

SELF-RECOVERY KIT

An employee's guide to recovering unpaid wages and entitlements through the minor debts procedure.

IMPORTANT NOTICE: The information outlined below applies to employees and employers who are under State industrial relations jurisdiction. Since the commencement of the federal government's WorkChoices on 27 March 2006, employers who are constitutional corporations (e.g. a Pty Ltd or Ltd company) and their employees are now covered under federal industrial relations jurisdiction. These employees and employers should contact the Queensland Government's Fair Go Queensland Advisory Service Hotline on **1300 737 841** for further information and assistance on the new laws.



Queensland Government
Department of **Employment and Industrial Relations**

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About the guide

An employer may owe an employee money because of the terms of the employment contract or through the operation of certain laws. This guide is only concerned with debts, which are due under Queensland's industrial laws – namely the *Industrial Relations Act 1999*, which are recoverable under the minor debts procedure administered by Queensland's Magistrates Courts.

Employees who are in doubt about whether to use the minor debts procedure, after reading this guide, should contact their own legal adviser.

This guide has been prepared to assist you in the recovery of your claimed entitlements. It has been prepared by the staff of the Queensland Department of Employment and Industrial Relations (DEIR) with many years of practical experience. However, DEIR regrets it can accept no responsibility for the accuracy of the information contained in the guide. We distribute this guide on the basis that the reader accepts all risks and liability arising from its use.

Commonly asked questions about minor debts procedure

Am I owed money?

If an award or an agreement covered the work you did then you may be owed money under that award or agreement. The *Industrial Relations Act 1999* requires that agreed rates of pay in excess of the award and agreed rates of pay where no award exists be paid by employers.

Awards and agreements provide for minimum rates of pay and other entitlements. Some employees know the award that applies to them and their classification under the award. Others do not know if an award applied to them. DEIR can assist you to find out which, if any, award applied to your work. A list of DEIR offices and the contact number for Wageline can be found in Section 10 of this guide.

If an award applied to your employment, deduct the money that your employer paid you from the award entitlement. If there is a shortfall then you are owed money. The same process follows if your work was covered by an agreement. Section 3 of this guide contains information on how to obtain further information to calculate your annual leave or long service leave entitlements.

If no award or registered agreement applies to you then the *Industrial Relations Act 1999* contains some minimum entitlements for all employees. Wageline can assist you to identify these entitlements. In addition the agreed terms or rates of your contract of employment must be paid to you under the *Industrial Relations Act 1999*.

How long have I got to recover my entitlements?

You must lodge your claim within six years of the money becoming due.

Must I go to court?

No, not necessarily. The minor debts procedure, when compared to other forms of court action, is quicker, easier, cheaper and more convenient. Nevertheless, we recommend that you attempt initially to resolve the matter with your employer.

How can I resolve the matter without going to court?

Having established that you are owed money, it is important to recognise that your former employer may not have a clear understanding of his or her obligations. The dispute may be resolved by a simple letter. Remember that most employers are honest and are willing to comply with the law.

Section 6 of this guide contains an example of the sort of letter you may care to use.

Of course, you should keep copies of your letters. We also recommend that you keep notes of any conversations you have with your former employer.

What is the minor debts procedure?

A minor debt is \$7500 or less. Thus if you were owed \$8700 you could lodge a minor debt but you would only recover a maximum of \$7500.

What is the Minor Debts Court?

It is a quick, low cost do-it-yourself way to recover a minor debt without using lawyers. Presently, filing fees are \$45 for claims less than \$2,500 and \$77 for claims greater than \$2,500. As the fees are subject to change, you should contact the minor debts court to confirm current filing fees.

Can anyone use a Minor Debts Court?

Yes. Anyone can claim a minor debt but it must be for a fixed sum or an amount agreed before the dispute. You will need to assess the value of your claim as discussed earlier in this section of the guide.

Where do you start the action?

You must start the action to recover the debt in the right district or it may fail. The district where the action is begun depends on where the dispute began, where the other person lives or carries on business or where the work was carried out. Your local court can help you with this.

What can the other person do?

- ❖ Pay the amount claimed after receiving the claim;
- ❖ Defend the claim. If the other person (or business) decides to defend the claim, a date will be set for a hearing in the Minor Debts Court;
- ❖ Ignore the claim, but a 'judgement by default' may be given against them if requested.

How do I know when my claim is to go to court?

The court informs you when your claim is to be mentioned in court if it is to be defended.

