**FEDERAL MAGISTRATES COURT OF AUSTRALIA**

Telephone: (03) 8600 4450
Facsimile: (03) 8600 4493

Owen Dixon Commonwealth Law Courts Building
305 William Street
Melbourne VIC 3000

**MEMORANDUM**

| | |
|---|---|
| TO | Law Societies, Bar Associations and Legal Aid Commissions |
| CC | John Mathieson, Angela Josan, Stewart Fenwick, Adele Carr, |
| FROM | Adele Byrne |
| DATE | 11 March 2011 |
| SUBJECT | Migration Applications by offshore applicants and changes to Federal Magistrates Court forms |

## Migration Application

The current *Application – Migration Act* has been amended to facilitate applications by off-shore claimants

The new form is attached and will be available on the Federal Magistrates Court website here: http://www.fmc.gov.au/forms/html/migration_application.html.

Also attached is the current *Application – Migration Act* marked to identify the changes made.

These matters will be listed before **Offshore Refugee Claimants Panel members** (see below):

New South Wales: Federal Magistrate Nicholls (panel co-ordinator)
Federal Magistrate Raphael
Federal Magistrate Driver
Federal Magistrate Smith
Federal Magistrate Cameron
Federal Magistrate Lucev

Victoria: Federal Magistrate Riethmuller
Federal Magistrate Riley
Federal Magistrate Burchardt

South Australia: Federal Magistrate Brown

Western Australia: Federal Magistrate Lucev

Northern Territory: Federal Magistrate Lucev

Queensland: Federal Magistrate Jarrett

For any applications filed in Tasmania or the Australian Capital Territory please contact the relevant registry for listing arrangements.

## General Application

The current *Application – General Federal Law* has been amended to facilitate election of small claims proceedings - consumer credit.

The new form is attached and will be available on the Federal Magistrates Court website here: http://www.fmc.gov.au/forms/html/application.html.

Also attached is the current *Application – General Federal Law* marked to identify the changes made.

## Fair Work Application

The current *Application – Fair Work Division* has been amended in relation to small claims proceedings.

The new form is attached and will be available on the Federal Magistrates Court website here: http://www.fmc.gov.au/forms/html/workplace.html.

Also attached is the current *Application – Fair Work Division* marked to identify the changes made.

## Notice of Request to Inspect

The current *Notice of Request to Inspect* has been amended to clarify processes for client service staff.

The new form is attached and will be available on the Federal Magistrates Court website here: http://www.fmc.gov.au/forms/html/subpoena.html#notice

Also attached is the current *Notice of Request to Inspect* marked to identify the changes made.

Yours sincerely,

Adele Byrne
Principal Registrar

# Instructions for completion

## APPLICATION – Migration Act

1. This form is used for commencing a proceeding under s.476 of the Migration Act 1958 (Cth), including where an extension of time is also sought under s.477.
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. Each ground of the application must identify a jurisdictional error by reason of which it is claimed that the migration decision under review is not a 'privative clause decision' within the meaning given by subsection 474 (2) of the Migration Act 1958. Particulars of each ground must be provided which are sufficient to allow the Court to understand how each ground relates to the decision, the reasons for decision, the circumstances of the decision, or the procedures concerned with the making of the decision, as the case may be.
4. An application by an offshore entry person should include details of any recommendation of an Independent Protection Assessment Reviewer which is challenged, and should specify the ground/s for contending that the recommendation was not made in accordance with law.
5. The applicant must file one or more affidavits attaching a copy of the decision and any statement of reasons, and including any other evidence relied upon. If an extension of time is sought, the affidavit must include evidence explaining the delay and showing why the applicant considers that it is necessary in the interests of the administration of justice for the Court to grant an extension (see section 477(2) of the Migration Act).
6. If the applicant is unable to raise an arguable case for the relief claimed, the application may be dismissed under Rule 44.12 without a final hearing.
7. If your application is for an extension of time or other interlocutory, interim or procedural orders in a proceeding which has already commenced, you should use the Application in a Case form.
8. 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 may be served by delivering them to the Department of Immigration and Citizenship.
9. If you are completing this application by hand and you need more space in any section, attach extra page/s as required.
10. 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 this instruction sheet before filing

