

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged:	Originating Application Starting a Representative Proceeding under Part IVA Federal Court of Australia Act 1976 - Form 19 - Rule 9.32
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File Number:	VID65/2026
File Title:	ALISSAH MITCHELL v HUNGRY JACK'S PTY LTD
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

**Originating application starting a representative proceeding
under Part IVA of the Federal Court of Australia Act 1976**

No. VID of 2025

Federal Court of Australia
District Registry: Victoria
Division: Fair Work

Alissah Mitchell

Applicant

Hungry Jack's Pty Ltd

Respondent

To the Respondent -

The Applicants apply for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place:

The Court ordered that the time for serving this application be abridged to

Date:

.....
Signed by an officer acting with the authority of
the District Registrar

Filed on behalf of	The applicant, Alissah Mitchell
Prepared by	██████████
Law firm	Shine Lawyers
Tel	██████████ Fax
Email	██████████
Address for service	Level 6, 299 Elizabeth Street, Sydney, NSW 2000



Details of claim

On the grounds stated in the accompanying statement of claim, the Applicant claims on her own behalf and on behalf of Group Members (together and severally **Claimants**):

1. Pursuant to s 545 of the *Fair Work Act 2009 (Cth)* (**FW Act**), further or alternatively s 21 of the *Federal Court of Australia Act 1976 (Cth)* (**FCA Act**):
 - (a) a declaration that the Respondent –
 - (i) up to 15 April 2020, contravened cl 18 of the *SDA Hungry Jacks (South Australia and Northern Territory) Certificated Agreement 1999 (1999 HJ Agreement)* by failing, in relation to employees based in South Australia, to pay –
 - A. full-time and part-time employees at the rate of 200%; and
 - B. casual employees at the rate of 180%,
 for ordinary hours worked on a Sunday; and
 - (ii) in the premises in (i) – contravened sch 16 item 2(2) of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth)* (**Transitional Act**);
 - (b) a declaration that the Respondent –
 - (i) up to 15 April 2020, contravened cl 11 of the 1999 HJ Agreement by failing, in relation to employees based in South Australia, to pay employees at the rate of 200% for overtime hours worked on a Sunday; and
 - (ii) in the premises in (i) – contravened sch 16 item 2(2) of the Transitional Act;
 - (c) a declaration that the Respondent –
 - (i) up to 15 April 2020, contravened cl 11 of the 1999 HJ Agreement by failing, in relation to employees based in South Australia who had agreed to take time off in lieu instead of payment for overtime hours worked on a Sunday, to give those employees that time off in lieu at the overtime equivalent; and
 - (ii) in the premises in (i) – contravened sch 16 item 2(2) of the Transitional Act;
 - (d) a declaration that the Respondent –
 - (i) on and from 16 April 2020, contravened cl 34.3 of the *Hungry Jack's National Enterprise Agreement 2019 (2019 HJ Agreement)* by failing, in relation to employees based in South Australia, to pay –
 - A. full-time and part-time employees at the rate of 225%, and
 - B. casual employees at the rate of 250%;
 for ordinary hours worked on a Sunday; and
 - (ii) in the premises in (i) – contravened s 50 of the FW Act;



- (e) a declaration that the Respondent –
 - (i) on and from 16 April 2020, contravened cl 26 of the 2019 HJ Agreement by failing, in relation to employees based in South Australia, to pay –
 - A. full-time and part-time employees at the rate of 250%, and
 - B. casual employees at the rate of 275%,for overtime hours worked on a Sunday; and
 - (ii) in the premises in (i) – contravened s 50 of the FW Act;
- (f) a declaration that the Respondent –
 - (i) on and from 16 April 2020, contravened cl 26 of the 2019 HJ Agreement by failing, in relation to employees based in South Australia who had agreed to take time off in lieu instead of payment for overtime hours worked on a Sunday, to give those employees that time off in lieu at the overtime equivalent, or pay those employees any balance of that overtime that had not been taken as time off in lieu at the earliest of:
 - A. the employee requesting payment for the overtime instead of taking the time off in lieu;
 - B. 6 months after the overtime was worked; or
 - C. the end of the employee's employment,
 - (ii) in the premises in (i) – contravened s 50 of the FW Act;
- (g) a declaration that the Respondent, in relation to employees based in South Australia –
 - (i) up to 27 July 2022 contravened cl 30.4 of the *Fast Food Industry Award 2020 (Fast Food Award)* by failing to pay –
 - A. full-time and part-time employees at the rate of 225%, and
 - B. casual employees at the rate of 250%;for ordinary hours worked on a Sunday;
 - (ii) on and from 28 July 2022 contravened cl 21 of the Fast Food Award by failing to pay –
 - A. full-time and part-time employees at the rate of 225%, and
 - B. casual employees at the rate of 250%;for ordinary hours worked on a Sunday; and
 - (iii) in the premises in (i) and (ii) (as the case may be) – contravened s 45 of the FW Act;



