

4 INFORMATION ABOUT SPECIFIC FORMS

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 (eg 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' (ie the document used to start proceedings).

4.3.1 Type of claim

You must include information about the **main** type of claim that you are making. The different types of claim are listed in Part 6 of this Guide. This information is collected by the courts for statistical purposes.

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

4.3.2 Relief claimed

See UCPR 6.12 for more information.

You must include information about the relief that you are claiming (ie 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 2005.

You can find out the amount of the service fee charged by the Sheriff from the Civil Procedure Regulation 2005. 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 Schedule 2 of the Legal Profession Regulation 2005.

(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 (eg a claim for damages for personal injury).

However, if your proceedings are in the District Court or a 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 set in UCPR Schedule 5, 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 eg defendant] pay interest to the [role of party eg plaintiff] on [amount of claim (in liquidated claims table at (a) above)] pursuant to section 100 of the *Civil Procedure Act 2005* calculated at [rate]% [#the rate prescribed under Schedule 5 of the Uniform Civil Procedure Rules 2005 #(other, eg 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, eg:

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

In a 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).

4.3.3 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). For more information see paragraph 4.16 of this Guide.

4.3.4 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.

4.3.5 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.

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

SERVICE IN AUSTRALIA BUT OUTSIDE NEW SOUTH WALES

This statement of claim will be served on a defendant in Australia, but outside New South Wales. The plaintiff intends to proceed under the *#Service and Execution of Process Act 1992* (Cth) #UCPR.

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 statement of claim. See *Service and Execution of Process Regulations 1993* (Cth) at <http://www.comlaw.gov.au/>

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

4.3.6 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 include a notice to the following effect in your statement of claim.

NOTICE TO DEFENDANT SERVED OUTSIDE AUSTRALIA

- 1 You may apply to have service of this statement of claim set aside where:
 - service of the statement of claim is not authorised by the Uniform Civil Procedure Rules 2005, or
 - the Supreme Court of New South Wales is an inappropriate forum for the trial of the proceedings.
- 2 Alternatively, you may submit to the jurisdiction of the court by filing an appearance which includes a statement of submission.
- 3 If you do not make an application under paragraph 1, or file a notice of appearance under paragraph 2, the court may give leave to the plaintiff to proceed against you.

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

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' (ie 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.

4.4.1 Type of claim

You must include information about the **main** type of claim that you are making. The different types of claim are listed in Part 6 of this Guide. This information is collected by the courts for statistical purposes.

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

4.4.2 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.

4.4.3 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 *Service and Execution of Process Act 1992* (Cth) or the UCPR.

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

SERVICE IN AUSTRALIA BUT OUTSIDE NEW SOUTH WALES

This summons will be served on a defendant in Australia, but outside New South Wales. The plaintiff intends to proceed under the *#Service and Execution of Process Act 1992* (Cth) #UCPR.

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 <http://www.comlaw.gov.au/>

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

4.4.4 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 include a notice to the following effect in your summons.

NOTICE TO DEFENDANT SERVED OUTSIDE AUSTRALIA

- 1 You may apply to have service of this summons set aside where:
 - service of the summons is not authorised by the Uniform Civil Procedure Rules 2005, or
 - the Supreme Court of New South Wales is an inappropriate forum for the trial of the proceedings.
- 2 Alternatively, you may submit to the jurisdiction of the court by filing an appearance which includes a statement of submission.
- 3 If you do not make an application under paragraph 1, or file a notice of appearance under paragraph 2, the court may give leave to the plaintiff to proceed against you.

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

4.4.5 Hearing details

If your proceedings are to be entered in the Probate list, 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
- 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 6 - 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 proceedings (including appearing in court) unless:

- The court gives you leave to take a step without entering an appearance.
- You are a defendant who is applying to set aside the originating process under UCPR 12.11.
- You are 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 (ie agree) to the court:

- making all of the orders that have been sought in the statement of claim or summons, or
- 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, eg 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:

Filing party

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

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 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.

4.7.1 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 a 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).

If you think the proceedings should be stayed or transferred you should get legal advice as soon as possible.

