

INDUSTRIAL MAGISTRATES COURTS
PRACTICE DIRECTION NO. 1 OF 2017

This Practice Direction is made pursuant to Regulation 72 of the Industrial Magistrates Courts (General Jurisdiction) Regulations 2005 (the Regulations).

This Practice Direction, issued 1 June 2017, is to take effect immediately, and replaces Practice Direction No. 1 of 2012.

Practice Direction No. 1 of 2009 and No. 2 of 2012 shall cease with immediate effect.

The following procedures are to be followed:

1. Case Outlines/Further and Better Particulars of Case Outline – (Regulation 18(2)(a))

The case outline/further and better particulars of case outline is to be lodged on Forms 8.1 and 8.2 in the manner prescribed hereunder.

Claimant

The claimant party shall outline his, her or its case/further and better particulars of case in the Schedule (Form 8.2).

The outline shall be in numbered paragraphs, each of which should endeavour to deal with only one issue.

Each outline should specify, where relevant –

- the identity and occupation of the claimant;
- the basis on which the claimant is authorised to make the claim;
- the identity of the respondent;
- the business, and/ or industry of the respondent;
- the nature of the relationship between the claimant and the respondent and the commencement and cessation dates of that relationship where known;
- the identity and nature of any relevant statutory instrument such as an award, industrial agreement or statute applying to that relationship;
- where necessary, the basis upon which it is asserted that the relevant statutory instrument applies;
- the identity and nature of the provisions of the statutory instrument alleged to have been not complied with; and
- the particular circumstances occurring at the time of the alleged failure to comply.

Respondent

The respondent shall outline his, her or its case/further and better particulars of case in the Schedule (Form 8.2).

The outline shall be in numbered paragraphs each of which should endeavour to deal with only one issue.

Each outline should specify, where relevant –

- his or her identity, occupation and the basis upon which the person is authorised to make the statement;
- which of the claimant's assertions the respondent admits;
- which of the claimant's assertions the respondent denies and where there is a denial, what the respondent says are the true facts; and
- which, if any, of the claimant's assertions the respondent does not admit or deny and the reason for not admitting or denying them.

2. Form of Witness Statements – Regulation 18(2)(b)

Each witness statement shall –

- be written and attached to a Form 29 under the heading "Witness Statement";
- be written in numbered paragraphs;
- identify at the beginning of the statement the identity of the person making the statement and the nature of that person's relationship to the parties to the action;
- detail the evidence to be given by the maker of the statement at the trial of the action; and
- have attached copies of any documents referred to in the statement that are in the possession or control of the person making the statement.

3. Copies of Records – Regulation 18(2)(c)

Where the Clerk orders the lodgement and service of copies of any records that the parties intend to use in evidence at trial, the same shall be lodged on a Form 29 under the heading of "Copies of Records" and served in accordance with Part 9 of the Regulations.

4. Disclosure – Regulations 24 – 27

Where disclosure of documents is sought because the documents are said to be relevant to a fact in issue, the party shall identify to the Clerk at a pre-trial conference the class or classes of documents sought and show why they are considered relevant to the fact in issue.

Disclosure shall be provided in accordance with the approved forms.

5. Request for Inspection of Documents – Regulation 26(1)

Any request for inspection of documents shall be lodged using Form 11, and served in accordance with Part 9 of the Regulations.

6. Interrogatories - Regulations 29 - 31

A party who wishes to interrogate another party shall notify the Clerk of the Court and the other party of the wish to interrogate, not less than three (3) days before making application to the Clerk at a pre-trial conference.

When making an application, the party shall include drafts of the interrogatories the party wishes to issue and an explanation as to why the party considers that the just hearing and determination of the action requires interrogatories to be issued and answered, and the relevance of the questions to the issues in the action.

Interrogatories shall not consist of more than 25 questions including any subdivision of a question unless the Clerk otherwise orders.

Interrogatories may not be issued unless the Clerk is satisfied that the just hearing and determination of the action requires that interrogatories be issued and answered.

Interrogatories shall not –

- seek an admission on a matter that is not material to the issues;
- seek an admission on matters of law;
- seek an admission depending on the application of a legal standard;
- require an answer which assumes the same answer will be given irrespective of the context in which the question arises;
- seek an answer reflecting on the credit or credibility of a person;

A request for answers to interrogatories shall be made on Forms 14.1 and 14.2 and shall set out the interrogatories. The interrogatories shall be answered on Forms 15.1 and 15.2 or 16.1 and 16.2.

7. Affidavits (Regulation 68)

Any affidavit lodged in the Industrial Magistrates Court shall be in accordance with Form 7.

8. Representation

A party who seeks to be represented in the Industrial Magistrates Court by a lawyer or agent must lodge in the Court a Notice of Appointment of Lawyer or Agent (Form 23) unless representation is already indicated on the Originating Claim (Form 1) or the Response form (Form 2).

9. Cessation of Representation

Any lawyer or agent who ceases to represent a party to a claim must, upon cessation, lodge in the Court and serve on all parties to the claim a Notice of Cessation of Representation which must contain the address for service of the party who is no longer represented (Form 27).

10. Application for Interim Order/s

This direction shall apply in each case where, pursuant to section 83E of the *Industrial Relations Act 1979*, an interim order is sought pending the final determination of the substantive claim.

