issue as “Height” and not by reference to a planning control or planning instrument that identifies a height requirement.

Contentions should be identified specifically and not generically. For example, it is not sufficient to identify a contention that the application ought to be refused in the “public interest” or the “circumstances of the case”. Rather the particular aspect or aspects of the public interest or the particular circumstances of the case which warrant refusal need to be identified. Similarly, it is not acceptable to identify as a ground for refusal “matters raised by the objectors”. The respondent consent authority is to identify which, if any, of the matters raised by the objectors the respondent itself contends, on a reasonable basis, justifies the refusal of the application.

### **The statutory controls**

Where the respondent contends that a proposal does not comply with statutory controls, including development standards, of an environmental planning instrument or a development control plan, such as density, floor space ratio, setbacks and height, it is to identify those controls by reference to the specific clause and subclause.

Where the respondent contends that a proposal is inconsistent with any objective of a statutory instrument, it must identify the specific objective.

Given the often-overlapping nature of statutory controls, different development standards or controls and objectives from different statutory instruments may apply to the same contention.

### **Particulars**

The respondent is to provide details of the extent of any non-compliance with the statutory controls or any inconsistency with any objective to enable the applicant to respond properly to the contention. Any particulars should be brief and not take the form of evidence or submissions. The extent of the non-compliance with the provisions of an environmental planning instrument may be shown in diagrammatic or tabular form.

### **B2 – Contentions that may be resolved by conditions of consent**

Part B2 is to identify those contentions that, in the opinion of the respondent consent authority, can be addressed through the imposition of a condition of consent or approval. The respondent is to identify the contention and provide details of those matters required to satisfy the contention or alternatively provide the specific wording of a condition that would satisfy the contention.

### **B3 – Contentions that there is insufficient information to assess the application**

Part B3 is to identify those matters that, in the opinion of the respondent consent authority, cannot properly be considered because of absence of information submitted with the application. The respondent is to identify the information it contends should be provided by the applicant to permit the Court to assess the application properly.

## **5.5 Statement of Facts and Contentions in Reply (Reply)**

No form is set out. Usual directions involve Short Minutes of Order which call for the other party, usually the applicant, to provide a Reply which follows the order of the SOFAC and does not repeat any fact.

Use a Form A General Form and refer to the SOFAC, stating agreement or otherwise with the statements in Part A; and any reasons for disputing the contentions in Part B.

## 5.6 Experts Reports

Use Form A General Form as a cover sheet with the matter name, plaint no and Class.

Add the report to the Form A using the guide set out in the JER clause 11 as follows:

The joint expert report should be divided into the following sections:

- Statement of matters agreed, in respect of each group of matters or a specific matter;
- Statement of matters not agreed, with succinct reasons for any disagreement, in respect of each group of matters or a specific matter;
- In planning appeals, statement of matters not agreed but capable of agreement if changes or modifications can be made to address the matter disagreed, including specific details of what changes or modifications are necessary in order to reach agreement, in respect of each group of contentions or specific contention;
- If applicable, statement that a particular matter falls outside an expert's field of expertise (UCPR r 31.27(1)(d));
- Statement of qualification of opinions, i.e. matters in respect of which an unqualified or concluded opinion cannot be given and short reasons why (see UCPR r 31.27(2) and (3));
- Any suggestion by the participating experts as to any other matter that they believe could usefully be submitted to them for their opinion;
- Disclosure of any circumstances by reason of which an expert may be unable to give impartial consideration to the matter; and
- If a curriculum vitae is not provided with an individual expert report, a one-page curriculum vitae for each expert is to be attached to the joint report.

## 5.7 Bundle

See RPN Usual Directions Paragraph 10, Class 1 PN Usual Directions Paragraph 16.

The council is to prepare and file a Bundle 14 days before Hearing which includes the following:

- The respondent consent authority is to file and serve a bundle of documents 14 days before the hearing. The bundle is to contain:
  - copies of relevant environmental planning instruments,
  - relevant extracts from development control plans and policies, and
  - documents evidencing the lodgement, processing and determination of the application by the consent authority, including all submissions from objectors, and the decision of the consent authority.
- but is not to otherwise include copies of any documents annexed to the development appeal application. Unnecessary copying and duplication of documents is to be avoided.
- The bundle is to be subdivided into relevant divisions, paginated and have a table of contents.

Add the Form A cover to the Bundle.

## 5.8 Without Prejudice Conditions

Councils and applicants are both required to produce without prejudice conditions of approval prior to hearing and conciliation.

Use Form A General Form as cover to numbered conditions of approval.



## **5.9 Schedule D/F**

Schedule D is the document used to advise the Court of the experts which each party seeks to use in Residential Appeals and Miscellaneous Appeals; while Schedule F performs the same function for Class 1 Appeal.

See Schedule D in Misc PN and RPN and Schedule F in Class 1.

Identify the issues in dispute by reference to their name and number in the SOFAC, and fill in the expert for each and every contention. Some contentions may overlap. In the Class One, Two and Three jurisdictions, the Schedule D and F constitute the application to rely on expert witnesses under UCPR 31.19.

Rather than make formal application, the Court makes direction for the filing of the Schedule D/F, and also makes short minutes of order at Directions, where the parties are invited to advise the names of their experts. Unless otherwise disputed, the Schedule D/F and the short minutes of order constitutes the request to rely on an expert under clause 31.19.

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