

# Commencing and Defending a Writ or Originating Motion

## Self-Help Information Pack

October 2018



**Principal Registry**  
Supreme Court of Victoria  
Level 2, 436 Lonsdale Street  
Melbourne Victoria 3000  
W: [supremecourt.vic.gov.au](http://supremecourt.vic.gov.au)



# Contents

<b>1 Commencing and Defending a Legal Action</b>	<b>3</b>
1.1 Commencing a Legal Action	3
1.2 Defending a Writ	3
1.3 Preparing a Notice of Appearance	3
1.4 Notice of Defence	4
1.5 Typed/Printed Documents or Handwritten Ones?	4
<b>2 Types of Commencing Documents</b>	<b>4</b>
2.1 How Proceedings Commence	4
2.2 Writ or Originating Motion	4
2.3 Overarching Obligations	5
2.4 Statement of Claim	5
2.5 Notice of Appearance	5
2.6 Notice of Defence	5
2.7 Service of Writs, Originating Motions and Other Documents	5
2.8 Filing with the Supreme Court	6
<b>3 Legal Assistance</b>	<b>6</b>
3.1 Law Institute of Victoria	6
3.2 Victoria Legal Aid	7
3.3 Community Legal Centres	7
3.4 Justice Connect	7
3.5 Other Online Information	7
<b>4 General Information</b>	<b>7</b>
4.1 Self-represented Litigant Coordinator	7
4.2 Supreme Court Registry and the Court of Appeal Registry	8
4.3 Duty Barrister Scheme	8
4.4 Court Network	8
<b>5 Supreme Court Fees</b>	<b>9</b>
5.1 Fee Waiver Application	9

**In this information pack, you will find relevant information on the Supreme Court of Victoria and information on how to commence and defend a writ or originating motion in the Supreme Court of Victoria.**

Legislation, rules and all other information are up to date as at the time of making this pack. Please check the legislation and rules before you commence your action. If in doubt, contact the Self-represented Litigant Coordinator's office on 03 9603 9240 or by email to [unrepresented@supcourt.vic.gov.au](mailto:unrepresented@supcourt.vic.gov.au).

# 1 Commencing and Defending a Legal Action

Commencing and defending a legal action can be very costly in terms of both money and time spent. Generally, the party who loses will be made to pay the other side's legal costs, so it is best only to begin legal actions that you feel you have a good chance of winning. Prospective litigants will also have to familiarise themselves with the rules and legislation governing the Court's processes. As always, it is best to try to resolve your legal problem outside of the courts if possible. If you are going to represent yourself, make sure you are familiar with the rules and legislation of the Court.

## 1.1 Commencing a Legal Action

If you are making a new claim against someone the most important thing to think about is what your 'statement of claim' will contain. Your statement of claim contains your allegations against the defendant, as well as an explanation of the orders that you want the Court to make in response.

At the same time, you also need to pay attention to the procedural requirements of how you will present your statement of claim—either as a 'writ' or 'originating motion'.

## 1.2 Defending a Writ

If you have been served with a writ and wish to defend the action you must file a 'notice of appearance', usually within 10 days of being served. Thirty (30) days after filing your notice of appearance you will need to file and serve a 'defence'. You will need to think carefully about what your defence to your opponent's claim will be, and how your defence is likely to be received in the Court. Note, these time periods differ if you have been served with Court process interstate or overseas.

## 1.3 Preparing a Notice of Appearance

If you have been served with a writ or originating motion, the first step in responding is filing a 'notice of appearance'—Form 8A. If a notice of appearance is not filed the plaintiff may ask the Court to grant the judgment or orders they have requested without any further notice to you.

While any person duly authorised to act on a corporation's behalf under the Corporations Act may file an appearance on its behalf, corporations are required to be represented by a solicitor.

Your notice of appearance must generally be filed and served within 10 days after service of the writ, but this may change if you live outside of Victoria. To avoid confusion, the time limit for filing will be recorded on the writ or originating motion.

## 1.4 Notice of Defence

Where a proceeding is commenced by writ, a defendant who files a notice of appearance must file and serve a notice of defence within 30 days of filing their appearance. You need to think about what your defence to the statement of claim will be, and if your defence will hold up to scrutiny in a court of law.

## 1.5 Typed/Printed Documents or Handwritten Ones?

It is always best to submit typed/printed documents rather than handwritten ones. Be as concise as you can, and make the document look professional. These will be the main documents used in your court action—if they read well, they may give you a better chance of settling or winning your action.

## 1.6 Try to Settle the Matter

Parties should attempt to settle the matter outside of the courtroom to alleviate one party having to pay the legal bills of the other. The longer a matter is active the more legal costs will be building up.

# 2 Types of Commencing Documents

## 2.1 How Proceedings Commence

A proceeding in the Supreme Court shall be commenced by filing a writ (Form 5A) or an originating motion (Form 5B, 5C, 5D or 5E, 5F or 5G whichever is appropriate).

An interlocutory or other application in a proceeding is made by filing a summons (Form 45A or Form 46A).

Some appeals are commenced by filing or serving a notice of appeal.

A person who commences a proceeding by writ shall be called a 'plaintiff' and a person against whom a proceeding is commenced shall be called a 'defendant'.

## 2.2 Writ or Originating Motion

The mechanisms for commencing proceedings are governed by legislation and the Supreme Court Rules. These include writ, originating motion, affidavit and other originating process. Supreme Court Registry staff may be able to provide some procedural guidance, but the decision about the appropriate way to commence a particular proceeding must be made by you, as the plaintiff. Most proceedings start by filing a writ. The alternative, filing an 'originating motion', is used where there is no defendant to the proceeding or where an Act or the

Supreme Court Rules require. A proceeding may start by filing an originating motion where it is unlikely that there will be any substantial dispute of fact.