What happens if I make a mistake when I fill out the complaint form?

Don't worry. So long as you have been truthful, a mistake can be amended at any time. However, please make all attempts to ensure the accuracy and honesty of any information provided.

Can I prove my case if I don't know anything about the laws of evidence?

Again, don't worry. Usually, to decide on a claim, the Magistrate will simply ask you and your former employer questions. However, section 5 of this guide contains certain tips to make the hearing run more smoothly.

What can the Minor Debts Court do?

The court can:

- ❖ Dismiss your claim if they are not satisfied that you are owed the money on the balance of probabilities or;
- ❖ Order the other person to pay you the money you have claimed within a set time (usually 28 days)

What if the other person refuses to pay?

If that person does not pay, contact the Civil Registry at the Courthouse. Staff can advise you how the order can be enforced.

Can I appeal a decision of the Minor Debts Court where I am not satisfied?

You cannot appeal against the decision unless you think the Magistrates Court acted outside its power or did not allow you to put your case fully. If this happens you may apply to a higher court such as the Supreme Court for leave to appeal. You should seek legal advice on the merits of the proposed appeal, and how best to form it.

Preparing your claim

The aim of this section is to make you feel more comfortable about asserting your claim. The more prepared you are, the less anxious you will feel. However, this is a guide only. Remember minor debts are a simplified procedure and the matter will only proceed to a hearing as a last resort. Moreover, the Magistrate may simply direct questions to you.

Gather your facts

A. To be successful in a claim for underpayment of wages under an award or agreement the Magistrate will need to know:

1. Who your employer was;
 2. What award or agreement applied to your employment;
 3. That you were not paid in accordance with that award or agreement either during or since your employment.
1. To prove the identity of your former employer you could use one or more of the following:
 - (a) A reference from your former employer;
 - (b) A separation certificate;
 - (c) A job advertisement;
 - (d) Any letters from your former employer;
 - (e) A taxation group certificate;
 - (f) Statutory declarations from third parties;
 - (g) Local council records;
 - (h) Documents from the Australian Securities and Investments Commission
 - (i) Your own statement that "X" was your employer.
 2. To prove your employment was covered by an award or agreement:
 - (a) Obtain documentary evidence as to the basis of your employment, your duties and employment classification or simply tell the Magistrate the duties you performed and the time spent on these duties. It's a good idea to write up a sample week breaking down the hours of each day to describe the duties you did in each hour, well before you attend court. By doing this you will be in a better position, if required, to adequately describe your duties.
 - (b) Produce a copy of the award or agreement. Awards and registered agreements can be purchased directly from Wageline, which is listed in section 10 of this guide. If your agreement is not registered then bring along a copy of your

agreement such as a letter of appointment or job advertisement or if there was no written agreement, just tell the Magistrate the terms of employment offered to you.

3. To prove that you were not paid in accordance with the award or agreement you should firstly list your hours of work from any diary you have kept or your memory. Calculate your entitlements under the award or agreement, having regard to what the award or agreement says about your employment classification, your duties, your qualification and if applicable your age. Lastly, calculate any shortfall by deducting any payments you received from your entitlements.

If your former employer fails to keep written time sheets and pay sheets in good order for six years as is required by the law, you may need to bring old pay envelopes or slips to court. Courts may accept your verbal evidence as to how much you received or evidence from a savings passbook or account statement issued by financial institutions.

B. To successfully claim annual leave the Magistrate will need to know:

1. Who your employer was;
2. Your period of employment;
3. What award or agreement applied to your employment;
4. The number of holidays you took (your own evidence will usually be sufficient);
5. Your wage rate at termination;
6. The amount of money paid to you at, or since, termination in respect of untaken holidays.

The method of calculating your annual leave entitlement can vary but the relevant method is contained in your award or registered agreement. If your employment was not covered by an award or registered agreement then the *Industrial Relations Act 1999* provides you with an entitlement and the relevant method of calculation.

For more information on calculating annual leave entitlements please contact Wageline listed in section 10 of this guide to obtain a brochure on annual leave.

C. To successfully claim long service leave the Magistrate will need to know:

1. Who your employer was;
2. Your period of continuous employment;
3. The number of days long service leave you took (your own evidence will usually be sufficient);
4. Your wage rate at termination;
5. The amount of money paid to you at, or since, termination in respect of untaken long service leave.

