

FORM 5G

Rule 5.02(2), 56.01(2)

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMON LAW DIVISION
JUDICIAL REVIEW AND APPEALS LIST**

No.

B E T W E E N

Independent Contractors of Australia Inc trading as Self Employed Australia
Plaintiff

-and-

Victorian WorkCover Authority trading as WorkSafe Victoria
Defendant

ORIGINATING MOTION FOR JUDICIAL REVIEW

| | | | |
|---------------------|---|------------------|----------|
| Date of Document: | 14 February 2022 | Solicitors Code: | 40373 |
| Filed on behalf of: | Independent Contractors of Australia Inc (Plaintiff) | DX: | |
| Prepared by: | | Telephone: | |
| | | Ref: | ████████ |
| | | Email: | |

TO THE DEFENDANT

TAKE NOTICE that this proceeding by originating motion has been commenced by the plaintiff for the relief or remedy set out below.

IF YOU INTEND TO DEFEND the proceeding, **YOU MUST GIVE NOTICE** of your intention by filing an appearance within the proper time for appearance stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by:

- (a) filing a "Notice of Appearance" in the Prothonotary's office, 436 Lonsdale Street, Melbourne, or, where the originating motion has been filed in the office of a Deputy Prothonotary, in the office of that Deputy Prothonotary; and
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this originating motion.

IF YOU FAIL to file an appearance within the proper time, the plaintiff **MAY OBTAIN JUDGMENT AGAINST YOU** without further notice.

IF YOU FILE an appearance within the proper time, the plaintiff cannot obtain judgment against you except by application to the Court after further notice to you. There will first be a directions hearing of which you will receive notice by summons or otherwise.

THE PROPER TIME TO FILE AN APPEARANCE is as follows:

- (a) where you are served with the originating motion in Victoria, within 10 days after service;

- (b) where you are served with the originating motion out of Victoria and in another part of Australia, within 21 days after service;
- (c) where you are served with the originating motion in Papua New Guinea, within 28 days after service;
- (d) where you are served with the originating motion in New Zealand under Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed;
- (e) in any other case, within 42 days after service of the originating motion.

FILED [insert date].

Prothonotary

THE PLAINTIFF CLAIMS:

1. An order in the nature of mandamus requiring the Defendant to investigate the occurrences of the remaining acts, matters or things referred to in the letter dated 21 December 2021 (**Second Request**) (by reference to the matters detailed in the Plaintiff's letter to the Defendant dated 29 September 2020 (**First Request**)), given under s 131 of the *Occupational Health and Safety Act 2004* (Vic) (the **OHS Act**), in accordance with its statutory duty under subsections 131(2A) and 131(2C) of the OHS Act.
2. An order in the nature of mandamus requiring the Defendant to give reasons why it is not prosecuting the remaining 26 individuals and entities identified in the Second Request (by reference to the First Request) by the Plaintiff, but which are not currently being prosecuted in relation to offences under the OHS Act in respect to the Hotel Quarantine Program (**Remaining Individuals and Entities**), in accordance with its statutory duty under subsection 131(2A)(a)(ii).
3. An order in the nature of mandamus requiring the Defendant to refer the remaining matters (involving occurrences of acts matters or things which the Plaintiff considers constitutes offences) identified in the Second Request (by reference to the First Request), which are not yet the subject of prosecution, to the Director of Public Prosecutions in accordance with its statutory duty under subsection 131(3) of the OHS Act and the Plaintiff's request that it do so, including providing its investigative materials.
4. Costs.
5. Such other orders as are appropriate to do justice between the parties.

THE GROUNDS RELIED UPON ARE:

1. The Plaintiff is a person with standing to make this application, being a person who has made a request in accordance with s 131(1) of the OHS Act for prosecutions to be brought by the Defendant.
2. The Defendant has failed to perform its statutory duty under s 131 of the OHS Act, as evidenced by the following:
 - (a) On 29 September 2020, in correspondence set out at pages 15 to 16 of the Affidavit of Ken Phillips dated 14 February 2022 (the **Affidavit**), in accordance with subsection 131(1) of the OHS Act, the Plaintiff provided the First Request to the Defendant.
 - (b) On 29 September 2021, in correspondence set out at pages 88 to 92 of the Affidavit, the Defendant notified the Plaintiff that it had completed its investigation and was prosecuting the Victorian Department of Health. It made no reference to the Remaining Individuals and Entities.

- (c) On 8 October 2021, in correspondence set out at pages 102 to 104 of the Affidavit, the Plaintiff requested confirmation from the Defendant as to whether it had complied with its statutory duty under subsection 131(2A) to investigate each and all of the individuals identified in the First Request. No response was received to this letter.
 - (d) On 21 December 2021, in correspondence set out at pages 112 to 116 of the Affidavit, the Plaintiff requested that the Defendant advise it whether prosecutions would be brought in relation to the Remaining Individuals and Entities.
 - (e) On 10 January 2022, in correspondence set out at pages 117 to 119 of the Affidavit, the Defendant informed the Plaintiff that it would be taking no further action in relation to the Plaintiff's request.
 - (f) On 24 January 2022, in correspondence set out at pages 120 to 122 of the Affidavit, the Plaintiff requested that, as the Defendant was not prosecuting the Remaining Individuals and Entities, it refer the occurrences of the acts, matters or things identified in the First Request to the Director of Public Prosecutions (**Request to Refer to the DPP**).
 - (g) On 31 January 2022, in correspondence set out at pages 123 to 124 of the Affidavit, the Defendant informed the Plaintiff that its position was unchanged from 10 January 2022.
3. In particular, as evidenced by its responses referred to in ground 2(e) and (g) above to the Second Request and the Request to Refer to the DPP:
- (a) The Defendant failed to perform its statutory duty under subsections 131(2A) and 131(2C) of the OHS Act to carry out investigations into the occurrences of acts, matters or things which may constitute offences in relation to the 26 Remaining Individuals or Entities.
 - (b) The Defendant failed to perform its statutory duty under subsection 131(2A)(a)(ii) of the OHS Act to give the reasons why a prosecution will not be brought by it in relation to the 26 Remaining Individuals or Entities.
 - (c) The Defendant failed to perform its statutory duty under subsection 131(3) of the OHS Act to refer the matters (involving occurrences of acts, matters or things) relating to the 26 Remaining Individuals or Entities to the Director of Public Prosecutions.

EXTENSION OF TIME:**

FURTHER PARTICULARS of the claim appear in the affidavit made in support of the claim. A copy of the affidavit and of any exhibit to the affidavit is served with this originating motion.

1. Place of trial—
Melbourne