The party seeking the interim order shall follow these procedures:

1. Lodge an originating claim specifying the alleged contravention or failure and the final orders sought.
2. At the time of lodgement of the originating claim or at any time thereafter shall lodge an application (Form 6) with a supporting affidavit (Form 7) setting out the interim relief sought and the reasons for seeking such relief.
3. Thereafter the application for interim orders will be allocated a hearing date by the Clerk of the Court. The date for the hearing of the application shall be entirely at the discretion of the Clerk having regard to the listing circumstances of the Court and the availability of an Industrial Magistrate.
4. No application for interim orders will be heard unless there is proof lodged with the Court, prior to the hearing of the application, that the respondent was served with the originating claim, the application for interim orders and the affidavit or affidavits in support thereof, at least two (2) clear working days before the hearing of the application.
5. Where possible written submissions in support of the application should be lodged at least two (2) clear days prior to the hearing.
6. Any affidavit in response to the application for interim orders must be lodged and served one (1) clear day prior to the hearing of the application.

11. Witness Summons – Regulation 37(5)

The person who serves a witness with a summons to witness (Form 22.1) must lodge an affidavit of personal service (Form 3) and annex to it the proof of service copy of the summons to witness (Form 22.2), recording how Regulation 37(3) was complied with.

12. Orders of the Industrial Magistrates Court

Upon the Industrial Magistrates Court making an order or giving judgment, the Clerk of the Court shall record the order or judgment on the Orders Form (Form 20) and issue the same to the parties.

13. Certification of Judgment

In each case where judgment is recorded on the Form 20, the Clerk of the Court shall issue to the parties a certified copy of that judgment.

14. Attachment Form

The attachment form (Form 28) is to be used and attached to the applicable form where that form does not provide sufficient space to enable all the relevant respondents to be listed.

15. Multipurpose Form

Where no specific form is indicated for the purpose of complying with the requirement to lodge with the Court a document or documents in compliance with the Regulations or the Court's orders, the Multipurpose Form (Form 29) shall be used.

16. Notice of Pre-trial Conference – Regulation 16

For the purpose of Regulation 16 the Clerk is to notify the parties of the listing of a pre-trial conference where possible on a Form 30, or otherwise by letter.

17. Notice of Trial – Regulation 22

For the purpose of complying with Regulation 22(b) the Clerk is to notify the parties of the trial date using Form 31.

18. Review of a Decision of the Clerk – Regulation 73

A party seeking that the Court review a decision of the Clerk must make an application pursuant to Regulation 73, using Form 32.

19. Notice of Clerk's Refusal to Accept Document - Regulation 49

If for any reason provided by the Regulations the Clerk refuses to accept lodgement of any document sought to be lodged, the Clerk shall, for the purposes of Regulation 49, record the reasons for such refusal on a Form 33 and shall thereafter issue to the lodging party a copy of the same.

20. Claims made pursuant to the *Fair Work Act 2009*

The practice and procedure to be followed by the Industrial Magistrates Court with respect to claims made under the *Fair Work Act 2009* shall be that provided by the Industrial Magistrates Court (General Jurisdiction) Regulations 2005 (the Regulations), with such modification as are necessary or desirable in the circumstances as may be directed by the Industrial Magistrate.

21. Small Claims under section 548 of the *Fair Work Act 2009*

If the claimant wants the small claims procedure provided by section 548(1) of the *Fair Work Act 2009* to apply, then the claimant must indicate that on the originating claim form, in which case regulation 19 of the Regulations shall not apply to the proceedings.

22. Approved Forms

The approved forms are those which are from time to time designated by the Chief Magistrate as being the current approved forms.

CURRENT APPROVED FORMS

<u>FORM NUMBER</u>	<u>TITLE OF FORM</u>
1.1	Originating Claim – Court Copy
1A.1	Originating Claim – Court Copy (Construction Industry Portable Long Service Leave Act 1985 (CIPLSL) claim only)
1.2	Originating Claim – Claimant’s Copy
1A.2	Originating Claim – Claimant’s Copy (CIPLSL only)
1.3	Originating Claim – Respondent’s Copy
1A.3	Originating Claim – Respondent’s Copy (CIPLSL only)
2	Response
2A	Response (CIPLSL only)
3	Affidavit of Service on a Person
3A	Affidavit of Service on a Person (CIPLSL only)
4	Affidavit of Service on a Public Authority
4A	Affidavit of Service on a Public Authority (CIPLSL only)
5	Affidavit of Service on a Corporation
5.1	Affidavit of Service on a Company
6	Application
7	Affidavit
8.1	Case Outline/Further and Better Particulars of Case Outline
8.2	Schedule – Case Outline/Further and Better Particulars of Case Outline
9.1	Disclosure of Documents
9.2	Schedule – List of Documents
10.1	Affidavit of Disclosure of Documents
10.2	Schedule – List of Documents
11	Request for Inspection of Documents
12.1	Invitation to Admit
12.2	Schedule - Invitation to Admit
13.1	Response to Invitation to Admit
13.2	Schedule – Response to Invitation to Admit
14.1	Request for Answers to Interrogatories
14.2	Schedule – Request for Answers to Interrogatories
15.1	Answers to Interrogatories other than on Affidavit
15.2	Schedule – Answers to Interrogatories other than on Affidavit
16.1	Answers to Interrogatories on Affidavit
16.2	Schedule – Answers to interrogatories on Affidavit
17	Memorandum of Consent to Order or Judgment
18	Notice of Discontinuance – Whole Claim
19	Notice of Discontinuance – Part of Claim
20	Orders
22.1	Summons to Witness
22.2	Summons to Witness – Proof of Service Copy

23	Notice of Appointment of Lawyer or Agent
24	Notice of Change of Lawyer or Agent
25	Notice of Change of Address for Service
26	Notice of Change of Email or Fax Address for Service
27	Notice of Cessation of Representation by Lawyer or Agent
28	Attachment
29	Multipurpose Form
30	Notification of Pre-trial Conference
31	Notification of Trial
32	Application for Review of Decision of the Clerk
33	Notice of Clerk's Refusal to Accept Documents

The Forms enumerated above are annexed hereto.

Approved this 1st day of June 2017

Chief Magistrate