## 2.3 Overarching Obligations

Before starting a proceeding, you must have read and understood the overarching obligations set out in sections 16 to 26 of the Civil Procedure Act 2010 and the paramount duty set out in section 16 of the Act.

You will also be required to complete and file both a ‘Proper Basis Certificate’ and ‘Overarching Obligations Certificate’ certifying that you have complied with your pre-litigation duties and obligations under the Civil Procedure Act.

Many proceedings are commenced by filing a writ. A proceeding shall be commenced with an originating motion where there is no defendant to the proceeding or where any other Act or the Supreme Court Rules require. A proceeding may also be commenced by filing an originating motion where it is unlikely that there will be any substantial dispute of fact.

## 2.4 Statement of Claim

An originating motion or a writ shall specify the relief or remedy sought and the Act, if any, under which the claim is made. This is usually called the ‘statement of claim’ in a writ. The statement of claim should state accurately the nature of and cause of the claim, along with the relief or remedy sought in the proceeding. Where there is a question to be answered, the question shall be stated in the statement of claim.

## 2.5 Notice of Appearance

If you have been served with a writ or originating motion, you must first file a Notice of Appearance (Form 8A) if you wish to take a step in the proceeding. If a notice of appearance is not filed, the plaintiff may obtain the judgment or orders they have requested in the statement of claim without further notice to you.

A corporation may file an appearance by any person duly authorised by it to so act under the Corporations Act. A corporation is required to be represented by a solicitor (see Order 1.17 of the Supreme Court (General Civil Procedure) Rules 2015)

A notice of appearance must be filed and served usually within ten (10) days after service of the writ. If you live outside of Victoria, the time to file an appearance is stated in the writ or originating motion.

## 2.6 Defence

In a proceeding commenced by writ, a defendant who files a notice of appearance shall file and serve a defence within 30 days after filing the appearance.

## 2.7 Service of Writs, Originating Motions and Other Documents

There are rules concerning the serving of documents to the Court and to the other parties involved in your case that must be adhered to. Any document required or permitted to be served in a proceeding may be served personally,

but unless personal service is required by these rules or by order, it need not be served personally. Personal service of a document is effected by:

- a. leaving a copy of the document with the person to be served or
- b. if the person does not accept the copy, by putting the copy down in the person's presence and telling the person the nature of the document.

Where personal service of a document is not required, the document may be served by leaving the document at the proper address of the person on a day when the prothonotary's office is open or by posting the document. If you are serving on a solicitor, the document can be served by post, document exchange or by fax.

## 2.8 Filing with the Supreme Court

You should file your documents in RedCrest, the Supreme Court of Victoria's electronic filing system and serve the documents on the other parties.

If you are representing yourself, please make an appointment with the Self-represented Litigant Coordinator (see section 3.1 below) before you file or serve any documents.

Further information on how to file documents in RedCrest is available at [redcrest.com.au](http://redcrest.com.au) or can be obtained by contacting the Self-represented Litigant Coordinator.

## 3 Legal Assistance

Have you had any legal assistance in relation to your appeal? If you have a legal problem, it is always best to seek legal advice. If, however, you do not want or cannot afford legal advice from a solicitor, there are various places you can go to seek initial legal help.

Do some research in the area of law your matter is concerned with, and try to find out everything you can before you commence a legal action. The best place to start is to search the internet for your specific legal problem; there are various websites that can give you advice. A good place to start could be the websites listed in sections 3.1–3.5 below.

Before you start or continue court proceedings, we suggest you try seeking out one or more of the following resources if you do not want or cannot afford legal advice or representation.

### 3.1 Law Institute of Victoria

The Law Institute of Victoria (LIV) offers a legal referral service to members of the community who cannot afford legal representation. A litigant can complete a referral form for a free 30-minute consultation with a solicitor. To obtain a referral form, or to find out more about the LIV's legal referral service you can:

- visit the following webpage, [www.liv.asn.au/Referral](http://www.liv.asn.au/Referral), and follow the prompts
- phone 03 9607 9550 or
- contact the LIV via email at [referrals@liv.asn.au](mailto:referrals@liv.asn.au)

The LIV is located at 470 Bourke St, Melbourne. Their website can be found at [www.liv.asn.au](http://www.liv.asn.au).

## 3.2 Victoria Legal Aid

We encourage self-represented litigants seeking free legal advice to visit the Victoria Legal Aid (VLA) website, available at [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au), or contact their helpline on 1300 792 387. The VLA helpline gives advice on a range of civil and criminal issues.

## 3.3 Community Legal Centres

Community Legal Centres (CLCs) are independent community organisations that provide free legal services. There are two types of CLC:

- **generalist CLCs** provide services on a range of legal issues to people in their local area. There are generalist CLCs who may be able to assist with your legal issues across metropolitan Melbourne and throughout rural and regional Victoria
- **specialist CLCs** can help with particular areas of law (such as tenancy, consumer, employment, welfare, human rights, environmental issues and immigration law) or assist specific groups of people (such as young people, women, or people with mental illness or disabilities).

For a list of CLCs and their relevant contact details, or other general information, please visit their website at [www.fclc.org.au](http://www.fclc.org.au).

## 3.4 Justice Connect

The Justice Connect (formerly PILCH) helps individuals access pro bono assistance and coordinates a number of pro bono schemes in Victoria.