**IN THE FEDERAL MAGISTRATES COURT OF AUSTRALIA**

**REGISTRY:** .....

File number

.....
Applicant(s)

Pseudonym(s) for Applicant(s)
[Registry use only]

**MINISTER FOR IMMIGRATION AND CITIZENSHIP**
First Respondent

**REFUGEE REVIEW TRIBUNAL**[or]
**MIGRATION REVIEW TRIBUNAL**[or]
**INDEPENDENT PROTECTION ASSESSMENT REVIEWER**[delete as applicable]
Second Respondent

# APPLICATION – Migration Act

The applicant applies for an order that the respondents show cause why a remedy should not be granted in exercise of the Court's jurisdiction under section 476 of the *Migration Act 1958* in respect of the migration decision specified on page 2.

## First court date

This application is listed for hearing at (court location): .....

Court date and time (registry staff to insert): at am/pm.

All parties or their legal representatives should attend this hearing. Default orders may be made if any party fails to attend. The Court may hear and determine all interlocutory or final issues, or may give directions for the future conduct of the proceeding.

_____
(for) Registrar
Date: ...../...../.....

Filed on behalf of _____
Prepared by _____ Lawyer's code _____
Name of law firm _____
Address for service in Australia _____
_____ State _____ Postcode _____
Email _____ DX _____
Tel _____ Fax _____ Attention _____

## Migration decision details (select box and insert details of the migration decision)

☐ Decision made by a tribunal

Name of the tribunal: .....

Date of the decision: ...../...../.....

☐ Decision made by the Minister or another person under the Migration Act.

Name of decision-maker: .....

Office held: .....

Date of the decision: ...../...../.....

☐ A future decision or other action by the Minister or an officer under the Migration Act concerning an offshore entry person, following the making of a recommendation by an Independent Protection Assessment Reviewer.

Name of Independent Protection Assessment Reviewer: .....

Date of the recommendation: ...../...../.....

## Final orders sought by applicant/s (select boxes and add additional or alternative order/s)

☐ An order that the decision of the tribunal or Minister be quashed.

☐ A writ of mandamus directed to the tribunal or Minister, requiring them to determine the applicant's application according to law.

☐ A declaration that the recommendation of the Independent Protection Assessment Reviewer was not made in accordance with law, by reason of the ground/s of this application.

☐ An injunction restraining the Minister, by himself or by his Department, officers, delegates or agents, from relying upon the recommendation of the Independent Protection Assessment Reviewer.

☐ (state precisely each other order sought by way of final relief)

1.

2.

3.

## Grounds of application (see Instructions for completion)

1.

2.

3.

**Application for extension of time** (an extension is required if the application is not made within 35 days of the date of the migration decision)

Does the applicant apply for an order that the time for making the application be extended under section 477 of the *Migration Act 1958*?

Yes ☐ No ☐

**Grounds of application for extension of time** (specify why the applicant considers that it is necessary in the interests of the administration of justice to extend time)

1.

2.

3.

**Other Interlocutory, interim or procedural orders sought by applicant/s** (complete only if other interlocutory, interim or procedural orders are sought)

1.

2.

3.

**Other Court Proceedings** (complete if the applicant has made a previous application or applications to a court to review the decision – see section 486D of the Migration Act 1958.)

Person or persons who made each previous application: .....

Court or courts to which each application was made: .....

Commencement date of each previous application or applications: .....

File number of each application: .....

Outcome of each application: .....

**Language spoken**

Does the applicant require an interpreter?

No ☐ Yes ☐

If Yes, what language: .....

## Service of Application

The application must be served on each respondent within 7 days by delivering it to the Department of Immigration and Citizenship at the address below.

