

Recovering unpaid wages

Steps you can take to recover your entitlements

Using this Guide

This guide takes you step-by-step through the process of recovering wages and/or other entitlements that may be owed to you by an employer. The guide uses the small claims procedure set out in the *NSW Industrial Relations Act 1996*, *Annual Holidays Act 1944* and the *Long Service Leave Act 1955*.

The information in this guide refers to recovering monies under NSW industrial relations legislation, awards and enterprise agreements. Before commencing any action you must determine if your employment was covered by NSW industrial relations legislation. Changes made to federal industrial relations laws will determine what laws apply in workplaces and what action you may take to recover unpaid wages and entitlements.

If your employer is incorporated (for example, Pty Ltd is part of the employer's name), then, in most cases, you will only be able to use this guide to recover money owed up to 27 March 2006. If your employer is unincorporated (sole trader or partnership) and you were employed under a NSW award, then NSW industrial relations laws continue to apply and the information in this guide applies to you.

In most instances the *NSW Long Service Leave Act 1955* will continue to apply to all NSW employees regardless of the status of the employer.

If your employer is an incorporated businesses and your claim relates to a period after 27 March 2006 you need to contact the Department of Employment and Workplace Relations. You can contact them directly on 1300 363 264. For further information please refer to the Office of Industrial Relations publication, *Employing Staff in NSW – A guide to the Laws Covering Employment in NSW*.

Many disputes about wages are resolved by the employee and employer talking to each other. Before preparing a claim for unpaid wages, the Office of Industrial Relations (OIR) recommends that you discuss your concerns with your employer.

If you believe you are owed money by an employer or former employer, your union, accountant or lawyer may be able to provide assistance and advice.

You should read through the frequently asked questions in this booklet before considering any legal action.

This process involves four basic steps:

- preparing your claim
- contacting your employer about your claim
- filing your claim with the local court
- presenting your case in court.

Copies of forms and sample letters you will need are included in the back pages of this guide.

The following free online services are available at www.industrialrelations.nsw.gov.au to assist you in calculating what you are owed.

Awards Online

NSW Awards Online provides easy access to information on industrial awards, including pay rates, award conditions and leave entitlements.

To find your award, enter a job or workplace description, or search the alphabetical list of awards. You can download a full copy of the award.

Check Your Pay

Check Your Pay calculates wages and other entitlements for people working in restaurants, shops, hair and beauty salons or in clerical and administration jobs. Other awards are in development. You can check your pay against actual hours worked and include allowances, penalties and loadings for a specific pay period. You can calculate the amount to be paid for the work done and generate time sheets.

You can also calculate **long service and annual leave entitlements** on the OIR website.

Note: you should contact your employer <u>before</u> taking any legal action.
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Before You Start Your Claim - Frequently Asked Questions

Awards and entitlements

Who sets the minimum wage and employment entitlements?

For workers covered by the NSW *Industrial Relations Act 1996*, the NSW Industrial Relations Commission (the Commission) is the independent tribunal that sets minimum pay rates and employment conditions in formal legal documents called 'industrial instruments'. These industrial instruments include awards and enterprise agreements approved by the Commission.

Even if your wages were not fixed by an industrial instrument (like an award), so long as an industrial instrument would apply to the same work done by an employee in different circumstances, any outstanding wages or entitlements relating to your employment may be recovered.

It is important to note that these industrial instruments do not apply to employees of constitutional corporations. For further information please refer to the Office of Industrial Relations publication, *Employing Staff in NSW – A guide to the Laws Covering Employment in NSW*.

Am I owed money?

The nature of your work determines whether an industrial instrument applies. If your work was covered by an industrial instrument, and you were not paid in accordance with that instrument, you may be owed money.

If an industrial instrument applied to your employment, deduct the money that your employer paid you from the entitlements due under that industrial instrument. If there is a shortfall, you are owed money.

Remember, in calculating your entitlements you must take into account that the gross payment made by the employer includes any tax paid on your behalf. Your employer may also be required by law to deduct other payments (such as child support payments and money relating to court orders).

If you discover that there is an underpayment, an employer may be entitled to offset any overpayments made during your employment against this amount.

Which award applies to my work?

The Office of Industrial Relations can help you to identify the award that may apply to your work. Contact the OIR on 131 628 or visit the OIR website at www.industrialrelations.nsw.gov.au.

You will need a copy of the award to calculate the amount of money owed to you and to present to the court. You can download a free copy of the award from the OIR's website at www.industrialrelations.nsw.gov.au or telephone 131 628 to purchase a hard copy of the award.

What if an enterprise agreement applies to my work?

If your employment was covered by an enterprise agreement, you can purchase or download a copy of the agreement from the NSW Industrial Registry at:

NSW Industrial Registry
47 Bridge Street

Sydney NSW 2000
Telephone: (02) 9258 0866
www.lawlink.nsw.gov.au/irc.

How do I find out the current award rates of pay?

Award rates of pay usually change at least once a year. Current pay rates are available from the OIR website at www.industrialrelations.nsw.gov.au or telephone the OIR on 131 628.

How do I find historical award information?