Justice Connect may be able to help you find pro bono legal assistance if:

- your matter has merit (a good chance of success)
- you are ineligible for legal aid
- you meet a means test and
- your matter has public interest.

You can find out more information about PILCH and getting pro bono help by visiting their website, available at [www.justiceconnect.org.au](http://www.justiceconnect.org.au), or by phoning 03 8636 4400.

## 3.5 Other Online Information

You can also browse free legal information at various websites, such as:

- The Law Handbook: Your Practical Guide to the Law in Victoria: [www.lawhandbook.org.au/handbook.php](http://www.lawhandbook.org.au/handbook.php).

# 4 General Information

## 4.1 Self-represented Litigant Coordinator

The Supreme Court has a Self-represented Litigant Coordinator who specialises in assisting litigants who, for various reasons, find themselves without legal representation. Just like any court registry officer, the Self-represented Litigant

Coordinator cannot give you legal advice relating to your particular case. However, the coordinator's office will be able to provide you with procedural and practical advice, as well as information about alternative dispute resolution measures and the availability of any free legal services. Self-help packs on various types of proceedings that can be commenced in the Supreme Court are available in hardcopy at the Supreme Court Registry, can be posted by request or can be found on the [www.supremecourt.vic.gov.au](http://www.supremecourt.vic.gov.au) website.

If you would like to make an appointment with the Self-represented Litigant Coordinator, please phone 03 9603 9240 and ask to make an appointment or send an email to [unrepresented@supcourt.vic.gov.au](mailto:unrepresented@supcourt.vic.gov.au). The coordinator's office is located in the Supreme Court Registry (see section 4.2).

## 4.2 Supreme Court Registry and the Court of Appeal Registry

The Supreme Court Registry and Court of Appeal Registry are located on Level 2, 436 Lonsdale St, Melbourne. They are open from 9.30am to 4pm Monday–Friday, except public holidays.

Contact details include:

- Supreme Court Registry phone: 03 9603 9300
- Court of Appeal Registry phone: 03 9603 9100
- Court of Appeal Registry email: [coaregistry@supcourt.vic.gov.au](mailto:coaregistry@supcourt.vic.gov.au)

The Supreme Court conducts hearings on the ground floor of 436 Lonsdale St, Melbourne for hearings before a judicial registrar or associate justice and at 210 William St, Melbourne for hearings before a Supreme Court justice.

The Court of Appeal hears its cases in three courtrooms situated at 459 Lonsdale Street, Melbourne. The Green Court is located on the ground floor, the Red Court is located on Level 1, and the Blue Court is located on Level 2.

## 4.3 Duty Barrister Scheme

The Duty Barrister Scheme of the Victorian Bar provides a roster of duty barristers to assist self-represented litigants in the Supreme Court and Court of Appeal on an ad hoc basis.

A pro bono (free of charge) barrister can only appear in court on your behalf to help you with the hearing; they cannot assist you with your paperwork or give legal advice before the hearing.

Persons seeking assistance are referred to the scheme via the Self-represented Litigant Coordinator or the Court of Appeal.

## 4.4 Court Network

Rather than provide legal advice, Court Network provides support and crisis assistance. Court Network is a unique non-legal court support, information and referral service operating throughout Victoria.

Court Network volunteers can provide support and information about going to court, be with you in person on your day in court, explain how the courts and legal systems operate (in person or by telephone) and refer you to other community services that can help you.

For more information, please visit their website at [www.courtnetwork.com.au](http://www.courtnetwork.com.au) or call 03 8306 6966.

## 5 Supreme Court Fees

See fees page on our website. [www.supremecourt.vic.gov.au](http://www.supremecourt.vic.gov.au) for a list of all current court fees.

### 5.1 Fee Waiver Application

#### Automatic Waiver

A fee may be automatically waived, if, at the time the fee is payable, the person or other entity –

- (a) is legally represented in the proceeding under a pro bono scheme administered by or on behalf of the Victorian Bar, the Law Institute of Victoria or Justice Connect;
- (b) is legally represented in the proceeding on a pro bono basis by a member of the Federation of Community Legal Centres;
- (c) has been granted legal aid for the proceeding;
- (d) is serving a sentence of imprisonment or is otherwise detained in a detention facility; or
- (e) is a person under the age of 18 years.

Fees for late filing, litigation searches, searching a file and photocopying cannot be waived under these categories and can only be waived on the grounds of financial hardship (in accordance with section 129(3) of the *Supreme Court Act 1986*).

#### Financial Hardship Waiver

The prothonotary has the power to waive the payment of court fees if the payment of the fee will cause financial hardship.

Section 129 (3) of the Supreme Court Act 1986 states the following:

The Prothonotary or Deputy Prothonotary at or for the place where a proceeding is to be heard may, having regard to the income, day to day living expenses, liabilities and assets of the person liable to pay a fee prescribed under subsection (1) (a), waive payment of that fee if, in his or her opinion, the payment of that fee by that person would cause him or her financial hardship and, in that case, that prescribed fee is not payable.

Fee waiver applications require a thorough examination of an individual's assets, liabilities, income and expenditures. The individual must provide evidence to support the details they state in the application. For example bank statements, pension card details (if applicable), details about any loans or shares, any assets currently owned and an individuals current employment status must all be made available.

#### Waiver Form

If you believe you satisfy the eligibility criteria for an automatic fee waiver or wish to apply based on financial hardship, you must complete and submit the [Application for Waiver of Court Fees](#) form for assessment. You must ensure that you attach the requested documentation to that form.