[The address will be inserted by the Registry]

## Signature of applicant/s or lawyer

---

Signed by (print name/s)

.....

☐ the applicant/s or ☐ lawyer for the applicant/s

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

## Lawyer's Certification (see section 486I of the Migration Act 1958)

I, [name], the lawyer filing this document commencing migration litigation, certify that there are reasonable grounds for believing that this migration litigation has a reasonable prospect of success.

Signature of the lawyer filing application

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

### IMPORTANT NOTICE TO RESPONDENT/S

To the respondent(s):

of (the address will be inserted by the Registry):

.....

A respondent who intends to contest the application must file a response within 14 days of service of the application. A response must specify each ground of opposition with particulars, including grounds of objection to competency, previous court proceedings, delay, etc. Any evidence relied upon must be detailed in or attached to an affidavit.

A respondent who does not intend to contest the application may file a notice of appearance which submits to the orders of the Court save as to costs.

Form approved pursuant to Rule 44.05(1) – March 2011

# Instructions for completion

## APPLICATION – Migration Act

1. This form is used for commencing a proceeding under s.476 of the Migration Act 1958 (Cth), including where an extension of time is also sought under s.477.
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. Each ground of the application must identify a jurisdictional error by reason of which it is claimed that the migration decision under review is not a 'privative clause decision' within the meaning given by subsection 474 (2) of the Migration Act 1958. Particulars of each ground must be provided which are sufficient to allow the Court to understand how each ground relates to the decision, the reasons for decision, the circumstances of the decision, or the procedures concerned with the making of the decision, as the case may be.
4. An application by an offshore entry person should include details of any recommendation of an Independent Protection Assessment Reviewer which is challenged, and should specify the ground/s for contending that the recommendation was not made in accordance with law.
5. The applicant must file one or more affidavits attaching a copy of the decision and any statement of reasons, and including any other evidence relied upon. If an extension of time is sought, the affidavit must include evidence explaining the delay and showing why the applicant considers that it is necessary in the interests of the administration of justice for the Court to grant an extension (see section 477(2) of the Migration Act).
6. If the applicant is unable to raise an arguable case for the relief claimed, the application may be dismissed under Rule 44.12 without a final hearing.
7. If your application is for an extension of time or other interlocutory, interim or procedural orders in a proceeding which has already commenced, you should use the Application in a Case form.
8. 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 may be served by delivering them to the Department of Immigration and Citizenship.
9. If you are completing this application by hand and you need more space in any section, attach extra page/s as required.
10. 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 this instruction sheet before filing

**IN THE FEDERAL MAGISTRATES COURT OF AUSTRALIA**

**REGISTRY:** .....

File number

.....
Applicant(s)

Pseudonym(s) for Applicant(s)
[Registry use only]

**MINISTER FOR IMMIGRATION AND CITIZENSHIP**
First Respondent

**REFUGEE REVIEW TRIBUNAL**[or]
**MIGRATION REVIEW TRIBUNAL**[or]
**INDEPENDENT PROTECTION ASSESSMENT REVIEWER**[delete as applicable]
Second Respondent

# APPLICATION – Migration Act

The applicant applies for an order that the respondents show cause why a remedy should not be granted in exercise of the Court's jurisdiction under section 476 of the *Migration Act 1958* in respect of the migration decision specified on page 2.

## First court date

This application is listed for hearing at (court location): .....

Court date and time (registry staff to insert): at am/pm.

All parties or their legal representatives should attend this hearing. Default orders may be made if any party fails to attend. The Court may hear and determine all interlocutory or final issues, or may give directions for the future conduct of the proceeding.

.....
(for) Registrar
Date: ...../...../.....

## Migration decision details (select box and insert details of the migration decision)

☐ Decision made by a tribunal

Name of the tribunal: .....

Date of the decision: ...../...../.....

☐ Decision made by the Minister ~~or a delegate~~ or another person under the Migration Act.

Name of decision-maker: .....

Office held: .....

Date of the decision: ...../...../.....