The method of calculating your long service leave entitlement can vary and the relevant method is sometimes contained in your award or registered agreement. If your employment was not covered by an award or registered agreement or the award or agreement does not provide an entitlement or method of calculation then the *Industrial Relations Act 1999* provides you with an entitlement and the relevant method of calculation.

For more information on calculating long service leave entitlements please contact

Wageline listed in section 10 of this guide to obtain a brochure on long service leave.

Lodging your claim

1. Read these guidelines carefully before completing the blank minor debts claim form contained in section 8 of this guide.

Use the example minor debts claim form contained in section 7 as a guide, altering the details to fit your employment and claim.

2. You will need four copies of the minor debts claim form.
 - ❖ One copy is for your records
 - ❖ The other copies are for:
 - the court and
 - the defendant *2
 - ❖ Photocopy forms are acceptable, but all signatures must be original
 - ❖ Typing the form is desirable, but not compulsory
 - ❖ If you complete the form by hand, please print and use a black or dark blue pen
 - ❖ You do not require a separate form for each matter
 - ❖ It may be possible to fit more than one matter on a form
 - ❖ Each plaintiff (employee) requires a separate form: that is there can be no "group" action.
3. File the three copies of the form with the Registrar of the Court in the District in which the claim originated.
 - ❖ The relevant court district is the closest courthouse to where the last day of work was performed in most cases.
 - ❖ Keep the fourth copy for your records
 - ❖ You have to pay a filing fee of between \$45 and \$77. You should check with the Registrar as the Filing fees are subject to variation.

4. Discuss with the Registrar the serving of the Summons.

❖ a fee-for-service is available through the court Bailiff. Costs are:

- \$33.00 [subject to change] for the first 12 kilometres from the Court House, and
- further charges apply for each additional kilometre beyond this.
- Check current fees at www.bailiff-sheriffaustralia.com.au

Appearing in court

1. On the mention date, you should notify the Magistrate [you address him or her as " your honour"] that you wish the matter to be heard as a minor debts claim procedure.
 - ❖ It is possible that on the mention date, a later date will be set by the Magistrate for the hearing of the matter.
2. On the hearing date sit outside the Magistrates courtroom. When you are called in the Magistrate will ask if there is any chance of settling the matter. If there is a chance you will be left to negotiate privately with the defendant.
3. If you reach agreement, a clerk will take you to the Magistrate who will record the terms of your agreement. If you cannot reach agreement, the clerk will take you to the Magistrate for a hearing.
4. If the matter goes to hearing be ready to tell your story and present your claim as you have prepared it.
5. You will need three sets of the following documents, one for the Magistrate, one for the defendant and one for yourself
 - ❖ a copy of the award or agreement relevant to your claim or if no award or agreement was applicable then your letter of appointment or other copy of the contract of employment. If this does not exist, you will have to explain the agreed contract of employment to the Magistrate.
 - ❖ any other relevant evidence, for example; a pay slip, a group certificate, birth certificate if you are a junior
6. You have to wear tidy formal clothes.
7. If you require an interpreter, you should contact the Translation and Interpreting Service on 13 14 50 and discuss your needs. There is a charge for this service.

A relative or a friend may go to court to act as your interpreter

8. The Magistrate determines when and how to use his or her best endeavours to bring the parties to an acceptable settlement. This usually occurs at the commencement of

the hearing.

- ❖ Each party in turn presents his or her case in a sworn form with the plaintiff (employee) proceeding first.
 - ❖ The parties should also bring witnesses to the court to give evidence to support their claim if possible.
 - ❖ The other party then has a right to comment or ask questions directed through the court.
 - ❖ The court may also ask questions by way of clarification, or to give the party an opportunity to address a relevant area that has not been covered.
 - ❖ In the presentation of his or her case, a party is given the opportunity to produce any relevant document or material.
 - ❖ The document or material is shown to the other party before it is shown the court. The court considers any objection.
 - ❖ The same procedure applies for the presentation of the case by the other party.
 - ❖ Each party is given the opportunity to make a closing submission.
 - ❖ If the hearing is adjourned, procedural directions as to the further hearing are given.
9. Should you be successful with your claim, the Magistrate can order the amount to be paid.
10. In default of payment by the defendant you should talk to court staff about enforcement of the order.

Sample letter to employer

Mr. Barry Owner
44 Industrial Pde.
Beenleigh 4567

[Date]

I refer to my recent employment with your business.