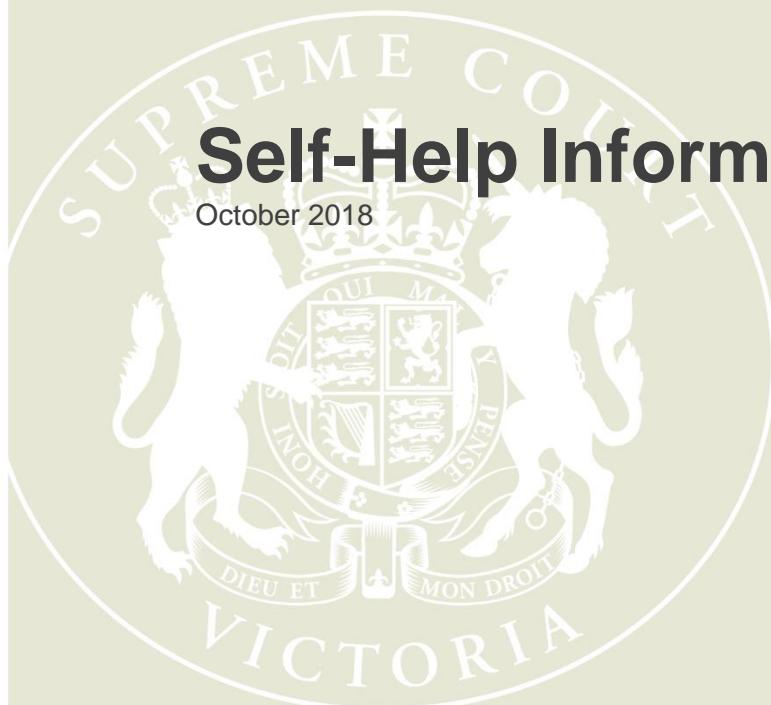
You may be requested to provide further documentary evidence to support your claim. If you are successful in obtaining a fee waiver, that will apply for any future fees which may be payable in the proceeding. Following the submission of that initial form and until the end of your court proceeding, you will need to notify the Court if your circumstances change.

# **Commencing and Defending a Writ or Originating Motion**

## **Rules and Forms**

### **Self-Help Information Pack**

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# Contents

**1 Supreme Court (General Civil Procedure) Rules 2015**      **12**

**2 Forms**      **22**

- Form 5A: Writ
- Form 5C: Originating Motion
- Form 8A - Notice of Appearance
- Defence

## In this information pack, you will find the relevant rules and forms to use.

Legislation, rules and all other information are up to date as at the time of making this pack. Please check the legislation and rules before you commence your action. If in doubt, contact the Self-represented Litigant Coordinator's office on 03 9603 9240 or by email to [unrepresented@supcourt.vic.gov.au](mailto:unrepresented@supcourt.vic.gov.au).

# 1 Supreme Court (General Civil Procedure) Rules 2015

## Order 4 – Process in the Court

### 4.01 How proceeding commenced

Except where otherwise provided by or under any Act or these Rules a proceeding in the Court shall be commenced by writ or by originating motion.

### 4.02 Interlocutory application

An interlocutory or other application in a proceeding made on notice to any person shall be by summons.

### 4.03 Names of parties

- (1) Except as provided by this Rule, a person who commences a proceeding shall be called a plaintiff and a person against whom a proceeding is commenced shall be called a defendant.
- (2) A person who commences a proceeding under Rule 32.03, 32.05, 37.02 or 75.06(3) shall be called an applicant and the person against whom the proceeding is commenced shall be called a respondent.
- (3) A person who commences a proceeding referred to in Rule 1.12 shall be called an applicant and the person against whom the proceeding is commenced shall be called a respondent.
- (4) A person who appeals shall be called an appellant and any other party to the appeal shall be called a respondent.
- (5) Where any appellant or respondent on an appeal is a party to a proceeding, the appellant or respondent shall be so identified in any document in the appeal by the expression "(Plaintiff)", "(Defendant)", "(Applicant)" or other description of party after the word "Appellant" or "Respondent" in the title of the document.

### 4.04 When writ required

- (1) Except as provided by Rules 1.12, 4.05 and 4.06 and Order 58, every proceeding shall be commenced by writ.

### 4.05 When originating motion required

- (1) Except as provided by Rules 1.12, 4.05 and 4.06 and Order 58, every proceeding shall be commenced by writ.

### 4.06 Optional commencement by originating motion

A proceeding may be commenced by originating motion where—

- (a) it is unlikely that there will be any substantial dispute of fact; and
- (b) for that reason it is appropriate that there be no pleadings or discovery.

#### **4.07 Continuance as writ of proceeding by originating motion**

- (1) Where a proceeding in which there is a defendant is commenced by originating motion, but ought by or under any Act or these Rules to have been commenced by writ, or might in the opinion of the Court more conveniently continue as if commenced by writ—
  - (a) the Court may order that the proceeding continue as if it had been commenced by writ and may, in particular, order that any affidavits already filed in the proceeding shall stand as pleadings, with or without liberty to any of the parties to add thereto or to apply for particulars thereof or that pleadings be served between the parties, and that the parties have discovery of each other; and
  - (b) by virtue of that order, the proceeding shall be taken to have been duly commenced for all purposes on the day the originating motion was filed.
- (2) Any reference in these Rules to a proceeding commenced by writ shall, unless the context otherwise requires, be taken to include a reference to a proceeding in respect of which an order has been made under paragraph (1).