In preparing a claim for unpaid or underpaid wages, you may need to research older award rates, dating back to the beginning of your claim period. This historical award information can be found in NSW Industrial Gazettes.

NSW Industrial Gazettes are available online from January 2001. The index to the Gazettes is published as a supplement and is called the [list of awards and contract determinations](#). This can be found at the Industrial Relations Commission website at www.lawlink.nsw.gov.au/irc.

For award rates prior to 2001, you will need to perform a manual search using a hard copy of the NSW Industrial Gazette. These are available from the State Library of New South Wales. The State Library will provide some assistance to those who live in regional New South Wales and cannot visit the library in person. The library can be contacted on (02) 9273 1414. Further details are available at www.sl.nsw.gov.au/ask/

What entitlements can I recover?

You may also recover any entitlements due to you under the *Annual Holidays Act 1944* and the *Long Service Leave Act 1955* even if you are not covered by an industrial instrument. As long as you are covered by an industrial instrument, all amounts owed to you under a contract relating to your employment may be recovered.

Can I recover unpaid superannuation?

Yes. If you are entitled to superannuation under an industrial instrument you can obtain a court order to make your employer pay into a superannuation fund an amount which, as far as practicable, makes up for earlier shortfalls.

Your employer may need to pay money towards your superannuation entitlement under Commonwealth Superannuation Guarantee laws.

Can I resolve the matter without going to court?

Yes. If you believe that you are owed money, it may be that your employer may not have a clear understanding of the legal obligation to pay you what is owed.

Contacting your employer by telephone and following up the call by writing them a letter outlining the details of your claim, can save you money and time in settling your claim. Usually, the court will want to know whether you have tried to settle your claim before it hears your case.

Information about the Small Claims Procedure

What is a small claim?

Section 379 of the *NSW Industrial Relations Act 1996* creates a special *small claims procedure* for recovering unpaid wages and entitlements up to \$20,000.

Even if you believe that your claim is more than \$20,000, you may still make an application under the *small claims procedure*. However, the court will only order an amount of up to \$20,000 if you win your case.

If you wish to claim more than \$20,000 from your employer, the *Industrial Relations Act 1996* provides other legal remedies. This guide does not cover these remedies – you should obtain your own legal advice about such claims. You can call Law Access NSW on 1300 888 529 for free limited legal advice.

What are the advantages of using the small claims procedure?

The small claims procedure has the following advantages:

- the court hearing is usually more convenient, cheaper and less formal than normal court hearings
- the magistrate hearing your claim may encourage you and your employer to settle the matter by agreement
- lawyers are usually not allowed to present your case or represent your employer, so you must represent yourself
- the magistrate hearing your claim does not have to apply formal rules of evidence.

Can I make a small claim for my holiday pay and long service leave?

Yes. Even though the *small claims procedure* is found in the *Industrial Relations Act 1996*, you can obtain an order for money owed under the *Annual Holidays Act 1944*, the *Long Service Leave Act 1955* and the *Long Service Leave (Metalliferous Mining Industry) Act 1963*.

How long have I got to recover my entitlements and wages?

You must lodge your claim within six years of when the money was owed to you.

Do I get interest on the monies owed to me?

Yes. On request the court may order that you be paid interest on the money owing to you.

Who pays your legal costs and the costs of the court?

The court may award costs to either you or your employer. The court will assess the amount of the costs.

The role of the Office of Industrial Relations (OIR)

What is the role of the OIR?

The OIR has two primary responsibilities:

- to provide information and advice to NSW employers and employees on their employment rights and obligations under NSW industrial laws, and

- to regulate the NSW industrial relations system through compliance, enforcement and education activities.

Some of the OIR's investigations are initiated by a complaint received from an employee or ex-employee. The OIR undertakes complaint-based investigations in order to:

- secure long term compliance with NSW industrial relation laws by employers and employees
- assist employers and employees to expeditiously resolve disputes about remuneration, in a way in which both parties gain a greater understanding of their respective rights and entitlements, and
- rectify identified breaches of NSW industrial relations laws and to penalise significant non-complying behaviour.

When the OIR investigates an employer after receiving a complaint from an employee, **the OIR is not acting on behalf of the employee.** The OIR's role is to ensure compliance with NSW industrial legislation. The OIR has no direct role in recovering money on behalf of the employees, apart from helping employees understand the process and determine the amount owed.

Can I lodge a complaint about an employer with the OIR?

If you believe that you are owed wages or other entitlements by your employer or ex-employer, you may lodge a complaint with the OIR. For more information, call 131 628.

Can I make a small claim if the OIR does not prosecute the employer?

The OIR may elect not to proceed to investigate or prosecute your complaint, for example, if there is insufficient evidence to support your claim. This decision does not stop you from taking your own action to recover the wages and entitlements that you believe are owed to you.

Will the OIR help me with my small claim?

This guide will help you to complete all the tasks needed to prepare and conduct your case before the court. OIRs free online services available at www.industrialrelations.nsw.gov.au can assist you in calculating what you are owed. You can also call the OIR on 131 628 for general advice.

