

# Form 13A – Complaint

Rule 13.02(1)

## COMPLAINT

IN THE MAGISTRATES' COURT  
OF VICTORIA AT MELBOURNE  
INDUSTRIAL DIVISION

Court Number

BETWEEN

Plaintiff

OF

and

Defendant

OF

### TO THE DEFENDANT

TAKE NOTICE that this COMPLAINT has been brought against you on the basis set out in the pages attached.

If you intend to defend this complaint you must complete a response within 14 days after service on you of this complaint and give it to —

(a) the plaintiff whose address for service is set out in this Form;

AND

(b) the Registrar of the Magistrates' Court of Victoria at Melbourne.

You should have received a blank copy of the response when served with this complaint.

If you have a claim against the plaintiff, you may counterclaim against the plaintiff in the proceeding with leave of the Court. If you intend to counterclaim you must give notice of intention to counterclaim in the response form.

If you submit a response the Court will write to you and tell you the date you need to attend a pre-hearing conference.

**IF YOU WANT TO DEFEND THE COMPLAINT** but fail to submit a response within 14 days after service on you of the complaint the plaintiff may be able to obtain an order against you for the amount claimed together with costs without further notice to you.

**IF YOU DO NOT WANT TO DEFEND THE COMPLAINT** but you pay the amount of \$         and costs of \$         to the plaintiff, plaintiff's Australian lawyer or other named representative within 14 days of service on you of the Complaint you may avoid further costs.

Section 570 of the Fair Work Act 2009 of the Commonwealth makes allowances for a costs order to be awarded in limited circumstances.

### **PLAINTIFF DETAILS**

Name:

Date of Birth:                   *(only provide date of birth if under 21 years of age)*

Address:

Address for service of court documents: *(if different from above)*

Phone:

Mobile:

Email address:

If the plaintiff is an organisation:

Name:

Trading as:

ABN: *(if an individual business):*

ACN: *(if a company):*

Address:

Phone: *(telephone during business hours):*

Email address:

### PLAINTIFF REPRESENTATIVE DETAILS

Who is representing you?

Union                       Australian lawyer                       Other

Name of representative:

Representative contact person details:

Name:

Address:

Phone: (*telephone during business hours*)

Mobile:

Email address:

### DEFENDANT DETAILS

You may sue your defendant in ONE of the following capacities. Please provide details for ONE applicable option below:

Individual                       Individual business                       Company

Name:

Trading as:

ABN:                                      (*only if complaint is against a defendant that is an individual business*)

ACN:                                      (*only if complaint is against a defendant that is a company*)

Address:

Email address:

If the complaint is against a company, the address is the company's registered office (as per ASIC search).

### PLAINTIFF EMPLOYMENT DETAILS

Job title:

Date employment commenced:

Are you still employed by the defendant?

Yes                       No

Date employment ended:

### NATURE OF EMPLOYMENT

On what basis are or were you employed?

- Full time    Part time    Casual    Fixed term    Seasonal  
 Outworker

Did you work regular hours?

- Yes

If Yes, please indicate your start and finish times in the table below

- No

If No, how many hours per week did you work?                      (*provide average or range*)

<i>Day</i>	<i>Start time</i>	<i>Finish time</i>
Monday	am/pm	am/pm
Tuesday	am/pm	am/pm
Wednesday	am/pm	am/pm
Thursday	am/pm	am/pm
Friday	am/pm	am/pm
Saturday	am/pm	am/pm
Sunday	am/pm	am/pm

What is your applicable Modern Award or Enterprise Agreement?

What is your classification level under the applicable Modern Award or Enterprise Agreement?

Do you have a written contract of employment?

- Yes       No

### COMPLAINT TYPE

The claim is made because the defendant has breached (*select each one that applies*):

- A term of an award (*specify name of award*)

- A term of an Enterprise Agreement (or transitional agreement)  
(*specify name of agreement*)

- A term of an Australian Workplace Agreement (*specify the relevant terms*)
- A term of the National Employment Standards (*specify the relevant terms*)
- A term of an order of the Fair Work Commission (*specify the term of the order*)
- The Fair Work Act 2009 of the Commonwealth (*specify relevant section*)
- The Fair Work Regulations 2009 of the Commonwealth (*specify relevant regulation*)
- The **Long Service Leave Act 2018**
- The **Occupational Health and Safety Act 2004**
- The **Outworkers (Improved Protection) Act 2003**
- The **Public Holidays Act 1993**
- The **Workplace Injury Rehabilitation and Compensation Act 2013**
- Other (*specify*)

### BREACHES

Please indicate which of the following are applicable and the amounts you are claiming (*select each one that applies*):

- |   |    |
|---|----|
| <input type="checkbox"/> Failure to pay wages:  | \$ |
| <input type="checkbox"/> Failure to pay commission:   | \$ |
| <input type="checkbox"/> Failure to pay entitlements ( <i>e.g., sick leave, annual leave or carers leave</i> ): | \$ |
| <input type="checkbox"/> Failure to pay penalty rates:  | \$ |
| <input type="checkbox"/> Failure to pay allowances  | \$ |
| <input type="checkbox"/> Failure to pay National Employment Standards (NES) or termination of employment:       | \$ |
| <input type="checkbox"/> Unauthorised deduction from wages:   | \$ |
| <input type="checkbox"/> Other ( <i>specify</i> )   | \$ |
| Total of all breaches:  | \$ |

## NATURE OF BREACHES

Briefly describe each breach you have selected above. Be clear and include enough information to enable the defendant to understand the claim. If claiming money, you must include details of each amount claimed (*attach further sheets if you require more space*).

## ORDERS SOUGHT

The plaintiff seeks orders that the defendant do either or both of the following:

- Pay monies in the sum of the breaches claimed: \$ [insert amount]
- Impose a penalty (*this is not available if the small claims procedure under the Fair Work Act 2009 of the Commonwealth is elected*)  Yes  No
- Do something else (*please specify*):

## SMALL CLAIMS PROCEDURE

Please note if your Complaint is brought under the Fair Work Act 2009 of the Commonwealth and the total amount sought is \$20 000 or less, your matter can, if you elect, be heard as a small claim and simplified procedures will apply.

I elect to have this matter heard as a small claim under section 548 of the Fair Work Act 2009 of the Commonwealth.

The small claims procedure does not allow a party to be represented by a legal practitioner unless the court grants permission.

Do you intend to seek to be represented?

- Yes  No

If you intend to seek leave to be represented, please provide the representative details in the "Plaintiff Representative Details" section above.

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Signed by the plaintiff or plaintiff's representative

Name:

Date: