**BASIC REQUIREMENTS FOR PLEADINGS**

Before canvassing the principal rules of pleadings, it is important to keep in mind 2 main functions of pleadings:

1. To define clearly and precisely the issues or questions which are in dispute between the parties which are to be decided by the court; and
2. To give reasonable and fair notice of what is claimed.

**PRINCIPLE RULES OF PLEADINGS**

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|  | **Principle Rules** | **UCPR 2005** | **FCR 2011** |
|  | **Starting Proceedings** | **R 6.2: Originating process**   * Statement of claim (see **R 6.3 – where statement of claim required**); or * Summons (see **R 6.4 – where summons required**)   **Matters in the Commercial List or the Technology and Construction List – Supreme Court Equity Division Practice Note SC Eq 3**  **Para 8**  A matter in the Commercial List or the Technology and Construction List shall be commenced in the general form of Summons prescribed under the UCPR. There is to be filed with the Summons a List Statement, for the Commercial List a “Commercial List Statement” and for the Technology and Construction List a “Technology and Construction List Statement”, setting out, in summary form, in the form of Annexure 1:  8.1 the nature of the dispute 8.2 the issues which the plaintiff believes are likely to arise 8.3 the plaintiff's contentions 8.4 the questions (if any) the plaintiff considers are appropriate to be referred to a referee for inquiry and report and  8.5 a statement as to whether the parties have attempted to mediate ***and*** whether the plaintiff is willing to proceed to mediation at an appropriate time.  **Para 9**  The plaintiff's contentions should:  9.1 avoid formality 9.2 state the allegations the plaintiff makes with adequate particulars and  9.3 identify the legal grounds for the relief claimed.  **Para 15**  Any party moving for an order for entry of any proceedings in either of the Lists shall move by Notice of Motion at the earliest possible time and shall file and serve with the Notice of Motion a relevant List Statement or List Response.  **Matters in the Corporations List – Supreme Court Equity Division Practice Note SC Eq 4**  Proceedings under the *Corporations Act* 2001 (Cth) (‘Corporations Act’) are usually brought in the Supreme Court or the Federal Court.  **Rule 2.2 of the Supreme Court (Corporations) Rules 1999 (NSW)**   1. Unless these Rules otherwise provide, a person must make an application required or permitted by the Corporations Act to be made to the Court: 2. if the application is not made in a proceeding already commenced in the Court—by filing an **originating process**, and 3. in any other case, and whether interlocutory relief or final relief is claimed—by filing an **interlocutory process**. 4. Unless the Court otherwise directs, a person may make an application to the Court in relation to a proceeding in respect of which final relief has been granted by filing an interlocutory process in that proceeding. 5. An **originating process** must: 6. be in accordance with **Form 2**, and 7. state: 8. each section of the Corporations Act or the ASIC Act, or each regulation of the Corporations Regulations, under which the proceeding is brought, and   (ii)  the relief sought.   1. An **interlocutory process** must: 2. be in accordance with **Form 3**, and 3. state: 4. if appropriate, each section of the Corporations Act or the ASIC Act, or each regulation of the Corporations Regulations, or each rule of Court under which the application is made, and   (ii)  the relief sought. | **FCR 8.01(1): Originating Application**  A person who wants to start a proceeding in the Court’s original jurisdiction must file an originating application, in accordance with Form 15.  **FCR 8.05(1)(a)**  An originating application must be accompanied by:   1. if the applicant seeks relief that includes damages — a statement of claim, in accordance with Form 17; or 2. if paragraph (a) does not apply — a statement of claim or an affidavit.   **Federal Court Practice Note Corp 1: “Interlocutory Process and Pleadings in Corporations Matters”**  **Rule 2.2 (1) of the *Federal Court (Corporations) Rules 2000*****(‘Corporations Rules’)**  Unless these Rules otherwise provide, a person must make an application required or permitted by the Corporations Act to be made to the Court:   1. if the application is not made in a proceeding already commenced in the Court - by filing an originating process; and 2. in any other case, **and whether interlocutory relief or final relief is claimed** - by filing an interlocutory process.   [This makes clear that the form of interlocutory process under the Rules (Form 3) is required to be used where subpara 2.2(1)(b) applies, even where final relief is claimed.] |
|  | **Form**  Paragraphing | **R 14.6**  If a pleading alleges or otherwise deals with several matters:  (a) the pleading must be divided into paragraphs, and  (b) each matter must, so far as convenient, be put in a separate paragraph, and  (c) the paragraphs must be numbered consecutively. | **FCR 16.02(1)(a)**  A pleading must be divided into consecutively numbered paragraphs, each, as far as practicable, dealing with a separate matter. |