Telling the OIR about your small claim

If you have lodged a complaint with the OIR and you then decide to lodge your own small claim, you must notify the OIR immediately.

Unfair dismissal claims

Have you lodged an unfair dismissal claim against the employer?

If you have lodged an unfair dismissal claim under the *NSW Industrial Relations Act 1996*, it will be dealt with by the NSW Industrial Relations Commission.

If you have lodged an unfair dismissal application **and** a small claims application against your former employer, you should tell the magistrate hearing your *small claim*. You should also tell the Commission member who is dealing with your unfair dismissal claim.

Can your unfair dismissal claim be dealt with at the same time as your claim for unpaid wages?

Generally, no. This is because the NSW Industrial Relations Commission is separate from the local court.

However, if your unfair dismissal application is brought by a union on your behalf, the union can ask the Commission to deal with your claim for unpaid wages at the same time.

Can the outcome of my unfair dismissal application affect my claim for unpaid wages?

Generally, no. However, if you settle your unfair dismissal application, you may be asked by your employer to sign a document that may stop you from bringing further legal action, including an application for unpaid wages.

Further information about unfair dismissals

Information about the procedures applying to unfair dismissal applications is available from the:

NSW Industrial Registry
47 Bridge Street
Sydney NSW 2000
Telephone: (02) 9258 0866
website: www.lawlink.nsw.gov.au/irc

Step 1: Preparing your claim

Gathering your facts

The information that you gather when preparing your claim is used as evidence in court when you are presenting your case. It is very important to get **all** your evidence together **before** you approach the employer or lodge your claim with the court.

Identifying your employer

You need to prove the correct legal identity of the employer to the court.

Items of evidence that will assist you include:

- a reference or statement of service from your employer
- an employment separation certificate
- any letters from the employer to you, especially if these letters show a company letterhead and/or address
- group certificate showing your income and any tax paid
- results of a company search.

A company search can help you to identify the name and registered address of the employer. A free company search can be carried out by contacting:

National Names Index
Australian Securities & Investments Commission (ASIC)
Level 8, 55 Market Street
Sydney NSW 2000
Telephone: (02) 9911 2500

Company searches can be done quickly and easily through ASIC's website at www.search.asic.gov.au/gns001.html. Remember to obtain a printed copy of your search results. Please note that this type of search will not give you the registered office address or names of the secretary or director of the company. A fee is charged by ASIC for this more detailed information.

The NSW Office of Fair Trading call also provide information on business names. Contact them direct on 13 32 20.

If these documents are unavailable, you should write and sign your own statement that a particular person, company or organisation was your employer.

Establishing the length and terms of your employment contract

Items of evidence that will assist you include:

- Job advertisement
- letter of appointment
- written contract of employment
- pay slips provided by the employer
- any group certificate(s) showing your income and any tax paid
- any other letters written to you by your employer, for example, about pay rises, promotions, rosters or superannuation
- diary notes listing hours worked and breaks taken.

If you are no longer working with the employer:

- employment separation certificate
- copy of a letter of resignation or dismissal
- reference or statement of service.

If none of these documents are available, you may be able to show that you were employed from your own records, such as a diary or bank statements which show that you were paid by the employer regularly. If necessary, write and sign a statement for the court explaining these records.

Identifying the NSW award or agreement covering your work

You will need to prove:

- that the work you performed was covered by an industrial instrument (an award or enterprise agreement) approved by the NSW Industrial Relations Commission, AND
- the 'classification' of the job that you performed under the industrial instrument.

The employer may have indicated which industrial instrument and the classification applying to your work in:

- your letter of appointment
- your contract of employment
- your pay slips.

If this is not the case, or you don't agree with the employer, you need to make your own inquiries.

The Office of Industrial Relations can help you to identify the award that may apply to your work. Call OIR on 131 628 or visit the OIR website at www.industrialrelations.nsw.gov.au to download a copy of the award.

Calculating what is owed to you

You need to prove that you were entitled to a particular level of wages or salary, and that you were not paid this entitlement.

To do this, you will need all the information that you have collected so far such as your employment contract, letter of appointment, pay slips, tax records and a copy of the award or enterprise agreement.

You must clearly set out the evidence that demonstrates you were underpaid.

Claiming an entitlement set by an industrial instrument

To make a claim for unpaid wages or other entitlements owed to you under an industrial instrument you will need to prove the following:

- the identity of your employer (See page 8, ASIC search)
- the period of your employment (date you commenced employment and date your employment was terminated)
- your pay rate (gross weekly amount) at the time your employment was terminated
- the applicable industrial instrument
- the correct classification of your work under the instrument
- the number of weeks holiday (annual leave) you took during the employment period
- the amount of money paid to you as holiday pay when your employment was terminated.

You will also need to show the amount of money that has already been paid to you by your employer.

See page 19 for an example of how to set out a claim for an entitlement under an industrial instrument.

Claiming for unpaid holiday pay

Before you make a claim for unpaid holiday pay you should read the OIR's free brochure, *Annual Holidays*, available at the OIR website www.industrialrelations.nsw.gov.au

To recover unpaid holiday pay you need to prove the following:

- the identity of your employer
- the period of your employment
- your pay rate when you ceased employment.