#### **4.08 Urgent case**

In an urgent case, on the application of a person who intends to commence a proceeding and upon that person's undertaking to commence the proceeding within such time as the Court directs, the Court may make any order which the Court might make if the applicant had commenced the proceeding and the application were made in the proceeding.

### **Part 2—Certification requirements for proceedings**

#### **4.09 Overarching obligations certification**

For the purposes of section 41(2) of the **Civil Procedure Act 2010**, the overarching obligations certification shall be in Form 4A.

#### **4.09.1 Certification of prior overarching obligations certification**

- (1) For the purposes of section 41(5)(a)(i) of the **Civil Procedure Act 2010**, the specified period is the period of two years prior to the date of the certification under section 41(5)(b) of that Act.
- (2) For the purposes of section 41(5)(b) of the **Civil Procedure Act 2010**, the certification by a legal practitioner as to prior overarching obligations certification in relation to a party referred to in section 41(5)(a) of that Act shall be in Form 4AB.

#### **4.10 Proper basis certification**

- (1) For the purposes of section 42(1C) of the **Civil Procedure Act 2010**, processes in the Court for the registration or enforcement of judgments are exempt from the proper basis certification requirements under the **Civil Procedure Act 2010**.
- (2) For the purposes of section 42(2) of the **Civil Procedure Act 2010**, the proper basis certification shall be in Form 4B.

## Order 5—Content, filing and duration of originating process

### 5.01 Definitions

In this Order—

**originating process** means writ, originating motion or other process by which a proceeding is commenced;

**writ** does not include writ of habeas corpus.

### 5.02 Form of originating process

- (1) A writ shall be in Form 5A.
- (2) An originating motion shall be in Form 5B, 5C, 5D, 5E or 5G, whichever is appropriate.

### 5.03 Appearance

- (1) A writ and, unless there is no defendant, an originating motion shall be indorsed with a statement to the effect that, if the defendant does not file an appearance within the time stated in the originating process, the plaintiff may obtain judgment against the defendant without further notice.
- (2) Except as provided in paragraph (3), the time for appearance to be stated in the originating process shall be as provided by Rule 8.04.
- (3) An originating motion under Order 53 or Order 56 which names a defendant shall state that the defendant may file an appearance on or before the day specified in the originating motion for application to the Associate Judge.

### 5.04 Indorsement of claim on writ

- (1) A writ shall contain an indorsement of claim.
- (2) The indorsement of claim shall be—
  - (a) a statement of claim; or
  - (b) a statement sufficient to give with reasonable particularity notice of the nature of the claim and the cause thereof and of the relief or remedy sought in the proceeding.
- (3) An indorsement of claim on a writ shall constitute a statement of claim if, but only if, it is headed "Statement of Claim".

### 5.05 Indorsement of claim on motion

An originating motion shall specify—

- (a) the relief or remedy sought and the Act, if any, under which the claim is made; and
- (b) where it includes any question to be answered, the question shall be stated.

### 5.06 Indorsement as to capacity

Where a party sues or is sued in a representative capacity, the originating process shall be indorsed with a statement showing that capacity.

### 5.07 Address of parties

- (1) An originating process shall be indorsed with—

- (a) the address of the plaintiff, and, where the plaintiff sues in person and that address is outside Victoria, also an address within Victoria for service in accordance with Rule 6.06;
  - (b) the address of any defendant;
  - (c) where the plaintiff sues by a solicitor, the name or firm and the business address within Victoria of the solicitor and also, if the solicitor is the agent of another, the name or firm and the business address of the principal; and
  - (d) an email address for service on the plaintiff.
- (1.1) On the application of the plaintiff, the Prothonotary, at any time, may, for special reason, dispense with the requirement in paragraph (1)(d).
- (2) Where any originating process is indorsed with the name of a solicitor—
  - (a) the solicitor shall, on request in writing by a defendant, declare in writing whether the originating process was filed by the solicitor; and
  - (b) if the solicitor declares in writing that the originating process was not filed by the solicitor, the Court may stay the proceeding.

## 5.08 Place and mode of trial

- (1) A writ shall be indorsed with a statement of the place and mode of trial desired.
- (2) If the writ is not indorsed with a statement as to the place of trial, the plaintiff shall be taken to desire trial in Melbourne, and, if the writ is not indorsed with a statement as to the mode of trial, the plaintiff shall be taken to desire trial without a jury.
- (3) The plaintiff may indorse an originating motion with a statement of the place of trial desired, and, if the originating motion is not so indorsed, the plaintiff shall be taken to desire trial in Melbourne.

## 5.09 Stay on payment of costs

- (1) Where in a proceeding commenced by writ the plaintiff claims a debt only, the writ shall be indorsed with—
  - (a) a statement of the amount of the debt and the amount claimed for costs; and
  - (b) a statement that the proceeding will come to an end if, within the time limited for filing an appearance, the defendant pays the amounts so claimed to the plaintiff or the plaintiff's solicitor.
- (2) Where a writ is indorsed in accordance with paragraph (1), and the defendant pays the amounts claimed within the time limited for filing an appearance, then, except as provided by paragraph (3), the proceeding shall come to an end.
- (3) The defendant may, notwithstanding the payment, have the costs taxed, and, if more than one-sixth shall be disallowed, the plaintiff's solicitor shall pay the costs of taxation.

## 5.10 Petition

- A petition shall include at the end—
- (a) a statement of the person intended to be served, if any; or
  - (b) if no person is intended to be served, a statement to that effect.