~~Section of the *Migration Act 1958* under which the decision was made.~~

☐ A future decision or any other action by the Minister or an officer under the Migration Act, concerning the detention or removal of an offshore entry person from Australia, following a recommendation of an Independent Protection Assessment Reviewer.

Name of Independent Protection Assessment Reviewer: .....

Date of his or her recommendation: ...../...../.....

## Final orders sought by applicant/s (state precisely each order sought by way of final relief)

☐ An order that the decision of the tribunal or the Minister be quashed.

☐ A writ of mandamus directed to the tribunal or to the Minister, requiring them to determine the applicant's application according to law.

☐ A declaration that the recommendation of the Independent Protection Assessment Reviewer was not made in accordance with law, by reason of the ground/s of this application

☐ An injunction restraining the Minister, by himself or by his Department, officers, delegates or agents, from relying upon the recommendation of the Independent Protection Assessment Reviewer.

☐ (state precisely each other order sought by way of final relief)

1.

2.

3.

## Grounds of application (see Instructions for completion)

1.

2.

---

Filed on behalf of _____

Prepared by _____ Lawyer's code _____

Name of law firm _____

Address for service in Australia _____

_____ State _____ Postcode _____

Email _____ DX _____

Tel _____ Fax _____ Attention _____

3.

**Application for extension of time** (an extension is required if the application is not made within 35 days of the date of the migration decision)

Does the applicant apply for an order that the time for making the application be extended under section 477 of the *Migration Act 1958*?

Yes ☐ No ☐

**Grounds of application for extension of time** (specify why the applicant considers that it is necessary in the interests of the administration of justice to extend time)

1.

2.

3.

**Other Interlocutory, interim or procedural orders sought by applicant/s** (complete only if other interlocutory, interim or procedural orders are sought)

1.

2.

3.

**Other Court Proceedings** (complete if the applicant has made a previous application or applications to a court to review the decision – see section 486D of the Migration Act 1958.)

Person or persons who made each previous application: .....

Court or courts to which each application was made: .....

Commencement date of each previous application or applications: .....

File number of each application: .....

Outcome of each application: .....

**Language spoken**

Does the applicant require an interpreter?

No ☐ Yes ☐

If Yes, what language: .....

## Service of Application

The application must be served on each respondent within 7 days by delivering it to the Department of Immigration and Citizenship at the address below.

[The address will be inserted by the Registry]

## Signature of applicant/s or lawyer

---

Signed by (print name/s)

.....

☐ the applicant/s or ☐ lawyer for the applicant/s

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

## Lawyer's Certification (see section 486I of the Migration Act 1958)

I, [name], the lawyer filing this document commencing migration litigation, certify that there are reasonable grounds for believing that this migration litigation has a reasonable prospect of success.

Signature of the lawyer filing application

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

### IMPORTANT NOTICE TO RESPONDENT/S

To the respondent(s):

of (the address will be inserted by the Registry):

.....

A respondent who intends to contest the application must file a response within 14 days of service of the application. A response must specify each ground of opposition with particulars, including grounds of objection to competency, previous court proceedings, delay, etc. Any evidence relied upon must be detailed in or attached to an affidavit.

A respondent who does not intend to contest the application may file a notice of appearance which submits to the orders of the Court save as to costs.

# Instructions for completion

## APPLICATION – General Federal Law

1. This form is used for commencing a general federal law proceeding where no other form of application is applicable under the *Federal Magistrates Court Rules 2001* (the Rules).

2. Do not use this form if your application relates to family law, child support or matters arising under the *Bankruptcy Act 1966*, *Administrative Decisions (Judicial Review) Act 1977* or *Migration Act 1958*. Ask registry staff for appropriate forms in these jurisdictions.

3. 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.

4. 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.

5. The grounds of the application must explain briefly the basis on which the orders are sought. Alternatively, you may file a pleading by way of a statement of claim or points of claim. Such a pleading should comply with Orders 11 and 12 of the *Federal Court Rules*. 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. The evidence supporting this application 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. However, an affidavit is not required in certain circumstances; see Subrule 4.05(2).