4.8 **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.

4.9 **Form 9 - Statement of cross-claim**

See UCPR Part 9 for more information.

If you are 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.

4.9.1 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.

4.9.2 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.

4.10 **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.

4.11 **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* 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.

4.12 **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.

4.13 **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
- 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
- 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.

4.14 **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*.

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.

4.15 **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.

4.16 **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 (ie 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.

4.17 **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.

4.18 **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 that you are disputing.

4.19 **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
- may be served at any time before a hearing.

The parties will arrange how the documents are to be inspected eg 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.

4.20 **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 (eg 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 (ie 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 (eg 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 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.

TIME FOR SERVICE

This notice of motion is to be served on or before [time and date] as ordered by the court on [date].

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.

4.21 Form 21 - Interrogatories

See UCPR Part 22 for more information.

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

- a notice of motion
- 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))
- 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)).

4.22 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 a plaintiff, an order that your proceedings be stayed or dismissed (see UCPR 22.5)
- if you are a defendant, an order that your defence be struck out (see UCPR 22.5).

4.23 **Form 23 - Requisition for jury / notice of intention of jury trial (defamation)**

For more information, see:

- *s. 85 Supreme Court Act 1970*
- *s. 76A District Court Act 1973*
- *s. 21 Defamation Act 2005*
- UCPR 29.2.

See the Civil Procedure Regulation 2005 for information about the fees charged for jury trials.

4.24 **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
- 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.

4.25 **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.

4.26 **Form 26 - Subpoena to produce**

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 (ie 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 a 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.

4.27 **Form 27 - Subpoena to attend to give evidence and to produce**

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.

4.28 **Form 28 - Subpoena notice**

You must serve this notice with your subpoena to produce if your proceedings are in the District Court. See District Court Practice Note DC (Civil) No. 8 for more information. You can access a copy of the practice note at <http://www.lawlink.nsw.gov.au/dc>

The person to whom the subpoena is addressed must return this notice to the court with the subpoenaed items.

4.29 **Form 29 - Order for production**

See CPA s. 68 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.

4.29.1 Schedule

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

4.29.2 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.

4.30 **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.

4.31 **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.

4.32 **Form 32 - Notice of motion - rehearing after arbitration**

See CPA s. 42 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 CPA s. 43(2)).

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.

4.33 **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 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.

4.34 **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.

4.35 **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 acknowledgment 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.

4.36 **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 Legal Profession Regulation 2005 sets out the amount you are entitled to claim for solicitors' fees.

4.37 **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 Legal Profession Regulation 2005 sets out the amount you are entitled to claim for solicitors' fees in the District and Local Courts.

4.38 **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 Legal Profession Regulation 2005 sets out the amount you are entitled to claim for solicitors' fees.

4.39 **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 Legal Profession Regulation 2005 sets out the amount you are entitled to claim for solicitors' fees in the District and Local Courts.

4.40 **Form 40 - Affidavit**

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

4.40.1 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 a 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*), 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), 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. 51 *Consumer, Trader and Tenancy Tribunal Act 2001*.

When you make an affidavit, you must:

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

4.40.2 Title of an affidavit

The title of the affidavit must include:

- the name of the deponent (ie the person making the affidavit)
- the date on which the affidavit is made (ie 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'.

4.40.3 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

4.40.4 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 number² as a JP in place of the JP's address.

² Justices of the Peace must write their registration number on any document they sign or witness as a Justice of the Peace in accordance with the *Guidelines for Justices of the Peace* developed in accordance with requirements under the *Justices of the Peace Act 2002* and the *Justices of the Peace Regulation 2003* 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.

4.40.5 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.

4.40.6 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.

4.41 **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,
- 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.

4.42 **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.

4.43 **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 (ie the Australian Company Number) of all parties that are companies:

- Include this information (ie 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 (ie 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 2005 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 eg a trustee in bankruptcy, must provide an address where the sealed copy of the judgment or order may be sent.

4.44 **Form 44 - Consent judgment / order**

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

4.44.1 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 ACN (ie the Australian Company Number) of all parties that are companies:

- Include this information (ie 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 (ie 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 (ie 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 2005 for the fee if the court furnishes a sealed or certified copy of a judgment or order.