## 5.11 Filing of originating process

- (1) A proceeding shall be commenced by filing the originating process.
- (1.1) An originating process is filed—
  - (a) when the Prothonotary receives the originating process and seals and dates it; or
  - (b) in the case of an originating process retrieved electronically by the Prothonotary pursuant to Part 2 of Order 28, when it is taken to be accepted for filing under Rule 28.10(3) or (4); or
  - (c) in the case of a proceeding to which Order 28A applies, when the originating process has been dealt with in accordance with Rule 28A.04.
- (2) Subject to Rule 28A.08 (in the case of an originating process filed in RedCrest), the originating process filed shall be signed by the solicitor for the plaintiff or by the plaintiff where the plaintiff sues in person, but need not be signed by the Prothonotary.
- (3) Subject to Rule 28.12, upon an originating process being filed or at any later time, the Prothonotary, on the request of the plaintiff, shall seal a sufficient number of copies of the originating process for service.
- (3.1) Paragraph (3) does not apply to an originating process filed in RedCrest
- (4) Subject to paragraph (4.1), in a proceeding commenced by originating motion, where the relief or remedy sought includes the construction of any instrument other than an Act—
  - (a) a copy of the instrument or, where it exceeds 25 pages, of the relevant parts shall be lodged with the Prothonotary at the time the originating motion is filed; and
  - (b) if the originating motion is filed electronically pursuant to Part 2 of Order 28, that Part (with any necessary modification) shall apply for the purpose of lodging the copy.
- (4.1) In a proceeding commenced by originating motion filed in RedCrest, where the relief or remedy sought includes the construction of any instrument other than an Act, a copy of the instrument or, if it exceeds 25 pages, of the relevant parts shall be filed in RedCrest together with the originating motion.
- (5) If the Prothonotary's office is closed and the plaintiff produces an originating process to the Court and undertakes that the originating process will be lodged in the Prothonotary's office on the day the office is next open, or, where appropriate, undertakes that it will be uploaded into RedCrest when it is next possible to do so—
  - (a) the Court may initial the originating process and such number of copies as are required for service; and
  - (b) upon such initialling the originating process shall be taken to have been filed.

## **5.12 Duration and renewal of originating process**

- (1) A writ or an originating motion shall be valid for service for one year after the day it is filed.
- (2) Where a writ or originating motion has not been served on a defendant, the Court may, from time to time, by order extend the period of validity for such period from the day of the order as the Court directs, being not more than one year from that day.
- (3) An order may be made under paragraph (2) before or after expiry.
- (4) The plaintiff may apply under paragraph (2) without notice to the defendant, but if the Court considers that the defendant ought to be heard, the Court shall—

- (a) adjourn the further hearing; and
  - (b) direct the plaintiff to give notice to the defendant by summons or otherwise.
- (5) Where an order is made under paragraph (2), the Prothonotary shall stamp any sealed copy originating process for service with the date of the order and the extended date of validity.

## Order 6—Service

### 6.01 When personal service necessary

Any document required or permitted to be served in a proceeding may be served personally, but unless personal service is required by these Rules or by order, need not be served personally.

### 6.02 Personal service of originating process

- (1) Except where otherwise provided by or under any Act or these Rules, originating process shall be served personally on each defendant.
- (2) Where a defendant to any originating process files an unconditional appearance, the originating process shall be taken to have been served on the defendant personally on the day on which the appearance is filed or on such earlier day as may be proved.

### 6.03 How personal service effected

- (1) Personal service of a document is effected by—
  - (a) leaving a copy of the document with the person to be served; or
  - (b) if the person does not accept the copy, by putting the copy down in the person's presence and telling the person the nature of the document.
- (2) Subject to paragraph (2.1), in the case of originating process, the copy for service shall be sealed in accordance with Rule 5.11.
  - (2.1) In the case of originating process filed in RedCrest under Order 28A, the copy for service shall be a copy of the originating process as sealed in accordance with that order.
- (3) To effect personal service it shall not be necessary to show the original document.

### 6.04 Service on particular defendants

Personal service of a document may be effected by serving the document in accordance with Rule 6.03, in the case of—

- (a) a corporation –
  - (i) on the mayor, chairman, president or other head officer of the corporation; or
  - (ii) on the town clerk, clerk, treasurer, manager, secretary or other similar officer of the corporation;
- (b) a minor, on a parent or guardian of the minor, and, if there is none, on the person with whom the minor resides or in whose
- (c) a handicapped person as defined in Rule 15.01, on—
  - (i) the person who, in accordance with Rule 15.03(2), would be entitled to be litigation guardian in any proceeding to which the handicapped person was party; or

- (ii) if there is no such person, the person with whom the handicapped person resides or in whose care the handicapped person is;
- (d) the Crown in right of the Commonwealth or the Commonwealth, on the Attorney-General of the Commonwealth or upon a person appointed by the Attorney-General to receive service in accordance with section 63 of the Judiciary Act 1903 of the Commonwealth;
- (e) the Crown in right of Victoria or the State of Victoria, on the Victorian Government Solicitor.

## **6.05 Motor car death or bodily injury**

- (1) In any proceeding in which the plaintiff claims damages in respect of death or bodily injury caused by or arising out of the use of a motor car, originating process shall not be taken to have been served on the defendant unless a copy of the originating process is served on the defendant in accordance with these Rules and also on the Transport Accident Commission.
- (2) Where in a proceeding to which paragraph (1) applies a copy of the originating process has been duly served on the defendant but not on the Transport Accident Commission, the Court, notwithstanding paragraph (1), may order that the originating process be taken to have been served on the defendant.