You will also need to outline the number of holidays you took while employed with the employer, and the amount of any holiday pay paid to you when you finished work.

You can use the OIR's on-line Annual Holidays Calculator to calculate annual leave entitlements that are owed to you.

See page 20 for an example of how to set out a claim for unpaid holiday pay.

Claiming for unpaid long service leave

If you were employed for more than 10 years, to recover unpaid long service leave you need to prove the following:

- the identity of your employer
- the period of your employment
- your pay rate when you ceased employment.

You will also need to outline the amount of long service leave taken by you when employed, and the amount of any long service leave paid to you when you finished work.

Note that some absences from work will change the qualifying period of service for long service leave entitlements.

Pro rata long service leave

If you were employed for more than five years (but less than ten years) service, you are entitled to a long service pro rata payment if you:

- resign as a result of illness, incapacity, domestic or other pressing necessity, or
- are dismissed for any reason except serious and wilful misconduct, or
- die.

You can use the OIR's on-line Long Service Leave Calculator to calculate long service leave entitlements that may be owed to you.

See page 21 for an example of how to set out a claim for unpaid long service leave.

Step 1: Check-list

Tick the following boxes as you complete these tasks.

- I have identified the full name of the person, company or organisation that employed me.
- I have identified the current registered or official address of the employer.
- I have established the starting date of my employment.
- If I no longer work for the employer, I have established that I finished work.

- I have identified the industrial instrument (award or enterprise agreement) that applies to the work that I performed.
- I have identified the correct classification in the industrial instrument applying to the work that I performed.
- (if applicable) I have completed a statement outlining the amount of money owed to me under the industrial instrument.
- (if applicable) I have completed a statement outlining the amount of money owed to me for unpaid holiday pay.
- (if applicable) I have completed a statement outlining the amount of money owed to me for unpaid long service leave.

Step 2: Contacting your employer about your claim

We recommend that you contact the employer in writing **before taking any legal action.**

Writing to the employer

The court will want to know whether you have tried to settle your claim before it hears your case.

There is no set format for writing to the employer. See page 22 for an example of a letter that you could send to the employer or you may wish to prepare your own.

Once you have written a letter, it is advisable to attach a copy of the claim that you prepared in Step 1.

Make a photocopy of everything that you are sending to the employer, so that you can show the court if asked.

Send the letter to the current address of the employer by registered mail, so that you can prove that you sent it to the employer on a particular date.

Discussing your claim with the employer

The employer may telephone you or write to you concerning your claim. When discussing your claim, remain calm and listen to what the employer says about the claim. Make notes of what is said in any conversation as you may be asked to repeat it in court.

The employer may offer to settle the claim by paying some or all of what you believe you are owed. You do not have to accept any offer. Ask the employer to put any offer of settlement in writing.

Step 2: Checklist

Tick the following boxes as you complete these tasks.

- I have written and signed a letter to the employer outlining my claim.
- I have attached copies of the details of my claim.
- I have made a photocopy of my letter and the attachments.
- I have sent the letter by registered mail and have kept the receipt.

Step 3: Filing your claim with the local court

Read this information carefully before completing the application.

If you have completed Step 1 and Step 2 of this guide, you are now ready to lodge your application with the court.

See page 23 for a sample small claims application form. You need to complete **all** of the information required by the form.

Typing the form is desirable. If you complete the form by hand, please print and use a black pen.

You do not require a separate form for each award matter.

Once you have completed your application, you need to make three copies. Photocopied forms are acceptable, but all signatures must be original.

Lodging your application with the local court

Your application must be filed with the:

The Registrar, Civil Claims Registry
Level 5, Downing Centre
143 - 147 Liverpool Street
SYDNEY NSW 2000
Ph: (02) 9287 7923

A filing fee (\$68.00) applies. If you do not pay the filing fee, your application will not be accepted under any circumstances.

All **four** copies of your application must be provided to the clerk of the court. The clerk will keep one copy, and return the other three copies to you to produce in court. These will be stamped with the court's official stamp.

The Clerk will complete the details on the back of the application form. These details set the 'mention date' for your application. A mention date is the date for the defendant (your employer) to appear and enter a plea only.

Under *section 379* of the *Industrial Relations Act 1996* the small claim application will be referred to the Chief Industrial Magistrates Court.

Provide the employer with a copy of your application

By law, you are now required to 'serve' (deliver) a copy of your application to the employer. This can be done by handing one of the three copies of the application to the employer, or by posting it to the employer's official address.

You may wish to discuss how to serve the application on the employer with the clerk at the local court.

Swearing an affidavit of service

Once you have delivered a copy of the application to the employer, you must swear an 'affidavit of service'. This is a short statement, signed by you, to say that the employer has been notified of your application.

It is preferable that the completed affidavit of service be returned to the clerk of the court prior to the mention date. If not, take the completed affidavit of service with you to the mention and hearing.

See page 31 for an example of an affidavit of service. Note that your signature must be witnessed by a Justice of the Peace or an officer of the court.

Step 3: Checklist

Tick the following boxes as you complete these tasks.

