

Procedures under the *Fair Work Act 2009 (Cth)*

Introduction

1. This practice direction takes effect on 1 October 2020.
2. The Magistrates Court has jurisdiction hear certain types of claims under the *Fair Work Act 2009 (Cth)*: s 539. That jurisdiction applies to claims less than \$25,000 notwithstanding the Magistrates Court Act, s 266A.
3. This practice direction details procedures for:
 - a. Fair work small claims; and
 - b. Fair work general claims.

Application of the *Court Procedures Rules 2006*

4. The applicable procedures provided within the *Court Procedures Rules 2006* (CPRs) apply to proceedings under the Act, subject to this practice direction and any direction made by the Court.

Small claims procedure

5. The small claims procedure can only be used in limited circumstances: see Fair Work Act, s 548.
6. In the case of small claims, applicants are to commence proceedings by filing Form 1 – Fair Work Claim (Annexure A). The registry will endorse that form with a return date being at least 28 days from the date of filing.
7. The applicant is to arrange service of the application and a copy of this practice direction on the respondent, in accordance with the CPRs, r 6411 or 6412, as soon as practicable and at least 21 days before the first return date. Service may also be by email, if the respondent acknowledges receipt of that email as service of the claim.
8. The respondent is to file and serve a Form 2 - Response to Fair Work Claim (Annexure B) no later than 7 days before the first return date, with service being on the applicant at the applicant's address for service, including any email address provided for that purpose.
9. The claim and response need not be complete pleadings as contemplated by the CPRs. Rather they are to provide sufficient detail for the other party and the Court to understand the nature and basis of the claim and response.

10. An applicant may apply to a registrar for an expedited return date. That application should be included within the orders sought in the Form 1 and be accompanied by a supporting affidavit. If the registrar grants an expedited return date, the registrar should endorse the originating application with dates for service of the application and response.
11. Where the application is to be served outside the ACT, the applicant is reminded to comply with the *Service and Execution of Process Act 1992* (Cth). If an expedited return date is requested the affidavit should address s 17(2) of that Act.
12. In small claim proceedings, the Court is not bound by the rules of evidence and may act in an informal manner and without regard to legal forms and technicalities. Evidence from witnesses will ordinarily be in the form of a statement. Witnesses will need to be available for cross-examination, unless excused by the other party.
13. Parties may only be represented by a lawyer or an official of an industrial association with the leave of the Court.

General claims procedure

14. Where the small claims procedure does not apply, the ordinary processes described in the CPRs apply.

Case management

15. The first return of the application for either type of procedure will be before a registrar in the Registrar's Civil Applications List. The purpose of appearances before a registrar are to:
 - a. list the matter for mediation;
 - b. make directions concerning the filing and service of material (for example the documents in the annexures); and
 - c. list the matter for hearing.

Usual orders and directions

16. The usual order for mediation is:

Parties are to file and serve position papers 7 days prior to the mediation date; and have liberty to relist the matter in the Registrar's Civil Applications List on 3 days' notice.

Non-appearances

17. If the applicant fails to appear the claim may be dismissed.
18. If the respondent fails to appear at the first return of the application, and evidence is available in support of the application and in relation to service of the application on the respondent, the registrar may refer the matter that same day to a magistrate for hearing in the Civil Applications List. Subject to any other business of the Court, the magistrate

may determine the application. For the purpose of that determination evidence may be put before the Court orally or by way of affidavit. The Court will expect the applicant to address issues of jurisdiction, evidence and natural justice.

Compliance and costs

19. Parties and their representatives are reminded that the Court may award costs against a party or a representative for failure to comply with this practice direction, the CPRs or a direction of the Court.

By direction of the Chief Magistrate and Magistrates.

A handwritten signature in black ink, appearing to read 'Helen Banks'.

Helen Banks

Registrar

ACT Magistrates Court

20th July 2022