4.44.2 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.

4.45 **Form 45 - Registration or filing of (certificate of) judgment / order**

See CPA s. 133 (2) 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 the order was made.

4.46 **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 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 justice of the peace, a solicitor, a barrister, a commissioner for affidavits or a notary public.

4.47 **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.

4.48 **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.

4.49 **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.

4.50 **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.

4.51 **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
- 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 CPA s. 108(3) 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.

4.52 **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
- 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 CPA s. 108(3) 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.

4.53 **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 2005.

Schedule 2 of the Legal Profession Regulation 2005 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.

4.54 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.

4.55 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.

4.56 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 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.

4.57 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.

4.58 Form 58 - Arrest warrant

See UCPR 38.6 for more information.

Form 58 is prepared and issued by the registrar.

4.59 Form 59 - Notice of motion - writ for possession of land

See s. 104 CPA 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 2005.

Schedule 2 of the Legal Profession Regulation 2005 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 eg failure to pay mortgage
- a list of persons in occupation
- the telephone number of the occupier(s) (if known)
- 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.

4.60 Form 60 - Writ of possession

See CPA s. 104 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.

4.61 **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)
- 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 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.

4.63 **Form 63 - Notice of motion - writ for delivery of goods**

See CPA s. 105 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 2005.

Schedule 2 of the Legal Profession Regulation 2005 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)
- 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.

4.64 **Form 64 - Writ of delivery**

See CPA s. 105 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.

4.65 **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 2005.

Schedule 2 of the Legal Profession Regulation 2005 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
- 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 66 - Writ for levy of property**

See CPA s. 106 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
- 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.

4.67 **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 *Real Property Act 1900* or in the General Register of Deeds kept under s. 186 *Conveyancing Act 1919*.
- 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.

4.68 **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.

Form 68 may be filed if:

- you have served a copy of the judgment creditor's notice on the judgment debtor
- 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.

4.69 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 holds money payable to the judgment debtor to pay that money to you in satisfaction of the judgment debt. 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 person who holds money payable to the judgment debtor. This person is referred to as the garnishee.

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.

4.70 Form 70 - Garnishee order for debts

See CPA s. 117 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.

4.71 Form 71 - Garnishee order for wages or salary

See CPA s. 119 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.

4.71.1 Amount not to be garnisheed

See CPA s. 122 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 80 per cent of the standard workers compensation weekly benefit (the amount prescribed by s. 37(1)(a)(i) *Workers Compensation Act 1987*, as adjusted from time to time under s. 82). The objective of this requirement is that any person whose wages or salary are 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 80 per cent of the standard workers compensation weekly benefit (section 122 Civil Procedure Act 2005). This amount is adjustable – refer to <http://www.workcover.nsw.gov.au/WorkersCompensation/WorkplaceInjuries/Benefits/weekly.htm> to determine the applicable rate.

The standard workers compensation weekly benefit is \$235.20 (s. 37(1)(a)(i) *Workers Compensation Act 1987*). This adjustable amount is notified in the NSW Government Gazette periodically. The notice concerns indexation of WorkCover benefits and damages, but is used to calculate the amount that is not to be garnisheed. The amount is usually changed on 1 April and 1 October each year.

HISTORICAL TABLE OF AMOUNTS NOT TO BE GARNISHEED				
Adjustment applies from	Adjustable Amount \$	Adjusted Amount \$	80% of adjusted amount	Gazette reference of notice
1/10/05	235.20 (from s. 37(1)(a)(i) <i>Workers Compensation Act 1987</i>)	340.90	272.72	Gaz 111, 2/9/05, p 7223
1/4/06		347.90	278.32	Gaz 32, 10/3/06, p 1183
1/10/06		354.40	283.52	Gaz 116, 15/9/06, p 8068
1/4/07		361.30	289.04	Gaz 33, 23/2/07, p1114
1/10/07		367.70	294.16	Gaz 127, 21/9/07, p 7218
1/4/08		374.90	299.92	Gaz 30, 7/3/08, p 1439

4.71.2 Amounts garnishee may retain

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.