## **6.06 Address for service**

- (1) The address for service of a plaintiff shall be—
  - (a) where the plaintiff sues by a solicitor—
    - (i) the business address of that solicitor indorsed on the originating process; or
    - (ii) where the solicitor acts by an agent, the business address of the agent;
  - (b) where the plaintiff sues in person, the plaintiff's address in Victoria indorsed on the originating process.
- (2) The address for service of a defendant shall be as provided in Rule 8.06.

### **6.06.1 Solicitor changing address**

- (1) Where the business address of a solicitor or of the agent of a solicitor given in accordance with Rule 6.06 or 8.06 is changed, the solicitor shall forthwith file notice of the change and serve a copy of the notice on every party.
- (2) Upon the filing and service of notice in accordance with paragraph (1), the address for service of the party for whom the solicitor acts shall be the new business address of the solicitor or, if the business address of the agent of the solicitor is changed, the new business address of the agent, stated in the notice.
- (3) If a solicitor required under paragraph (1) to file and serve notice does not do so, a document not required to be served personally on the party for whom the solicitor acts may, until notice is filed and served, be served on the party either at—
  - (a) the address given in accordance with Rule 6.06; or
  - (b) the new business address of the solicitor or of the agent, as the case may be.

### **6.06.2 Email address for service**

- (1) Subject to Rule 5.07(1.1), the email address for service indorsed on the originating process shall be the email address for service of a plaintiff.
- (2) The email address for service of a defendant shall be provided as in Rule 8.06.

### **6.06.3 Party changing email address for service**

- (1) If a party's email address for service is changed, the party shall forthwith file notice of the change and serve a copy of the notice on every other party.
- (2) Upon the filing and service of a notice in accordance with paragraph (1), the email address for service of the party shall be the new email address stated in the notice.

### **6.07 How ordinary service effected**

- (1) Where personal service of a document is not required, the document may be served—
  - (a) by leaving the document at the proper address of the person to be served on any day on which the Prothonotary's office is open;
  - (b) by posting the document to the person to be served at the person's proper address;
  - (c) where provision is made by or under any Act for service of a document on a corporation, by serving the document in accordance with that provision;
  - (d) where the solicitor for a party has facilities for the reception of documents in an exchange box in a document exchange, by leaving the document in that exchange box or in another exchange box for transmission to that exchange box;
  - (e) where the solicitor for a party has facilities for the reception by telephone transmission of a facsimile of a document, by telephone transmission of the document in accordance with paragraph (2.1); or
  - (f) by emailing the document to the person's email address in accordance with paragraph (2.2).
- (2) For the purpose of paragraph (1), the proper address of a person shall be the address for service of that person in the proceeding, but if at the time service is to be effected that person has no address for service, the proper address shall be—
  - (a) in the case of an individual, the individual's usual or last known place of residence or of business;
  - (b) in the case of individuals suing or being sued in the name of a firm, the principal or last known place of business of the firm;
  - (c) in the case of a corporation, the registered or principal office of the corporation.
- (2.1) A document that is served by telephone transmission shall include a cover page stating—
  - (a) the name, address and telephone number of the sender;
  - (b) the name of the solicitor to be served;
  - (c) the date and time of transmission;
  - (d) the total number of pages transmitted, including the cover page;
  - (e) the telephone number from which the document is transmitted;
  - (f) the name and telephone number of a person to contact in the event of any problem in transmission of the document;
  - (g) that the transmission is by way of service under Rule 6.07(1)(e).
- (2.2) For the purposes of paragraph (1)(f), but subject to paragraphs (2.3) and (2.4), a document may be served either by attaching it to an email sent to the person's

email address for service or by providing, in an email sent to the person's email address for service, an operative hyperlink to the document, and in either case the email shall state—

- (a) the name, address, telephone number and email address of the sender;
  - (b) the name of the person to be served;
  - (c) the title and court file number of the proceeding to which the email relates;
  - (d) the name and number of pages of each document served by means of the email; and
  - (e) that the email is by way of service under Rule 6.07(1)(f).
- (2.3) The file name of the document being served shall be substantially similar to the name of the document as stated in the email pursuant to Rule 6.07(2.2)(d).
- (2.4) Unless the person served or to be served consents, a document may not be served by being attached to an email if the total size of all of the attachments to the email is more than 10 megabytes.
- (3) Where no person can be found at the address for service of a plaintiff who sues or a defendant who has appeared in person, any document in the proceeding may be served on that plaintiff or defendant by filing it.
- (3.1) A party who serves a document by filing in accordance with paragraph (3) shall indorse upon a backsheet or on the back of the last sheet a statement that the document is filed as such service.
- (4) Service in accordance with paragraph (1)(a) or (1)(e) which is effected after 4.00 p.m. shall, for the purpose of calculating any period of time after that service, be taken to have been effected on the next day the Prothonotary's office is open.
- (5) The day of service of a document shall, where the document—
  - (a) is sent by post in accordance with paragraph (1)(b)—be taken to be the day it would be delivered in the normal course of post;
  - (b) is delivered into the facilities of a document exchange in accordance with paragraph (1)(d)—be taken to be the day following the day upon which it is so delivered or, where a document is delivered on a Friday, be taken to be the following Monday—or on such other day as may be proved.
- (6) In this Rule, **document exchange** means any document exchange for the time being approved by the Chief Justice on the recommendation of the Council of the Law Institute of Victoria.

