

Instructions for completion

APPLICATION – Fair Work Division

A small claim proceeding under the Fair Work Act 2009

If your claim is for \$20,000 or less and involves a breach of one of the National Employment Standards, a term of a Modern Award, an enterprise agreement, a workplace determination, a safety net contractual entitlement, a national minimum wage order, an equal remuneration order, or another Fair Work Australia order, you can elect to use the small claims procedure of this Court. You can also use the small claim procedure in respect of breaches of *Workplace Relations Act 1996* instruments which are “transitional instruments” under schedule 3 to the *Fair Work (Transitional Provisions and Consequential Provisions) Act 2009* (see schedule 16 to that Act) where the breaches occurred on or after 1 July 2009.

In a matter which is dealt with by the Court's small claims procedures:

- (a) the Federal Magistrate is not bound by any rules of evidence;
- (b) the Federal Magistrate may correct any mistake in the application;
- (c) the Federal Magistrate can act in an informal manner and without regard to legal form and technicalities; and
- (d) neither party can be represented by a lawyer unless the Federal Magistrate permits this.

If you elect to have your claim dealt with using the small claims procedure you need to tick the relevant box in the application.

1. This form is used for commencing a proceeding in the Fair Work Division of the Federal Magistrates Court.
2. You must complete address for service details in the footer on page 1. All correspondence concerning the application will be sent to the mailing address inserted and all documents in the proceedings will be deemed to have been served on you if posted to that address. If your address details change, you must file a notice of address for service within seven days, and serve a copy on all other parties; see Rule 6.02.
3. You must insert the name/s and address/es of each respondent in the ‘Important Notice to Respondent/s’ box at the end of the form.
4. Applications in the Fair Work Division of the Federal Magistrates Court alleging unlawful termination of employment or contravention of general protections under the *Fair Work Act 2009* and applications using the Court’s small claims procedures must be accompanied by one of the Fair Work Division claim forms
5. In cases where an accompanying claim form is not required, the grounds of this application must be set out in the application and must explain briefly the basis on which the orders are sought. The evidence supporting such applications must be provided by affidavit/s filed with this application; see Subrule 4.05(1). The affidavit must include a full narrative of all facts, matters and circumstances, including documentary evidence, upon which you rely. Alternatively in such cases, you may file a pleading by way of a statement of claim or points of claim. Such a pleading should comply with Part 16 of the *Federal Court Rules 2011*. It

should identify in summary form the material facts on which you rely, but not the evidence by which those facts are to be proved. All necessary particulars must be given, including any claim of fraud, misrepresentation, breach of trust, wilful default, undue influence and damages.

6. Unless the Court orders otherwise, an application and other documents filed with it may not be served less than seven days before the day fixed for the hearing of the application; see Rule 6.19. Service must be by hand, unless the Rules allow otherwise or the Court otherwise orders. The application and other documents must be served on each party and the person against whom orders are sought if that person is not a party.
7. If your application is for interlocutory, interim or procedural orders in a proceeding which has already commenced, you should use the Application in a Case form.
8. If you are completing this application by hand and you need more space in any section, attach extra page/s as required.
9. Once complete, you need to file the original and a copy of this application for each party to the matter with the court registry. The Court will keep the original and return the sealed copies to you. You will need to serve a copy on the other party or parties and keep a copy for your records.

Remove these instruction sheets before filing

Final orders sought by applicant (select one box only)

- The orders sought by the applicant are set out in the claim filed with this application
- A claim has not been filed with this application and the orders sought by the applicant are:

(This option is only available if rules 45.05, 45.09 or 45.14 apply to the proceeding. If so, state precisely each order sought by way of final relief)

- 1.
- 2.
- 3.

Grounds of application (select one box only)

- The grounds of the application are set out in the claim filed with this application
- A claim has not been filed with this application and the grounds of the application are:

(This option is only available if rules 45.05, 45.09 or 45.14 apply to the proceeding. If so state briefly the grounds of the application)

- 1.
- 2.
- 3.

Interlocutory, interim or procedural orders sought by applicant

(complete only if interlocutory, interim or procedural orders are sought)

- 1.
- 2.
- 3.

Signature of applicant, lawyer or authorised representative

Signed by (print name)

- the applicant
- lawyer for the applicant
- authorised representative of the applicant

Date:/...../.....

IMPORTANT NOTICE TO RESPONDENT/S

To the respondent (name):

of (address):

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** If there are two or more respondents, provide details*

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You should seek legal advice about this application. You may file a response. If you file a response, you must file and serve the response within 14 days of receiving this application. You may also need to file an affidavit; see Rule 4.05 of the *Federal Magistrates Court Rules 2001*. If you do not file a response, you must file and serve a notice of address for service before the hearing.

Form approved by the Chief Federal Magistrate for general federal law proceedings pursuant to Subrule 2.04(1A) for the purpose of Subrule 4.01(1) – November 2011