|  | **Identifying material facts**   * Material facts only. The plaintiff must plead the facts it will rely upon at the hearing. For the court to grant the relief sought the plaintiff must establish those facts at the hearing with the evidence. * All the material facts relied on | If the plaintiff does not include all the material facts, the pleading may not disclose a cause of action.  Also, facts that are not pleaded, may not be able to be raised at the hearing by the plaintiff.  If the pleading does not disclose a cause of action, the action will fail. See **R 14.28** | **FCR 16.02(1)(c)**  A pleading must identify the issues that the party wants the Court to resolve.  **FCR 16.02(1)(d)**  A pleading must state the material facts on which a party relies that are necessary to give the opposing party fair notice of the case to be made against that party at trial, but not the evidence by which the material facts are to be proved.  **FCR 16.21(1)(e)**  A party may apply to the Court for an order that all or part of a pleading be struck out on the ground that the pleading fails to disclose a reasonable cause of action or defence or other case appropriate to the nature of the pleading. |
|  | **Distinguishing facts from evidence**  The material facts relied on, but not the evidence by which they are to be proved | **R 14.7**  Subject to Parts 6, 14 and 15 of the UCPR, a party’s pleading must contain only a summary of the material facts on which the party relies, and not the evidence by which those facts are proved.  [Parts 6, 14 and 15 of the UCPR specify additional information required to be pleaded in the originating process concerning specific claims such as defamation or allegations of fraud]  However:  **R 14.10 Certain facts need not be pleaded**  A party need not plead a fact if:   1. The fact is presumed by law to be true, or 2. The burden of disproving the fact lies on the opposite party,   Except so far as may be necessary to meet a specific denial of that fact by another party’s pleading. | **FCR 16.02(1)(c)**  A pleading must identify the issues that the party wants the Court to resolve.  **FCR 16.02(1)(d)**  A pleading must state the material facts on which a party relies that are necessary to give the opposing party fair notice of the case to be made against that party at trial, but not the evidence by which the material facts are to be proved.  **FCR 16.21(1)(e)**  A party may apply to the Court for an order that all or part of a pleading be struck out on the ground that the pleading fails to disclose a reasonable cause of action or defence or other case appropriate to the nature of the pleading. |
|  | **Brevity**  Material facts in a summary form.  A pleading must be precise and concise, clear and well ordered | **R 14.8**  Pleadings must be as brief as the nature of the case allows. | **FCR 16.02(1)(b)**  A pleading must be as brief as the nature of the case permits. |
|  | **Distinguishing facts from law** | **While the general rule is that pleadings must not include conclusions of law, argument or inference, r 14.19 permits a party to raise a point of law.**  **R 14.19**  A pleading may raise any point of law.  [if however, a cause of action arises under a statutory provision, it should be expressly pleaded by referring to the specific section of the Act] | **FCR 16.02(3)**  A pleading may raise a point of law. |
|  | **Identifying specific legislative provisions relied upon**  Where the claim, defence, etc, arises by or under any Act, the specific provision of the Act relied on | **R 14.19** | **FCR 16.02(1)(e)**  A pleading must state the provisions of any statute relied on.  **FCR 8.03(1)**  An originating application must state the relief claimed, and if the relief is claimed under a provision of an Act — the Act and the provision under which the relief is claimed. |
|  | **Any matter which if not specifically pleaded may take the other party by surprise** | **R 14.14 General rule as to matters to be pleaded specifically**  (1) In a statement of claim, the plaintiff must plead specifically any matter that, if not pleaded specifically, may take the defendant by surprise.  (2) In a defence or subsequent pleading, a party must plead specifically any matter:  (a) that, if not pleaded specifically, may take the opposite party by surprise, or  (b) that the party alleges makes any claim, defence or other case of the opposite party not maintainable, or  (c) that raises matters of fact not arising out of the preceding pleading.  (3) Matters which must be pleaded pursuant to subrule (2) include (but are not limited to) fraud, performance, release, statute of limitation, extinction of right or title, voluntary assumption of risk, causation of accident by unknown and undiscoverable mechanical defect and facts showing illegality. | **FCR 16.03**  (1) A party must plead a fact if:  (a) it is necessary to plead it to meet an express denial of the fact pleaded by another party; or  (b) failure to plead the fact may take another party by surprise.  (2) However, a party need not plead a fact if the burden of proving the fact does not lie on that party.  **See also FCR 16.08(b)**  In a pleading subsequent to a statement of claim, a party must expressly plead a matter of fact or point of law that if not expressly pleaded, might take another party by surprise if later pleaded. |
|  | **Consistency** | **R 14.18 Pleadings to be consistent as to allegations of fact**  (1) A party must not in any pleading make an allegation of fact, or raise any ground or claim, inconsistent with any of his or her previous pleadings.  (2) Subrule (1) does not affect the right of a party to make allegations of fact, or raise grounds or claims, in the alternative. | **FCR 16.06**  A party must not plead inconsistent allegations of fact or inconsistent grounds or claims except as alternatives. |
|  | **Specifying the relief or remedy sought**  The pleading should contain particulars of damages sought and the basis on which they have been worked out or estimated.  A failure to adequately particularise damages will expose you to a request for further particulars which will have time and cost implications. | **R 6.12 Contents of Statement of Claim and Summons**  (1) A statement of claim or summons must specifically state the relief claimed by the plaintiff.  (2) If the relief claimed requires the determination or direction of the court on any question, the statement of claim or summons must state the question.  (3) Costs referred to in section 59(1)(d) of the Legal Profession Uniform Law Application Act 2014 (costs payable for the enforcement of a lump sum debt or liquidated sum for damages) must be specifically claimed.  (4) Costs, other than those referred to in section 59(1)(d) of the Legal Profession Uniform Law Application Act 2014, need not be specifically claimed.  (5) Exemplary damages and aggravated compensatory damages must be specifically claimed.  (6) An order for interest up to judgment must be specifically claimed.  (7) In the case of a liquidated claim, a claim for an order for interest up to judgment:  (a) must specify the period or periods for which interest is claimed, and  (b) must specify the rate or rates at which interest is claimed.  (8) If no rate of interest is specified under subrule (7)(b), the rate at which interest is claimed is taken to be:  (a) in respect of the period from 1 January to 30 June in any year — the rate that is 4% above the cash rate last published by the Reserve Bank of Australia before that period commenced, and  (b) in respect of the period from 1 July to 31 December in any year — the rate that is 4% above the cash rate last published by the Reserve Bank of Australia before that period commenced.  **Damages**  If damages are sought, the pleading should provide particulars of those damages and the basis on which they are calculated. [see part 15 of UCPR for rules on particulars]  Note the requirement to provide certain particulars of a claim for damages for bodily injury: UCPR r 15.12. | **FCR 16.02(1)(f)**  A pleading must state the specific relief sought or claimed.  **FCR 16.02(4)**  A party is not entitled to seek any additional relief to the relief that is claimed in the originating application.  **See FCR 8.03(1)**  **FCR 2011 Div 16.4 [particulars]** |
|  | **Circumstances court may strike out pleadings** | **R 14.28**  (1) The court may at any stage of the proceedings order that the whole or any part of a pleading be struck out if the pleading:  (a) discloses no reasonable cause of action or defence or other case appropriate to the nature of the pleading, or  (b) has a tendency to cause prejudice, embarrassment or delay in the proceedings, or  (c) is otherwise an abuse of the process of the court.  (2) The court may receive evidence on the hearing of an application for an order under subrule (1). | **FCR 16.21(1)**  A party may apply to the Court for an order that all or part of a pleading be struck out on the ground that the pleading:  (a) contains scandalous material; or  (b) contains frivolous or vexatious material; or  (c) is evasive or ambiguous; or  (d) is likely to cause prejudice, embarrassment or delay in the proceeding; or  (e) fails to disclose a reasonable cause of action or defence or other case appropriate to the nature of the pleading; or  (f) is otherwise an abuse of the process of the Court. |
|  | **Particulars** | **R 15.1 Pleadings must give all necessary particulars**  (1) Subject to this part, a pleading must give such particulars of any claim, defence or other matter pleaded by the party as are necessary to enable the opposite party to identify the case that the pleading requires him or her to meet.  (2) Subrule (1) does not require a pleading to give particulars of any claim for interest up to judgment other than those required by rule 6.12(7).  **R 15.9 Manner of giving particulars**  The particulars to be given by a pleading must be set out in the pleading or, if that is inconvenient, must be set out in a separate document referred to in the pleading and filed with the pleading.  **R 15.10 Court may order particulars**   1. The court may order a party to file:    1. particulars of any claim, defence or other matter stated in the party’s pleading or in any affidavit relevant to the proceedings, or    2. a statement of the nature of the case on which the party relies, or    3. if the party claims damages, particulars relating to general or other damages. 2. Without limiting subrule (1), if a pleading alleges that a person had knowledge or notice of some fact, matter or thing, the court may order that party to file:    1. if the pleading alleges knowledge, particulars of the facts on which that party relies, and    2. if the pleading alleges notice, particulars of the notice.   **SPECIFIC PARTICULARS TO BE GIVEN INCLUDE:**  **Building, technical and other cases**  **R 15.2**   1. In proceedings involving a building, technical or other matter in which several items of a claim are in dispute as to liability or amount, or both, the party making the claim may, and if the court so orders must, prepare and file a “Scott Schedule” in the approved form. 2. A party on whom a Scott Schedule is served must complete and file the Schedule.   **Allegations of behaviour in the nature of fraud**  **R 15.3**  A pleading must give particulars of any fraud, misrepresentation, breach of trust, wilful default or undue influence on which the party relies.  **Allegations as to condition of mind**  **R 15.4**   1. A pleading that alleges any condition of mind must give particulars of the facts on which the party pleading relies. 