7. 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.

8. 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.

9. If you are completing this application by hand and you need more space in any section, attach extra page/s as required.

10. 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.

**A small claim proceeding under the National Consumer Credit Protection Act 2009**

If your claim is for $40,000 or less and involves an order which is covered by subsection 199(2), you can elect to use the small claims procedure of this Court.

In a matter which is dealt with by the Court's small claim 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.

# Remove this instruction sheet before filing

**IN THE FEDERAL MAGISTRATES COURT OF AUSTRALIA**
**REGISTRY: .....**

File number

.....
Applicant

.....
Respondent

** Repeat as necessary for additional parties*

# APPLICATION - General Federal Law

## Type of application

This application is commenced in the Court's jurisdiction under the (specify Act or Acts):

.....

### National Consumer Credit Claims only – Small Claims List

The applicant elects for this proceeding to be dealt with under the Court's small claims procedures.

Yes ☐ No ☐

## First court date

This application is listed for hearing at (court location): .....

Court date and time (registry staff to insert): at am/pm.

All parties or their legal representatives should attend this hearing. Default orders may be made if any party fails to attend. The Court may hear and determine all interlocutory or final issues, or may give directions for the future conduct of the proceeding.

.....
(for) Registrar
Date: ...../...../.....

## Final orders sought by applicant/s (state precisely each order sought by way of final relief)

1.

2.

3.

## Grounds of application (state briefly the grounds of the application)

1.

2.

3.

## Interlocutory, interim or procedural orders sought by applicant/s (complete only if interlocutory, interim or procedural orders are sought)

1.

2.

3.

## Signature of applicant/s or lawyer

---

Signed by (print name/s)

.....

☐ the applicant/s or ☐ lawyer for the applicant/s

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

---

Filed on behalf of _____

Prepared by _____ Lawyer's code _____

Name of law firm _____

Address for service in Australia _____

_____ State _____ Postcode _____

Email _____ DX _____

Tel _____ Fax _____ Attention _____

## IMPORTANT NOTICE TO RESPONDENT/S

To the respondent (name): .....

of (address):

.....

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

.....

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) – March 2011

# Instructions for completion

## APPLICATION – General Federal Law

1. This form is used for commencing a general federal law proceeding where no other form of application is applicable under the *Federal Magistrates Court Rules 2001* (the Rules).

2. Do not use this form if your application relates to family law, child support or matters arising under the *Bankruptcy Act 1966*, *Administrative Decisions (Judicial Review) Act 1977* or *Migration Act 1958*. Ask registry staff for appropriate forms in these jurisdictions.

3. 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.

4. 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.

5. The grounds of the application must explain briefly the basis on which the orders are sought. Alternatively, you may file a pleading by way of a statement of claim or points of claim. Such a pleading should comply with Orders 11 and 12 of the *Federal Court Rules*. 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. The evidence supporting this application 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. However, an affidavit is not required in certain circumstances; see Subrule 4.05(2).

7. 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.

8. 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.

9. If you are completing this application by hand and you need more space in any section, attach extra page/s as required.

10. 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.

**A small claim proceeding under the National Consumer Credit Protection Act 2009**

If your claim is for $40,000 or less and involves an order which is covered by subsection 199(2), you can elect to use the small claims procedure of this Court.

In a matter which is dealt with by the Court's small claim 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.

# Remove this instruction sheet before filing

**IN THE FEDERAL MAGISTRATES COURT OF AUSTRALIA**

**REGISTRY: .....**

File number

.....
Applicant

.....
Respondent

** Repeat as necessary for additional parties*

# APPLICATION - General Federal Law

## Type of application

This application is commenced in the Court's jurisdiction under the (specify Act or Acts):

.....

### National Consumer Credit Claims only – Small Claims List

The applicant elects for this proceeding to be dealt with under the Court's small claims procedures.