As I still have not received my lawful entitlement, I am examining ways available, at law to obtain what is owing to me.

I consider legal action to be a last resort. In order to save you unnecessary cost and inconvenience, I am extending to you a final opportunity to meet your obligation by paying me \$???. I have calculated that amount to be owed on the following basis:

[List brief calculation]

Should you not take this opportunity, I will have no alternative other than to commence legal action within 14 days of the date of this letter.

Yours faithfully,

John Worker

Sample minor debt claim form

MAGISTRATES COURT OF QUEENSLAND

*Please print clearly*REGISTRY: **Holland Park**
NUMBER:Plaintiff: **John Edward Worker**

AND

Defendant: **Barry Gerard Owner**

MINOR DEBT CLAIM

STATEMENT OF PARTICULARS OF CLAIM *(Set out as briefly as the nature of the case permits all material facts relied on to bring this claim, including description of any goods/services involved, reasons for making claim, including dates and places. Also include the amount or amounts claimed, including interest (if any); how the plaintiff claims the amount is worked out and came to be owing. Attach additional sheets of A4 size paper if insufficient space)*

The above named Plaintiff says that the above named Defendant being an employer within the meaning of the *Industrial Relations Act 1999* failed to pay

Wages and Annual Leave (Holiday Pay)*(Type of Claim eg. Wages or Annual Leave)*due to him whilst working as an **Engineering Tradesperson (Grade 1)***(Award Classification or Job Description)*under the **Engineering Award – State***(Name of the Award or Agreement)*between the **13th January 2003** and the **18th July 2003***(Date of Commencement)**(Date of Termination)*

The Plaintiff claims the amount set out below and elects to have this claim heard and decided in the Magistrates Court under the simplified procedures as a Minor Debt Claim:-

Amount of Wages Claimed	\$ 3670.00
Amount of Annual Leave Claimed	\$ 1503.00
Filing fee	\$ 77.00
Bailiff's service fee	\$ 33.00
Total	<u>\$ 5283.00</u>

To the defendant[s]: TAKE NOTICE that you are being sued by the plaintiff in the Court. If you intend to dispute this claim you must within 28 days of service upon you of this claim file a Notice of Intention to Defend and Defence to a Minor Debt Claim in this Registry. If you do not comply with this requirement Judgment may be given against you for the amount claimed without further notice to you. The Notice should be in Form 4 to the Uniform Civil Procedure Rules. You must serve a sealed copy of it at the plaintiff's address for service shown in the claim as soon as possible.

Address of registry: Corner Logan & Marshall Roads, HOLLAND PARK
(Insert address of Court)

If you object that these proceedings have not been commenced in the correct district or that this Court does not have jurisdiction in this matter, that objection should be included in your Notice of Intention to Defence and Defence to a Minor Debt Claim.

(MINOR DEBT CLAIM)
 Filed on behalf of the: _____

Filed By:
 Name:
 Address for Service:
 Telephone number:
 Fax number:

[Form 3] R.22,514

PARTICULARS OF THE PLAINTIFF:

Name: **John Edward Worker**

Plaintiff's residential or business address: **27 City Road, Holland Park 4121**

Name of solicitor or agent (*if any*): **Nil**

Business address of solicitor or agent: **n/a**

Address for service: **n/a**

Dx (*if any*): **n/a**

Telephone: **n/a**

Fax: **n/a**

E-mail address (*if any*): **n/a**

[If the plaintiff has no solicitor or agent:

 plaintiff's address for service: **27 City Road, Holland Park 4121**

 plaintiff's telephone number or contact number: **98765432**

 plaintiff's fax number (*if any*): **Nil**

 plaintiff's e-mail address (*if any*): **Nil**

S E L F - R E C O V E R Y K I T

Signed:

(Signature of Plaintiff)

S E L F - R E C O V E R Y K I T

Description: **John Edward Worker**
(Name of Signatory / Plaintiff)
Dated: **25th July 2003**
(Today's date)

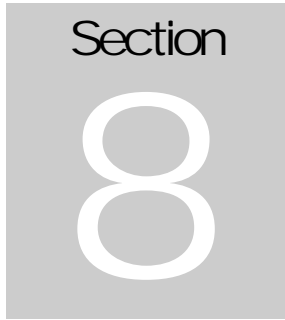
This claim is to be served on: **Barry Gerard Owner**
(Name of Defendant / Employer)
of: **44 Industrial Parade, Holland Park 4121**
(Address of Defendant / Employer)

ISSUED WITH THE AUTHORITY OF THE MAGISTRATES COURTS OF QUEENSLAND

And filed in the **Holland Park** Registry on **25 / 07 / 03 :**

Registrar:
(registrar to sign and seal)

Note: All relevant documents must be brought with you and made available to the Court at any hearing of this proceeding.



