



## SUMMONS CHECKLIST

---

This checklist is a guide to assist parties fulfil their obligations regarding a summons under the *Uniform Civil Procedure Rules (UCPR)*. It is the responsibility of the issuing party to ensure they comply with all requirements under the *Industrial Relations Act 1996 (NSW)*, *Industrial Relations Commission Rules 2022 (NSW)* and the UCPR.

### Do I need to apply for leave of the Commission to issue a summons? (UCPR r 7.3)

- I am self-represented (Complete the [Application for leave to issue a summons](#))
- A party to the proceedings has not entered an appearance (Complete the [Application for leave to issue a summons](#))
- There is no defendant in the proceedings (Complete the [Application for leave to issue a summons](#))
- I am representing a party, but I am not a practising solicitor (Complete the [Application for leave to issue a summons](#))

### STEP 1: COMPLETE THE APPLICATION FOR LEAVE TO ISSUE A SUMMONS

- Before completing the application - I have asked the person with control or possession of the documents to provide them and/or to give evidence voluntarily?
- I have included a list of reasons in my application for applying for leave, such as:
  - Why am I requesting the documents or things or evidence?
  - How are the documents or things or evidence relevant to the issues in dispute?
- I have given the other party at least five (5) clear business days before the nominated date for production (when the documents are to be produced) or before the person must give evidence (e.g. hearing date or another date).

OR

- I require the Commission to issue a short service order because I cannot give the other party at least five (5) clear business days. I have set out the reasons for the shorter timeframe, including:
  - whether the recipient is aware of the short timeframe; and
  - has the other party objected to the shorter timeframe; and
  - why I didn't make this request earlier; and
  - the attempts I made to get the documents or the attendance of the witness voluntarily.

## STEP 2: DRAFT THE SUMMONS

### What type of summons do I need? (UCPR r 33.2)

- I need a person to attend a compulsory conference (Download [IRC 39 - Summons to confer](#))  

OR
- I need a person to give evidence at a hearing or arbitration (Download [IRC 40 – Summons to give evidence](#))  

OR
- I need a person to provide documents (Download [IRC 41 – Summons to produce](#))  

OR
- I need someone to provide documents and give evidence at a hearing or arbitration (Download [IRC 42 – Summons to produce and give evidence](#))

### What should I include in the summons? (UCPR r 33.3)

- The summons is addressed to ONE person and identifies the person by name or by description of office or position.
  - Have I identified the right person or position?
  - Do I have up-to-date contact details for that person?
- If applying for a summons to produce:
  - I have identified the document(s) or thing(s) to be produced; and considered:
    - whether the documents I have requested are relevant to a fact in dispute in my proceedings;
    - the scope of documents requested is specific, narrow and easy to identify;
    - the documents I have requested are not confidential or legally privileged;
    - the person receiving the summons has control or possession of the documents;
    - my request doesn't ask someone to create a document; and
    - the person receiving the summons has enough time to locate the documents.
  - Have I specified the correct date, time and place for production. If not, have I contacted the Commission's Registry?
- If applying for a summons to give evidence:
  - Have I specified the correct time and place for attendance – being the first date of the hearing?

### **STEP 3: SUBMIT THE APPLICATION**

- I have completed the:
  - Application for leave to issue a summons;
  - Summons to confer/produce/give evidence/produce and give evidence.
- I have submitted the application to the Commission by email or in-person in the Registry.

### **STEP 4: GIVE THE OTHER PARTY A COPY OF THE SUMMONS AFTER FILING**

- I have personally given the other party a copy of the summons, which means:
  - I gave the other party a copy of the summons; or
  - The person would not accept the summons, so I left a copy of the summons in their presence and told them the nature of the document; or
  - Service was prevented because the person was violent or threatened violence service, so I left the summons as near as practicable to them. (UCPR 10.21)
- I included conduct money with the summons to give evidence OR have offered to pay reasonable conduct money (UCPR rr 33.6(1A), 33.11)?
- I have sent a copy of the summons to all other parties in the proceedings as soon as practicable after the summons has been served on the other party.

### **Inspection of, and dealing with, the documents produced (UCPR rr 33.8, 33.9)**

- I have followed all instructions or directions from the Commission in relation to the removal, return, inspection, copying and disposal, of any document or thing been produced in response to a summons.
- If the Registrar has given at least 14 days' notice of the intention to return a document, I will attend the Commission to inspect the document before the notice period expires.

### **Costs and expenses of compliance (UCPR 33.11)**

- I have paid the associated fees for issuing the summons and paid any reasonable loss or expense incurred by the other party in complying with the summons.