4.72 **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.

4.73 **Form 73 - Notice of motion - charging order**

See CPA s. 126 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.

4.74 **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.

4.75 **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.

4.76 **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 (eg 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.

4.77 **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, eg 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.

4.78 **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.

4.79 **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.

- 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 the CPA 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 (eg 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.

4.80 **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.

4.81 **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).

4.82 **Form 82 - List of parties (Part 50 appeal)**

See UCPR 4.2A and paragraph 4.2 of this Guide for more information.

4.83 **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, or
- 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.

4.84 **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
- 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).

4.85 **Form 85 - Notice of motion - transfer of Local Court proceedings**

See UCPR 44.1 for more information.

You must use form 85 if:

- you are defending a claim in the Local Court
- you wish to apply to transfer the proceedings to an appropriate Local Court.

You must file form 85 at the same time as you file your defence (see paragraph 4.7 in the Guide).

You can only apply to transfer proceedings to another Local Court if the proceedings have not been commenced at an appropriate Local Court.

An appropriate court means the Local Court nearest to any of the following places:

- your residence
- your residence at the time the cause of action arose
- your place of business
- your place of business at the time the cause of action arose
- your place of employment
- your place of employment at the time the cause of action arose
- the place where the cause of action arose.

If there is more than one appropriate Local Court, you must list all appropriate Local Courts and nominate the Local Court to which you want the proceedings to be transferred.

4.86 **Form 86 - Notice specifying appropriate Local Court or opposing transfer of Local Court**

See UCPR 44.1 for more information.

You must use form 86 if:

- you are served with a notice of motion to transfer the proceedings
- you want to:
 - nominate your preferred Local Court, or
 - oppose the transfer of the proceedings.

You must file form 86 within 14 days after you are served with the notice of motion for the transfer of the Local Court proceedings.

4.101 **Form 101 - General form (Court of Appeal)**

From 1 January 2008 the Court of Appeal rules are contained in UCPR Part 51. Part 51 of the Supreme Court Rules 1970 (old appeal rules) is repealed.

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 (eg 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).

4.102 **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.

4.103 **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.³

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).

4.104 **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).

³ Note that the time for bringing appeals from GREAT is fixed at 21 days by s. 55 *Government and Related Employees Appeal Tribunal Act* and cannot be extended by filing a notice of intention to appeal (see *Commissioner of Corrective Services v Walker* [2007] NSWCA 213).

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

4.104.1 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.

4.104.2 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.

4.104.3 White folder

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

4.104.4 Cross-appeals

See paragraph 4.105.3 of this Guide for more information.

4.105 **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).

4.105.1 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 *Supreme Court Act 1970*.

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*, 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*, ss. 57, 58. See also *Supreme Court Act 1970*, s. 48(1)(a)(i).
- Appeals from Dust Diseases Tribunal: *Dust Diseases Tribunal Act 1989*, s. 32. See also *Supreme Court Act 1970*, s. 48(1)(a)(ia).
- Appeals from District Court: *District Court Act 1973*, ss. 127, 142N. See also *Supreme Court Act 1970*, s. 48(1)(a)(iv).
- Appeals from Government and Related Employees Appeal Tribunal: *Government and Related Employees Appeal Tribunal Act 1980*, s. 54. See also *Supreme Court Act 1970*, s. 48(1)(a)(iii).
- Appeals from Workers Compensation Commission constituted by Presidential member: *Workplace Injury Management and Workers Compensation Act 1998*, s. 353.
- Appeals from other Tribunals: If the relevant statute confers a right of appeal to the Supreme Court and if s. 48(1)(a)(vii) *Supreme Court Act 1970* applies, the appeal is assigned to the Court of Appeal.

4.105.2 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).

4.105.3 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)

- replace references to 'cross-defendant' with 'cross-respondent'.

4.105.4 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
- the contact details of parties in the Court of Appeal.

4.106 **Form 106 - Notice of contention (Court of Appeal)**

See UCPR 51.40 for more information.

You must use form 106 if you are 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.