2. In subrule (1), **condition of mind** includes any disorder or disability of mind, any malice and any fraudulent intention, but does not include knowledge. [Note: this is a wide term that not only includes physiological and psychological disorders or disabilities that significantly affects a person’s capacity to reason and understand but also includes states of mind, such as malice and intention. “Good faith” may be relied as affirmative defence, and if so, particulars are required.]   **Allegations of negligence and breach of statutory duty in common law claims in tort**  **R 15.5**   1. The particulars to be given by a pleading that alleges negligence (whether contributory or otherwise):    1. must state the facts and circumstances on which the party pleading relies as constituting the alleged negligent act or omission, and    2. if the party pleading alleges more than one negligent act or omission, must, so far as practicable, state separately the facts and circumstances on which the party relies in respect of each alleged negligent act or omission. 2. The particulars to be given by a pleading that alleges breach of statutory duty:    1. must state the facts and circumstances on which the party pleading relies as constituting the alleged breach of statutory duty, and    2. if the party pleading alleges more than one breach of statutory duty, must, so far as practicable, state separately the facts and circumstances on which the party relies in respect of each alleged breach of statutory duty.   **Claims for out of pocket expenses**  **Rule 15.6**  A party pleading who claims damages that include money that he or she has paid or is liable to pay must give particulars of that money.  **Claims for exemplary damages**  **Rule 15.7**  The particulars to be given by a pleading that claims exemplary damages must state the facts and circumstances on which the party pleading relies to establish that claim.  **Claims for aggravated damages**  **Rule 15.8**  The particulars to be given by a pleading that claims aggravated compensatory damages must state the facts and circumstances on which the party pleading relies to establish that claim.  **Particulars in relation to personal injury: see R 15.12**  **Particulars in relation to defamation: see R 15.19** | **FCR 16.41**  A party must state in a pleading, or in a document filed and served with the pleading, the necessary particulars of each claim, defence or other matter pleaded by the party.  **FCR 16.42 Fraud, misrepresentation etc**  A party who pleads fraud, misrepresentation, unconscionable conduct, breach of trust, wilful default or undue influence must state in the pleading particulars of the facts on which the party relies.  **FCR 16.43 Conditions of mind**   1. A party who pleads a condition of mind must state in the pleading particulars of the facts on which the party relies. 2. If a party pleads that another party ought to have known something, the party must give particulars of the facts and circumstances from which the other party ought to have acquired the knowledge. 3. In this rule:   **condition of mind**, for a party means:   * 1. knowledge; and   2. any disorder or disability of the party’s mind; and   3. any fraudulent intention of the party.   **FCR 16.44 Damages and exemplary damages**   1. A party who claims damages that includes money that the party has paid, or is liable to pay, must state in a pleading the amount of the money paid or liable to be paid. 2. If the party claims exemplary damages, the pleading must also state particulars of the facts on which the claim is based.   **FCR 16.45 Application for order for particulars** |
|  | **Defence** | **R 14.3**  (1) The time limited for a defendant to file a defence is 28 days after service on the defendant of the statement of claim or such other time as the court directs for the filing of a defence.  **Matters in the Commercial List or the Technology and Construction List – Supreme Court Equity Division Practice Note SC Eq 3**  **Para 10**  A defendant shall file and serve a List Response, in the Commercial List a “Commercial List Response” or in the Technology and Construction List a “Technology and Construction List Response”, setting out, in summary form in the form of Annexure 1:  10.1 the nature of the dispute 10.2 the issues which the defendant believes are likely to arise  10.3 the defendant's response to the plaintiff’s contentions including the legal grounds for opposition to the relief claimed in the Summons 10.4 the questions (if any) the defendant considers are appropriate to be referred to a referee for inquiry and report and  10.5 a statement as to whether the parties have attempted to mediate ***and*** whether the defendant is willing to proceed to mediation at an appropriate time.  **Para 11**  The defendant's contentions should:  11.1 avoid formality 11.2 admit or deny the allegations the plaintiff makes 11.3 in so far as they do not already appear state the allegations the defendant makes including adequate particulars of those allegations and  11.4 identify the legal grounds for opposition to the relief claimed in the Summons. | **FCR 16.32**  A respondent must file a defence, in accordance with Form 33, within 28 days after service of the statement of claim. |
|  | **Reply** | **R 14.4**  In proceedings in the Supreme Court or the District Court, a plaintiff may file a reply to a defence 14 days after service of the defence on the plaintiff. | **FCR 16.33**  If a respondent files a defence and the applicant wants to plead a matter of fact or point of law of the kind mentioned in rule 16.08, the applicant must file a reply, in accordance with Form 34, within 14 days after being served with the defence. |