

COMMENCING PROCEEDINGS

Steps

1. Ensure that your client has reasonable prospects of success.
2. Seek instructions from your client.
3. Write a letter of demand to the other party.
 - This opportunity for the other party to resolve the matter outside of court.
 - Not appropriate in all circumstances → Eg if there are concerns about destroying evidence.
4. Commence proceedings:
 - Need a SOC or summons to commence proceedings: [r 6.1 UCPR](#).
 - Statement of claim in cases of debt, liquidation, fraud, tort, breach, damages, defamation etc.: [r 6.3 UCPR](#).
 - Must identify what D must respond to.
 - Identify parties.
 - Identify dispute.
 - Summons where there is no defendant, custody of a minor, trespass, non-damage claims, application for an appeal etc.: [r 6.4 UCPR](#).
5. Joining parties:
 - All relevant claims between parties should generally be dealt with in one proceeding.
 - The court can order separate trial if there is inconvenience, embarrassment or delay.
 - Embarrassment where D cannot effectively respond to the SOC because of faults with the claim.
6. Service of documents: [part 10 UCPR](#).
7. Pleadings.

Protocols

Service of documents

- **Part 10 of the UCPR.**
- Once a party files a document, they must serve it to the other parties as soon as is practicable: **r 10.1 UCPR.**
- Service ensures the document is brought to the attention of the person being served.
- Once the defence has been properly served then the case can proceed.
- The way to formally put D on notice to go to court and the issues / charges.

Personal service: r 10.5(1)(a) UCPR

- Served by P or their agent.
- Give the document to D.
- Document may be accepted by D's solicitor: **r 10.13 UCPR.**
- Originating documents need to be personally served: **r 10.20(2) UCPR.**
- If they do not accept, then leave the documents as close to them as possible and tell them the nature of the document.
- Service is also required for the superior courts to be willing to exercise their jurisdiction.
 - The local court is a bit more flexible.
- There is a time limit for service.
- Service may differ according to the individual (eg: corporations, prisoners etc.).
- Service may be conducted through the Online Court: **r 3.7 UCPR.**

Ordinary service: r 10.5(1)(b)(c)

- For the service of interlocutory proceedings.
- Service by filing: **r 10.16 UCPR.**
- Service by the court.
- Informal service.
- Service by fax.
- Service by post.
- Service electronically.
- Substituted service if personal service is too difficult: **r 10.14 UCPR.**
- *Bulldogs Rugby League Club Ltd v Williams* [2008] NSWSC 822.

Pleadings

- A pleading:
 - Is set out in paragraphs: r 14.6 UCPR.
 - Contains material facts of the claim or defence must be pleaded → no evidence: r 14.7 UCPR.
 - Is brief: r 14.8 UCPR.
- Conclusions of law must not be asserted as material facts.
- The purpose of pleading is to avoid surprise, to disclose a cause of action (in a SOC) and to define the issues.
- Should only plead a cause of action with reasonable prospects of success.
- *Silversides Superfunds Pty Ltd v Silverstate Developments Pty Ltd* [2008] NSWSC 904.
- *Markisic v Department of Community Service of New South Wales (No 2)* [2006] NSWCA 321 at [34-35].

Defendant's response

- D must file a defence within 28 days after service: r 14.3 UCPR.
- The defence can:
 - Admit the allegations.
 - Admit but further explain (confess and avoid).
 - Deny the allegations.
 - Allege additional facts that may change P's cause of action.
 - Plead a legal problem with P's claim.
 - Plead an offsetting claim.
- P files a reply within 14 days of service of the defence: r 14.4 UCPR.