## 6.08 Identity of person served

For the purposes of proof of service, evidence of a statement by a person of that person's identity or that the person holds some office is evidence of that person's identity or that the person holds that office.

## 6.09 Acceptance of service by solicitor

- (1) This Rule applies to service of a document whether or not required to be served personally.
- (2) If a solicitor makes a note on a copy of a document that service of the document is accepted on behalf of a person, the document shall be taken to have been served on the person on the day the solicitor made the note, unless the solicitor is shown not to have had authority to accept service.
- (3) Paragraph (2) does not limit other service of the document on the person or proof of such service.

**FORM 5A**

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE**

**No. S Cl**

**B E T W E E N**

Plaintiff

-and-

Defendant

**WRIT**

---

Date of Document:	Solicitors Code:
Filed on behalf of:	DX:
Prepared by:	Telephone:
	Ref:
	Email:

---

**TO: THE DEFENDANT**

**TAKE NOTICE** that this proceeding has been brought against you by the plaintiff for the claim set out in this writ.

**IF YOU INTEND TO DEFEND** the proceeding, or if you have a claim against the plaintiff which you wish to have taken into account at the trial, **YOU MUST GIVE NOTICE** of your intention by filing an appearance within the proper time for appearance stated below.

**YOU OR YOUR SOLICITOR** may file the appearance. An appearance is filed by—

- (a) filing a "Notice of Appearance" in the Prothonotary's office, 436 Lonsdale Street, Melbourne, or, where the writ has been filed in the office of a Deputy Prothonotary, in the office of that Deputy Prothonotary; and
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this writ.

**IF YOU FAIL** to file an appearance within the proper time, the plaintiff may **OBTAIN JUDGMENT AGAINST YOU** on the claim without further notice.

**\*THE PROPER TIME TO FILE AN APPEARANCE** is as follows—

- (a) where you are served with the writ in Victoria, within 10 days after service;
- (b) where you are served with the writ out of Victoria and in another part of Australia, within 21 days after service;
- (c) where you are served with the writ in Papua New Guinea, within 28 days after service;
- (d) where you are served with the writ in New Zealand under Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed;
- (e) in any other case, within 42 days after service of the writ.

~~IF the plaintiff claims a debt only and you pay that debt, namely, \$ and \$ for legal costs to the plaintiff or the plaintiff's solicitor within the proper time for appearance, this proceeding will come to an end. Notwithstanding the payment you may have the costs taxed by the Court.~~

**FILED**

Prothonotary

**THIS WRIT** is to be served within one year from the date it is filed or within such further period as the Court orders.

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE**

**No. S Cl**

**B E T W E E N**

Plaintiff

-and-

Defendant

**STATEMENT OF CLAIM**

---

Date of Document:

Solicitors Code:

Filed on behalf of:

DX:

Prepared by:

Telephone:

Ref:

Email:

---

1. Place of trial: Melbourne
2. Mode of trial:
3. This writ was filed—
  - (a) by the plaintiff in person;
  - (b) for the plaintiff by solicitor, of
  - (c) for the plaintiff by solicitor, of agent for solicitor, of
4. The address of the plaintiff is:
5. The address for service of the plaintiff is:
6. The email address for service of the plaintiff is:
7. The address of the defendant is:

**FORM 5C**

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE**

**No. S CI**

**B E T W E E N**

Plaintiff

-and-

Defendant

**ORIGINATING MOTION BETWEEN PARTIES**

---

Date of Document:	Solicitors Code:
Filed on behalf of:	DX:
Prepared by:	Telephone:
	Ref:
	Email:

---

**TO: THE DEFENDANT**

**TAKE NOTICE** that this proceeding by originating motion has been brought against you by the plaintiff for the relief or remedy set out below.

**ALSO TAKE NOTICE** that the plaintiff cannot continue with the proceeding except by order of the Court. You will be given notice by summons of any application for the order and until the summons is served you are not required to take any step in the proceeding.

**IF YOU INTEND TO DEFEND** the proceeding you must attend before the Court at the time and place named in the summons served with this originating motion.

**FILED**

Prothonotary

**THIS ORIGINATING MOTION** is to be served within one year from the date it is filed or within such further period as the Court orders.

### **RELIEF OR REMEDY SOUGHT**

*[Specify the relief or remedy sought and the Act, if any, under which the claim is made, and, where it includes the answer to any question, state the question.]*

1. Place of trial: Melbourne
2. This originating motion was filed—
  - (a) by the plaintiff in person;
  - (b) for the plaintiff by solicitor, of
  - (c) for the plaintiff by solicitor, of agent for solicitor, of
3. The address of the plaintiff is:
4. The address for service of the plaintiff is:
5. The email address for service of the plaintiff is:
6. The address of the defendant is:

## **FORM 8A**

# IN THE SUPREME COURT OF VICTORIA AT MELBOURNE

No. S CI

## BETWEEN

## Plaintiff

-and-

## Defendant

## **NOTICE OF APPEARANCE**

Date of Document:

## Solicitors Code:

Filed on behalf of:

DX:

Prepared by:

Telephone:

Ref:

Email:

**FILE** an appearance for *[full name of defendant]* the abovenamed defendant.

Dated:

Signed by

The address of the defendant is:

The address of the defendant within Victoria for service is:

The email address for service of the defendant is:

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE**

No. S CI

## BETWEEN

## Plaintiff

-and-

## Defendant

DEFENCE

Date of Document:

## Solicitors Code:

Filed on behalf of:

DX:

Prepared by:

Telephone:

Ref:

Email:

---

Signed by