- I have completed a small claims application.
- I have made four copies of the small claims application.
- I have signed each copy of the small claims application.
- I have filed the four copies of the small claims application with the local court registry.
- I have paid the filing fee.
- The clerk of the local court registry has stamped my application and returned three copies to me.
- I have served a copy of the stamped application on the employer.
- I have prepared and sworn an affidavit of service.
- I have provided a copy of the affidavit of service to the court registry.

Step 4: Presenting your case in court

Preparing for Court

What to bring and wear.

Use your checklists in Steps 1, 2 and 3 of this guide to assemble the written material that you may need to present to the court.

Dress sensibly. Formal dress is not required. However you will feel more comfortable in court if you dress neatly.

When and where to attend court

You will be notified by the court when your attendance is required. You should aim to be at the courthouse at least 20 minutes before the appointed time.

On arrival at the courthouse, look for the 'court list'. This is a list of all the cases to be dealt with by the court on the day. Check that your matter is on the list and write down the number of your matter from the list.

When you enter the court itself, it is advisable to inform the court staff that you are present. Then take a seat inside the court and wait for your name and number to be called.

If you can't attend court

If for any reason you cannot travel to attend the court hearing, you must contact the clerk of the court immediately. You may be able to apply for the matter to be deferred or proceed in your absence. You will need to complete an affidavit outlining your claim and include all the documentation.

The court hearing

Speaking in court

When the Magistrate or court officer calls your matter, you should stand and approach the table directly in front of the Magistrate's bench. The Magistrate may be addressed as 'Sir' or 'Madam', or 'Your Worship'.

You can introduce yourself by saying, for example:

'Your Worship, my name is Mary Smith. I am the applicant in matter number 123 on page 1 of the court list.'

If you are speaking, or are being spoken to by the Magistrate, it is polite to stand. Otherwise, sit quietly at the table in front of the Magistrate's bench.

Following what is going on in court

After you have introduced yourself, the Magistrate will usually take the same details from the employer. From then on, it will be a matter of simply answering the Magistrate's questions. You should do whatever the Magistrate requests you to do.

If you do not understand what is being said, or what is being asked of you, politely request the Magistrate to explain it to you. Remember that Magistrates are used to people appearing in court for the first time.

Attending the 'mention'

Usually, the court will start dealing with your application by holding a 'mention'. A mention is a short hearing used by the Magistrate to identify you and the employer. The magistrate will ask whether you have attempted to settle the matter and work out how long the case will take to complete.

The Magistrate will usually set time and date for the hearing of your claim.

Attending the 'hearing'

At the hearing, the magistrate will ask you to outline your case first. It is necessary to explain why you believe that you are owed the money.

You can use the format adopted in this guide to prove your case. That is, show who employed you, your period of employment, the industrial instrument covering your work and the classification that you were working as under the instrument. Then you will need to explain the details of your underpayment, using the claims that you prepared in Step 1.

Be prepared to answer any questions from the Magistrate and provide copies of all written material. You should also expect the Magistrate to ask you about your efforts to settle your claim. The employer is not permitted to ask you questions directly.

Some general tips about the court hearing

In small claims hearings, the Magistrate will usually tell you and the employer what is expected in presenting your cases. The Magistrate's role is to make sure that each side gets a fair hearing.

Generally each party:

- is given an opportunity to present a case in 'unsworn' form, so you will not be required to present your evidence from the witness box
- is given an opportunity to respond to the other party's arguments. Remember to address your comments to the Magistrate, not to the employer
- can produce relevant documents. If you intend to do this, bring three copies as the employer has a right to view each document before it is seen by the Magistrate and to object to it.

The end of the hearing

The Magistrate has the power to stop hearing your application at any time. In most cases, the Magistrate will issue a decision immediately. In other cases, the decision may be 'reserved'. That is, the magistrate will announce the decision at a later date.

You should stand when the Magistrate issues the decision and any orders.

If you have succeeded in your application, the Magistrate will usually issue one or more 'orders'. This means that the employer will be required to pay you the specified amount within a certain period.

The Attorney General's Department of NSW have prepared a range of information sheets as easy to follow guides to procedures within the Local Court.

The fact sheets may be accessed on-line at:

www.lawlink.nsw.gov.au and follow the links from 'Courts and Tribunals'