Yes ☐ No ☐

## First court date

This application is listed for hearing at (court location): .....

Court date and time (registry staff to insert): at am/pm.

All parties or their legal representatives should attend this hearing. Default orders may be made if any party fails to attend. The Court may hear and determine all interlocutory or final issues, or may give directions for the future conduct of the proceeding.

.....
(for) Registrar
Date: ...../...../.....

## Final orders sought by applicant/s (state precisely each order sought by way of final relief)

1.

2.

3.

## Grounds of application (state briefly the grounds of the application)

1.

2.

3.

## Interlocutory, interim or procedural orders sought by applicant/s (complete only if interlocutory, interim or procedural orders are sought)

1.

2.

3.

## Signature of applicant/s or lawyer

---

Signed by (print name/s)

.....

☐ the applicant/s or ☐ lawyer for the applicant/s

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

---

Filed on behalf of _____

Prepared by _____ Lawyer's code _____

Name of law firm _____

Address for service in Australia _____

_____ State _____ Postcode _____

Email _____ DX _____

Tel _____ Fax _____ Attention _____

## IMPORTANT NOTICE TO RESPONDENT/S

To the respondent (name): .....

of (address):

.....

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

.....

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) – March 2011

# 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 Orders 11 and 12 of the *Federal Court Rules*. 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

**IN THE FEDERAL MAGISTRATES COURT OF AUSTRALIA**

File number

**AT** .....

**SMALL CLAIMS LIST** (delete if not applicable)

.....
Applicant

.....
Respondent

** Repeat as necessary for additional parties*

# APPLICATION– Fair Work Division

This application is commenced in the Court's jurisdiction under:

☐ the Workplace Relations Act 1996 ☐ the Fair Work Act 2009

☐ the Building and Construction Industry Improvement Act 2005

## Small claims list

The applicant elects for these proceedings to be dealt with under the Court's small claims procedures.

Yes ☐ No ☐

## First court date

This application is listed for hearing at (court location): .....

Court date and time (registry staff to insert): at am/pm.

All parties or their legal representatives should attend this hearing. Default orders may be made if any party fails to attend. The Court may hear and determine all interlocutory or final issues, or may give directions for the future conduct of the proceeding.

.....
(for) Registrar
Date: ...../...../.....

Filed on behalf of .....
Prepared by ..... Lawyer's code .....
Name of law firm .....
Address for service in Australia .....
..... State ..... Postcode .....
Email ..... DX .....
Tel ..... Fax ..... Attention .....

## 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:

(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:

(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):

.....

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

.....

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) – March 2011

# 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 ~~(such a claim is not available until 2010)~~, a term of a Modern Award ~~such a claim is not available until 2010)~~, an enterprise agreement, a workplace determination, a safety net contractual entitlement, a national minimum wage order ~~(such a claim is not available until 2010)~~, an equal remuneration order, or ~~another Fair Work Australia order~~ a safety net contractual entitlement ~~(such a claim is not available until 2010),~~ 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 b~~e~~y 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 ~~this~~ 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 Orders 11 and 12 of the *Federal Court Rules*. 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.

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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

**IN THE FEDERAL MAGISTRATES COURT OF AUSTRALIA**

File number

**AT** .....

**SMALL CLAIMS LIST** (delete if not applicable)

.....
Applicant

.....
Respondent

** Repeat as necessary for additional parties*

# APPLICATION– Fair Work Division

This application is commenced in the Court's jurisdiction under:

☐ the Workplace Relations Act 1996 ☐ the Fair Work Act 2009

☐ the Building and Construction Industry Improvement Act 2005

## Small claims list ~~– Fair Work Act Proceedings Only~~

The applicant elects for these proceedings to be dealt with under the Court's small claims procedures.

Yes ☐ No ☐

## First court date

This application is listed for hearing at (court location): .....

Court date and time (registry staff to insert): at am/pm.

All parties or their legal representatives should attend this hearing. Default orders may be made if any party fails to attend. The Court may hear and determine all interlocutory or final issues, or may give directions for the future conduct of the proceeding.

