Form 5

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
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| DEFENCE AND COUNTERCLAIM  **Magistrates Court of South Australia (Civil Division)**  [www.courts.sa.gov.au](http://www.courts.sa.gov.au) | | | | | | | | | | | | | Court Use  Date Filed  Date of Posting | |
|  | | | | | | | | | | | | | | |
| Trial Court |  | | | | | | | | | Action No | |  | | |
| Address |  | | | | | | | |  | | |  | |  |
|  | *Street* | | | | | | | | *Telephone* | | | *Facsimile* | | *DX* |
|  |  | | | |  | |  | | |  | | | | |
|  | *City/Town/Suburb* | | | | *State* | | *Postcode* | | | *Email Address* | | | | |
| Amount Counterclaimed/set off (if any) | | | | $ | | | | |
| Court Fee on Filing | | | | $ | | | | |
| Service and Other Fee | | | | $ | | | | |
| Solicitor’s Fee | | | | $ | | | | |
| TOTAL CLAIMED | | | | $ | | | | |
| **Method of service** *(tick)* | | | | | | | | | | | | | | |
| Registrar | | | Defendant’s Solicitor | | | | | Party | | | | | | |
| **Plaintiff/s** *(as on claim form)* | | | | | | | | | | | | | | |
| Full Name |  | | | | | | | | | | | | | |
| Address  *(Registered Office, if Body Corporate)* |  | | | | | | | |  | | |  | |  |
|  | *Street* | | | | | | | | *Telephone* | | | *Facsimile* | | *DX* |
|  |  | | | |  | |  | | |  | | | | |
|  | *City/Town/Suburb* | | | | *State* | | *Postcode* | | | *Email Address* | | | | |
| Solicitor for Plaintiff/s (name)  *(if any, as on claim form)* | | | |  | | | | | | | | | | |
| Address |  | | | | | | | |  | | |  | |  |
|  | *Street* | | | | | | | | *Telephone* | | | *Facsimile* | | *DX* |
|  |  | | | |  | |  | | |  | | | | |
|  | *City/Town/Suburb* | | | | *State* | | *Postcode* | | | *Email Address* | | | | |
| **Defendant/s** | | | | | | | | | | | | | | |
| Full Name |  | | | | | | | | | | | | | |
| Address  *(Registered Office, if Body Corporate)* |  | | | | | | | |  | | |  | |  |
|  | *Street* | | | | | | | | *Telephone* | | | *Facsimile* | | *DX* |
|  |  | | | |  | |  | | |  | | | | |
|  | *City/Town/Suburb* | | | | *State* | | *Postcode* | | | *Email Address* | | | | |
| Solicitor for Defendant/s (name) | | | |  | | | | | | | | | | |
| Address |  | | | | | | | |  | | |  | |  |
|  | *Street* | | | | | | | | *Telephone* | | | *Facsimile* | | *DX* |
|  |  | | | |  | |  | | |  | | | | |
|  | *City/Town/Suburb* | | | | *State* | | *Postcode* | | | *Email Address* | | | | |
| **NOTICE TO PLAINTIFF**  The Court assumes you will defend a counterclaim. If you admit a counterclaim or part of it, you should file an admission of liability or an offer to save costs. If you admit the counterclaim in full, say so. | | | | | | | | | | | | | | |
| **PARTICULARS OF DEFENCE:** State any part of the plaintiff’s claim which is admitted or denied and briefly state any defence. If you admit the claim in full, say so. | | | | | | | | | | | | | | |
| **PARTICULARS OF COUNTERCLAIM** - Briefly state the date, place and circumstances from which the counterclaim arose and the cause of action and the relief sought. Where the counterclaim is for damages, the amount claimed for each head of damages must be given.  There are costs penalties for making an unsuccessful counterclaim. | | | | | | | | | | | | | | |
| ADDRESS FOR SERVICE – All documents for the DEFENDANT will be sent to his/her above address (or if he/she has a solicitor, to his/her solicitor) unless notice of another address is filed at the Trial Court and served on the PLAINTIFF.  THE DEFENDANT (or his/her solicitor) must sign and date each page. | | | | | | | | | | | | | | |
| Date DEFENDANT | | | | | | | | | | | | | | |

**AFFIDAVIT OF PROOF OF SERVICE**

|  |  |  |
| --- | --- | --- |
| I,       of | | |
| Occupation: |  | |
| MAKE OATH AND SAY that: | | |
| I. I did on the       day of       20     , between the hours of       and       duly serve the within named defendant       with this claim and Form 17 and any applicable form under the *Service and Execution of Process Act 1992* (Cth). | | |
| (Please tick the appropriate box) | | |
| By personal service on the person. | | |
| By service on the solicitor acting for the person. | | |
| By leaving it for the person at the address of the place of dwelling or business of the person with someone apparently above the age of 14 years. | | |
| By depositing it for the person at the DX addressed to the DX number of the person or the solicitor acting for the person. | | |
| By leaving it at the registered office of the body corporate. | | |
| By sending it by prepaid post addressed to the strata corporation at its site or its post office box. | | |
| By prepaid post addressed to the community corporation or to the presiding officer, treasurer or secretary at the postal address of the community corporation or by placing it in the community corporation’s letterbox. | | |
| By fax directed to the fax number of the person or the solicitor acting for the person during normal business hours on a business day. | | |
| By service on one partner or at the principal place of business of the firm. | | |
| By sending it by prepaid post addressed to the person at -  (note - unless the court is satisfied that the document served by this method came to the attention of the defendant the plaintiff is not entitled to costs thrown away if the judgment is set aside-rule 106(8)) | | |
| By  (here describe any other authorised means of service) | | |
| II. I served the person at (state the address, DX number, fax number etc.) | | |
| III. I necessarily made       trips and travelled       kilometres for the purpose of effecting the service. | | |
| SWORN before me at  on the       day of       20  Signature  (Person authorised to take Affidavits)  (e.g. Justice of the Peace) | | SERVER |