Glossary

Adjourn	Put off Court hearing to another date.
Affidavit	A sworn statement as to the existence of facts to which the person has knowledge.
Appeal	Application to a higher Court for a review of a decided case.
Applicant	The person making the claim.
Award	An award sets out the rights and obligations of employers and employees engaged in particular types of work.
Call-over	Court mention for making administrative or timetable arrangements.
Certified copy	A copy of a document which is endorsed as a true copy, often obtained from a government department or public officer.
Complaint	The form filed to commence a civil action.
Complainant	The person making the complaint.
Contempt of Court	A punishable act of wilful disregard and/or denial of the Court's authority.
Costs	Expenses involved in taking an action.
Court orders	A decision of the Court which has penalty provisions for non-compliance.
Cross examination	The opportunity for the opposition to question a witness.
Defendant	The person against whom a claim or action is taken.
Enterprise agreement	An enterprise agreement sets out the rights and obligations of employers and employees engaged in particular types of work in an enterprise.
Evidence	The information presented to the Court upon which it makes a decision.
Hearing	The presentation of the case/evidence before the Court.
Industrial Court	The Industrial Relations Commission or a Local Court constituted specifically for the purposes of recovery of wages, entitlements and other amounts by an Industrial Magistrate sitting alone.
Industrial Instrument	An award, an enterprise agreement, a public sector industrial agreement, a former industrial agreement, a contract detriment or a contract agreement.
Jurisdiction	The power of the Court to hear a matter.
Justice of the Peace	A person authorised by legislation to witness the swearing of documents.
Legislation	Acts of Parliament or statutes.
Magistrate	Judicial person with the power to decide matters of civil and criminal nature.
Mention	A brief session before the Court usually to set a hearing date.
Oral evidence	Evidence of a witness in Court.
Practising Legal Practitioner	A practising barrister or practising solicitor.
Respondent	Person against whom the action has been taken.
Return date	Date on which the Court will notify the matter is to be mentioned or heard.
Service	Giving documents to the opposition.
Settlement	Agreed resolution of the matter.
Subpoena	A legal document requiring a person to attend Court as a witness or to produce certain documents.
Summons	A legal document requiring a person to appear before the Court, usually to defend a matter.
Without prejudice	A precursor to communications, verbal or written where that information cannot be used in evidence.
Witness	A person who gives evidence about matters they know which are relevant to the proceedings.

Example 1: Claim for an entitlement under an industrial instrument

Claim for unpaid entitlements under the Industrial Relations Act 1996					
Name of Industrial Instrument: (eg. award, enterprise agreement)					
Employee's Name:					
Pay Period(s)	Award Entitlement	Award clause	Calculations (attach other papers to show all calculations if this space is insufficient)	Less Amount Already Paid	Amount Claimed
Total amount claimed					

Use more than one form if you need more space

Example 2: Claim for unpaid holiday pay

Claim for holiday pay under the Annual Holidays Act 1944			
Note: casual employees are not entitled to claim for holiday pay			
Employer's name:			
Employee's name:			
Gross weekly wage: (At date of ceasing employment)		\$	A
Date employment commenced:		/ /	
Date employment ceased:		/ /	
Duration of employment: (give duration in years and weeks – ignore any days left over)		years	B
		weeks	C
Calculating your annual leave entitlement			
Completed years:	Multiply your answer at B by 4		D
Completed weeks:	Divide your answer at C by 12		E
Entitlement to annual leave:	Add your answers at D and E	weeks	F
Less any leave taken:	Total the number of weeks and days of annual leave taken by you	weeks	G
Annual leave due at termination:	Subtract your answer at G from F	weeks	H
Holiday pay due at termination:	Multiply your answer at H by your gross weekly wage (A)	\$	I
Less any holiday paid to you:	Put the amount already paid to you here	\$	J
Amount of holiday pay claimed:	Subtract J from I	\$	K

Example 3: Claim for unpaid long service leave

Claim for holiday pay under the Long Service Leave Act 1955			
Employer's name:			
Employee's name:			
Gross weekly wage: (At date of ceasing employment or weekly average of last 5 years – whichever is greater)		\$	A
Date employment commenced:		/ /	
Date employment ceased:		/ /	
Duration of employment: (give duration in years, months, weeks and days.) If employment is greater than 15 years – ignore any incomplete years		years	B
		months	C
		weeks	D
		days	E
Calculating your long service leave entitlement			
Completed years:	Multiply your answer at B by 0.87		F
Completed months	Multiply your answer at C by 0.073		G
Completed weeks:	Multiply your answer at D by 0.017		H
Completed days:	Multiply your answer at E by 0.0024		I
Entitlement to long service leave:	Add your answers at F, G, H and I	weeks	J
Less any leave taken:	Total the number of weeks and days of long service leave taken by you	weeks	K
Long service leave due at termination:	Subtract your answer at K from J	weeks	L
Long service leave pay due at termination:	Multiply your answer at L by your gross weekly wage (A)	\$	M
Less any long service paid to you:	Put the amount already paid to you here	\$	N
Amount of long service leave pay claimed:	Subtract N from M	\$	O

Example 4: Letter to your employer

(Your Names goes here)

(Your address goes here)

(Put today's date here)

(Insert your employer's name)

(Insert your employer's address)

Re: Outstanding Pay

Dear (Insert your employer's name)

I refer to my employment with your organisation as a **(put your job classification here)** on a fulltime/part-time/casual basis **(pick one)** under the **(put name of Award or enterprise agreement here)**.

I believe the following entitlements are owed to me:

List each of your outstanding entitlements, how much you think you are owed and how you have calculated this. eg:

<u>Entitlement</u>	<u>Calculation</u>	<u>Amount Owed \$</u>
Underpayments of wages for the period (date) to (date)	no. weeks/hours X \$ per week/hour	

You are requested to pay the outstanding amounts within seven days of the date of this letter. If I do not receive a response from you within this time, I may lodge a complaint with the Office of Industrial Relations, Department of Commerce or take other legal action.