.....
(for) Registrar
Date: ...../...../.....

Filed on behalf of .....
Prepared by ..... Lawyer's code .....
Name of law firm .....
Address for service in Australia .....
..... State ..... Postcode .....
Email ..... DX .....
Tel ..... Fax ..... Attention .....

## 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

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(state precisely each order sought by way of final relief)

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☐ 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:

(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):

.....

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

.....

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) – March 2011

**IN THE FEDERAL MAGISTRATES COURT OF AUSTRALIA**

**REGISTRY:** .....

File number: .....

**Date of filing ……../……/…….**

.....
Applicant

.....
Respondent

.....
Other party (if applicable)

*Repeat as necessary for additional parties*

# Notice of request to inspect in accordance with FMC Rule 15A.13(1)(c)

I (print name) ..... certify that:

1. *(select one box only)*

☐ I am the solicitor on record for this matter and I issued the subpoena/s in respect to this notice / or I have a letter of authorisation from the solicitor on record who issued the subpoena, or

☐ I am a party to these proceedings and I issued the subpoena/s in respect to this notice (*for parties, photo identification is required*).

2. The following subpoenas have been issued in the FMC. P*lease complete the following details – one Notice of Request to Inspect Form for* ***each subpoena you wish to inspect.***

| **Person subpoenaed** | Date issued | Date served | **Who the subpoenaed material relates to.** | Medical records Yes / No |
|---|---|---|---|---|
| | | | | |

3. The date for the production of the subpoena listed in point 2 above has passed.
**(Note: This form WILL NOT BE ACCEPTED for filing until after the date of production.)**

4. All parties, the independent children's lawyer (if appointed) and all interested persons have been served a copy of the subpoena listed in point 2 above. Details of that service are as follows:

| Name of person served | Date and means of service |
|---|---|
| | |
| | |
| | |

5. No notice of objection has been received by myself / the solicitor on record in respect to the above subpoenas.
**(WARNING: The information contained in this document is provided in lieu of an affidavit of service. Issuing parties MUST BE ABLE TO provide the Court with proof of service if required.)**

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

| OFFICE USE ONLY | |
|---|---|
| Was an objection lodged in respect of this subpoena? | YES / NO |
| Is this person the issuing party or the solicitor on record? | YES / NO |
| Did you decide that the document referred to in point 2 above could be released for inspection – Rule 15A.13(1)(c). ( If no, provide reason) | YES / NO<br>View /view and copy |
| Name & Signature of Officer approving the Notice of request to inspect (please print) | Date of decision<br>/ / |

Form approved by the Chief Federal Magistrate pursuant to Subrule 2.04(1A) – March 2011

**IN THE FEDERAL MAGISTRATES COURT OF AUSTRALIA**

**REGISTRY:** .....

File number: .....

**Date of filing ……../……/…….**

.....
Applicant

.....
Respondent

.....
Other party (if applicable)

*Repeat as necessary for additional parties*

# Notice of request to inspect in accordance with FMC Rule 15A.13(1)(c)

I (print name) ..... certify that:

1. *(select one box only)*

☐ I am the solicitor on record for this matter and I issued the subpoena/s in respect to this notice / or I have a letter of authorisation from the solicitor on record who issued the subpoena, or

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

| OFFICE USE ONLY | |
|---|---|
| Was an objection lodged in respect of this subpoena? | YES / NO |
| Is this person the issuing party or the solicitor on record? | YES / NO |
| Did you decide that the document referred to in point 2 above could be released for inspection – Rule 15A.13(1)(c). ~~provide the document for inspection?~~ ( If no, provide reason) | YES / NO<br>View /view and copy |
| Name & Signature of Officer ~~providing subpoena material~~ approving the Notice of request to inspect (please print) | Date of decision<br>/ / |

Form approved by the Chief Federal Magistrate pursuant to Subrule 2.04(1A) – March 2011