Minor debt claim form

MAGISTRATES COURT OF QUEENSLAND

Please print clearly

**REGISTRY:
NUMBER:**

Plaintiff:

AND

Defendant:

MINOR DEBT CLAIM

STATEMENT OF PARTICULARS OF CLAIM *(Set out as briefly as the nature of the case permits all material facts relied on to bring this claim, including description of any goods/services involved, reasons for making claim, including dates and places. Also include the amount or amounts claimed, including interest (if any); how the plaintiff claims the amount is worked out and came to be owing. Attach additional sheets of A4 size paper if insufficient space)*

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The Plaintiff claims the amount set out below and elects to have this claim heard and decided in the Magistrates Court under the simplified procedures as a Minor Debt Claim:-

Claim	\$
Filing fee	\$
Bailiff's service fee	\$
Total	\$

To the defendant[s]: TAKE NOTICE that you are being sued by the plaintiff in the Court. If you intend to

S E L F - R E C O V E R Y K I T

dispute this claim you must within 28 days of service upon you of this claim file a Notice of Intention to Defend and Defence to a Minor Debt Claim in this Registry. If you do not comply with this requirement Judgment may be given against you for the amount claimed without further notice to you. The Notice should be in Form 4 to the Uniform Civil Procedure Rules. You must serve a sealed copy of it at the plaintiff's address for service shown in the claim as soon as possible.

Address of registry:

If you object that these proceedings have not been commenced in the correct district or that this Court does not have jurisdiction in this matter, that objection should be included in your Notice of Intention to Defence and Defence to a Minor Debt Claim.

(MINOR DEBT CLAIM)
Filed on behalf of the: _____

Filed By:
Name:
Address for Service:
Telephone number:
Fax number:

[Form 3] R.22,514

PARTICULARS OF THE PLAINTIFF:

Name:

Plaintiff's residential or business address:

Name of solicitor or agent (*if any*):

Business address of solicitor or agent:

Address for service:

Dx (*if any*):

Telephone:

Fax:

E-mail address (*if any*):

[If the plaintiff has no solicitor or agent:

 plaintiff's address for service:

 plaintiff's telephone number or contact number:

 plaintiff's fax number (*if any*):

 plaintiff's e-mail address (*if any*)]

Signed:

Description:

Glossary of terms

Adjourn	Put off court hearing to another date.
Agreement	A document certified by the Queensland Industrial (registered) Relations Commission regulating employment conditions.
Agreement (unregistered)	Employment conditions agreed upon by the employer and employee.
Appeal	Application to a higher court for a review of a decided case.
Award	A law made by the Queensland Industrial Relations Commission regulating employment conditions.
Closing Submission	A summary of the evidence presented in the hearing
Court Order	A decision of the court.
Defendant	The person against whom the claim is made.
DEIR	Queensland Department of Employment and Industrial Relations
Evidence	The information presented to the court upon which it makes its decision.
Hearing	The presentation of the case / evidence before the court.
Industrial Relations Act 1999	The Queensland Act regulating employment conditions
Legislation	Acts of parliament or statutes.
Magistrate	Judicial person with the power to decide matters of civil and criminal nature.
Mention	A brief session before the court usually to set a hearing date.
Plaintiff	The person making the claim.
Service	Giving documents to the opposition.

Contacts for information

If you need to determine your entitlements under an award or agreement or the *Industrial Relations Act 1999*, ask:

Queensland Department of Employment and Industrial Relations (Wageline) – 1300 369 945 or visit our website at www.wageline.qld.gov.au

Regional Office Locations:

- Ayr
- Brisbane
- Bundaberg
- Cairns
- Emerald
- Gladstone
- Gympie
- Ipswich
- Mackay
- Maryborough
- Mount Isa
- Nambour
- Rockhampton
- Roma
- Southport
- Toowoomba
- Townsville
- Warwick

If you have a problem that the Minor Debts Court can settle, ask:

Minor Debts Court
363 George Street
Brisbane QLD 4000
Ph. (07) 3247 5778; or

Your nearest Magistrates Court; or

A community legal centre.