Further information about these entitlements is available from the Office of Industrial Relations website at www.industrialrelations.nsw.gov.au, or by telephoning the Office on 131 628.

This letter provides an opportunity for you to rectify these outstanding matters.

If you wish to discuss this matter further, please contact me on **(put your telephone number here)**.

Yours sincerely

(Put your signature)
(Write your name here)

Example 5: Local Court small claims application form

Form 2 (version 3) Rule 6.2		
STATEMENT OF CLAIM		
COURT DETAILS		
Court		
**Division		
**List		
Registry		
Case number		
TITLE OF PROCEEDINGS		
[First] plaintiff		
**Number of plaintiffs		
[First] defendant		
**Number of defendants		
FILING DETAILS / ADDRESS FOR SERVICE		
Filed for	Plaintiff[s]	
Address for service		
**DX address		
** Telephone		
** Fax		
** Email		
** Court user number		
** Reference number		
VENUE		
Intended hearing venue		
RELIEF CLAIMED		
The plaintiff[s] claim[s]		
PLEADING AND PARTICULARS		
The plaintiff relies [plaintiffs rely] on the following facts and assertions		

SIGNATURE	
Signature	
Name	
Capacity	<p>**Solicitor for plaintiff[s]</p> <p>**Solicitor belonging to the same firm or organisation as plaintiff's solicitor</p> <p>**Solicitor acting as agent for [plaintiff's[s']] solicitor</p> <p>**Solicitor belonging to the same firm or organisation as [plaintiff's[s']] solicitor's agent</p> <p>**Authorised person for plaintiff[s]</p> <p>**Plaintiff[s]</p>
Date	
**AFFIDAVIT VERIFYING	
Name	
Address	
Occupation	
<p>On [date], I **say on oath/**affirm:</p> <ol style="list-style-type: none"> 1. I am the [first] plaintiff. 2. I believe that the allegations of fact in the statement of claim are true. 	
SWORN/AFFIRMED at	
Signature of deponent	
Signature of witness	
Name of witness	
Capacity of witness	[Barrister, solicitor or justice of the peace]
**Address of witness	
**CERTIFICATE – SECTION 347 OF THE LEGAL PROFESSION ACT 2004	
<p>I certify that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.</p>	
Signature	
Name	
Capacity	[Barrister or solicitor]
Date	

PARTY DETAILS**PLAINTIFF[S]****[First] plaintiff**

Family name OR company name	
Given names OR ACN	
Address	
**Telephone	[To be included if plaintiff is unrepresented]
**Fax	[To be included if plaintiff is unrepresented]
**Email	[To be included if plaintiff is unrepresented]

****[First] plaintiff's tutor**

**Name of tutor	
**Address	

****PLAINTIFF'S[S'] REPRESENTATIVE******Solicitor on the record**

Name	
Practising certificate number	
Firm	
Address	
Telephone	
Fax	
Email	
Agrees to electronic service	[yes / no]

****Solicitor on the record's agent**

Name	
Practising certificate number	
Agent's firm	
Agent's address	
Agent's telephone	
Agent's fax	
Agent's email	

****Plaintiff's[s'] authorised officer**

Name of authorised officer	
Address for service	
Capacity to act for plaintiff	

Telephone	
Fax	
Email	
Agrees to electronic service	[yes / no]

DEFENDANT[S]

[First] defendant

Family name OR company name	
Given names OR ACN	
Address	

HOW TO RESPOND

You can respond by:

- Agreeing to the claim
- Filing a defence and/or making a cross-claim against the plaintiff
- If money is being claimed, paying the plaintiff all of the money and any interest claimed
- If money is being claimed, signing an agreement with the plaintiff to pay the money.

You can get further information about the forms you need to file to respond to this statement of claim from:

- The registry
- A legal practitioner
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.

NOTICE TO DEFENDANT

You will be in default, if you do not file a defence within 28 days of being served with this statement of claim. The court may enter judgment against you without any further notice to you. The judgment may be for the relief sought in the statement of claim and for the plaintiff's costs for bringing these proceedings.

REGISTRY ADDRESS

Street address	
Postal address	
Telephone	

HOW TO COMPLETE THIS FORM

THESE INSTRUCTIONS ARE NOT TO BE FILED

Do not include any information about the proceedings on this part of the form. In these instructions, UCPR means the Uniform Civil Procedure Rules 2005.

** OPTIONAL INFORMATION

*Some information in this form may not be relevant to your proceedings. An item marked with ** may be omitted if it is not relevant to your proceedings.*

COURT DETAILS

Include details about the court, division, list and registry. The registry must be the same as the venue at which you intend the proceedings to be heard.

The court will include details of the case number.

TITLE OF PROCEEDINGS

Plaintiff

Include the full name of the first plaintiff. If the first plaintiff is a company, include the name and ACN of the company.

Include details of the number of plaintiffs if there is more than one plaintiff.

Defendant

Include the full name of the first defendant. If the first defendant is a company, include the name and ACN of the company.

Include details of the number of defendants if there is more than one defendant.

FILING DETAILS / ADDRESS FOR SERVICE

Include details of the address for service. This must generally be within New South Wales (see UCPR 4.5).

If the plaintiff is represented by a solicitor:

- *the address for service must be the office of the solicitor or the solicitor's agent*
- *the name of the firm, its ACN or ABN number, telephone number and street address must be included*
- *a DX address and/or email address can be included if service will be accepted by DX or by email (see UCPR 10.5(2))*
- *the solicitor's reference number and court user number may be included.*

If the plaintiff is not represented, information must be included about the plaintiff's business or residential telephone number, fax number and email address, if any.

VENUE

Include details of the venue at which you intend the proceedings to be heard. Proceedings in the Equity Division of the Supreme Court will be heard in Sydney.

RELIEF CLAIMED

Use numbered paragraphs. State the remedy, relief or orders that you are seeking.

Include the following information if you are making a claim for a liquidated amount.

Amount of claim	\$
Interest	\$
Court filing fees	\$
Service fees	\$
Solicitor's costs	\$
TOTAL	\$

For further information, see UCPR Part 6.

PLEADING AND PARTICULARS

Use numbered paragraphs. List the facts and assertions on which you are relying. For further information, see UCPR Part 14.

SIGNATURE

This form must be signed by:

- *The solicitor for the plaintiff[s], a solicitor belonging to the same firm or organisation as the plaintiff's[s'] solicitor, a solicitor acting as agent for the plaintiff's[s'] solicitor, or a solicitor belonging to the same firm or organisation as the plaintiff's[s'] solicitor's agent*
- *If the plaintiff does not have a solicitor, the plaintiff's authorised officer, or the plaintiff.*

Include information about the capacity in which the person is signing the form.

AFFIDAVIT VERIFYING

You must verify this form by affidavit if you are filing it in the Supreme Court or District Court, unless you are claiming damages for:

- Defamation
- Malicious prosecution
- False imprisonment
- Trespass to the person
- Death
- Personal injury.

If you are verifying the form on behalf of the plaintiff, replace paragraph 1 with the following information:

1. I am [give details of the capacity of the person making the affidavit and the facts that qualify the person to make the affidavit] and am authorised to verify this statement of claim on [his/her/its] behalf.

For example, if the plaintiff is a corporation, insert the words "I am an [officer e.g. director] of [name of corporation] and am authorised to verify this statement of claim on its behalf".

If a barrister, solicitor or commissioner for affidavits witnesses the affidavit, include the address of the barrister, solicitor or commissioner for affidavits (see UCPR 35.7A).

PARTY DETAILS

This information must be on a separate page.

You must provide information about each plaintiff and the plaintiff's representative if relevant. If the plaintiff is not represented, information must be included about the plaintiff's business or residential telephone number, fax number and email address, if any.

You must provide information about each defendant.

Example 6: Affidavit of Service

Form 62 (version 2) Rule 35.1		
AFFIDAVIT OF [NAME] – [DATE]		
COURT DETAILS		
Court		
**Division		
**List		
Registry		
Case number		
TITLE OF PROCEEDINGS		
First plaintiff		
**Number of plaintiffs		
First defendant		
**Number of defendants		
FILING DETAILS		
Filed for		
Address		
AFFIDAVIT DETAILS		
Name		
Address		
Occupation		
On date, I say on oath <i>OR</i> affirm:		
1. I am [role of the deponent].		
2. I believe that the information contained in this affidavit is true.		
SWORN/AFFIRMED		
At		
Signature of deponent		
Signature of witness		
Name of witness		
Capacity of witness		

HOW TO COMPLETE THIS FORM

THESE INSTRUCTIONS ARE NOT TO BE FILED

Do not include any information about the proceedings on this part of the form.

** OPTIONAL INFORMATION

*Some information in this form may not be relevant to your proceedings. An item marked with ** may be omitted if it is not relevant to your proceedings.*

COURT DETAILS / TITLE OF PROCEEDINGS

Copy this information from the originating process.

FILING DETAILS

Include the role (eg. plaintiff) of the party or the name of the person who is filing this form.

Include the address for service of the party or person who is filing the form. For example, the following information should be included if the form is being filed by the solicitors for a party.

Address	[Name of firm] Solicitors [ACN if relevant] [Street address] [DX address] [Telephone number] [Fax number] [Email address] [Court user number if relevant] [Solicitor's file reference]
---------	---

AFFIDAVIT DETAILS

Include details about the name, address and occupation of the deponent.

Use numbered paragraphs. State the information to be included in the affidavit.

If you are making the affidavit on behalf of a party, replace paragraph 1 with the following information:

I am [give details of the capacity of the person making the affidavit and the facts that qualify the person to make the affidavit] and am authorised to make this affidavit on [his/her/its] behalf.

For example, if the party is a corporation, insert the words "I am an [officer eg director] of [name of corporation] and am authorised to make this affidavit on its behalf".

Each page of the affidavit must be signed by the deponent and by the person before whom it is sworn.

A barrister, a solicitor or a Justice of the Peace must witness the affidavit. You may face serious penalties if you provide false or incomplete information.

June 2006