- (h) a declaration that the Respondent, in relation to employees based in South Australia –
- (i) up to 27 July 2022 contravened cl 26 of the Fast Food Award by failing to pay –
 - A. full-time and part-time employees at the rate of 250%, and
 - B. casual employees at the rate of 275%,for overtime hours worked on a Sunday;
 - (ii) on and from 28 July 2022 contravened cl 20.6 of the Fast Food Award by failing to pay –
 - A. full-time and part-time employees at the rate of 250%, and
 - B. casual employees at the rate of 275%,for overtime hours worked on a Sunday; and
 - (iii) in the premises in (i) and (ii) (as the case may be) – contravened s 45 of the FW Act;
- (i) a declaration that the Respondent, in relation to employees based in South Australia who had agreed to take time off in lieu instead of payment for overtime hours worked on a Sunday –
- (i) up to 27 July 2022 contravened cl 26 of the Fast Food Award by failing to give such employees time off in lieu at the overtime equivalent, or pay those employees any balance of that overtime that had not been taken as time off in lieu at the earliest of:
 - A. the employee requesting to be paid for the overtime instead of taking the time off;
 - B. 6 months after the overtime was worked;
 - C. the end of the employee's employment;
 - (ii) on and from 28 July 2022 contravened 20.7 of the Fast Food Award by failing to give such employees time off in lieu at the overtime equivalent, or pay those employees any balance of that overtime that had not been taken as time off in lieu at the earliest of:
 - A. the employee requesting to be paid for the overtime instead of taking the time off;
 - B. 6 months after the overtime was worked;
 - C. the end of the employee's employment; and
 - (iii) in the premises in (i) and (ii) (as the case may be) – contravened s 45 of the FW Act;



- (j) a declaration that the Respondent –
 - (i) contravened s 89 of the FW Act by deducting the annual leave balances of full-time and part-time employees based in South Australia for work purposes, for paid annual leave taken on a Sunday; and
 - (ii) in the premises in (i) – contravened s 44 of the FW Act;
 - (k) a declaration that the Respondent –
 - (i) contravened s 98 of the FW Act by deducting the personal/carer's leave balances of full-time and part-time employees based in South Australia for work purposes, for paid personal/carer's leave taken on a Sunday; and
 - (ii) in the premises in (i) – contravened s 44 of the FW Act;
2. An order under s 545 of the FW Act that the Respondent pay compensation to the Claimants in respect of the contraventions referred to in paragraph 1 hereof.
 3. In the alternative to 2 above, an order under:
 - (a) s 545 of the FW Act;
 - (b) s 33Z(1)(e) of the FCA Act; further or alternatively
 - (c) s 33Z(1)(f) of the FCA Act,
 that the Respondent pay compensation to the Claimants in amounts worked out in such manner as the Court specifies, alternatively in an aggregate amount.
 4. An order under s 546 of the FW Act that the Respondent pay a pecuniary penalty for each contravention of the FW Act as may be found by the Court, with that penalty to be paid to the Claimants in such sum or sums as may be determined by the Court.
 5. Interest.
 6. Such further or other orders as the Court considers appropriate.

Questions common to claims of group members

The questions of law or fact common to the claims of the Claimants are:

*(All defined terms have the same meaning as in the statement of claim (**Claim**))*

1. Whether the 1999 HJ Agreement applied to any and if so which of the Claimants.
2. Whether the 2019 HJ Agreement applied to any and if so which of the Claimants.
3. Whether the Fast Food Award applied to any and if so which of the Claimants.
4. Whether, in the State of South Australia, Sunday was a public holiday for the purposes of the FW Act.



(1999 HJ Agreement)

5. Whether any and if so which of the Claimants were entitled, under the 1999 HJ Agreement, to be paid at the public holiday rates prescribed by that Agreement for work performed on Sundays.
6. Whether by the conduct pleaded in the Claim the Respondent contravened cl 18 of the 1999 HJ Agreement, and thereby sch 16 item 2(2) of the Transitional Act.
7. Whether by the conduct pleaded in the Claim the Respondent contravened cl 11 of the 1999 HJ Agreement, and thereby sch 16 item 2(2) of the Transitional Act.
8. The appropriate measure of compensable loss and damage suffered by Claimants or any of them resulting from the contraventions of the 1999 HJ Agreement.
9. Whether any and if so which of the Claimants were entitled, under the 2019 HJ Agreement, to be paid at the public holiday rates prescribed by that Agreement for work performed on Sundays.
10. Whether by the conduct pleaded in the Claim the Respondent contravened cl 34.3 of the 2019 HJ Agreement, and thereby s 50 of the FW Act.
11. Whether by the conduct pleaded in the Claim the Respondent contravened cl 26 of the 2019 HJ Agreement, and thereby s 50 of the FW Act.
12. The appropriate measure of compensable loss and damage suffered by Claimants as a result of the contraventions of the 2019 HJ Agreement.

(Fast Food Award)

13. Whether Claimants were entitled, under the Fast Food Award, to be paid the public holiday rates prescribed by the Award for work performed on a Sunday.
14. Whether by the conduct pleaded in the Claim the Respondent contravened cl 30.4 (up to 27 July 2022) and cll 27.3 and 21 (on and from 28 July 2022) of the Fast Food Award, and thereby s 45 of the FW Act.
15. Whether by the conduct pleaded in the Claim the Respondent contravened cl 26 (up to 27 July 2022) and cll 20.6, 20.7 or 27.3 (on and from 28 July 2022) of the Fast Food Award, and thereby s 45 of the FW Act.
16. The appropriate measure of compensable loss and damage suffered by Claimants as a result of the contraventions of the Fast Food Award.

(Unpaid Sunday leave)

17. Whether the Claimants were entitled, under s 89 of the FW Act, to be taken to not be on paid annual leave on a Sunday, if the Claimants took paid annual leave on that Sunday.



18. Whether by the conduct pleaded in the Claim the Respondent contravened s 89 of the FW Act, and thereby s 44 of the FW Act.
19. Whether the Claimants were entitled, under 98 of the FW Act, to be taken to not be on paid personal/carer's leave on a Sunday, if the Claimants took paid personal/carer's leave on that Sunday.
20. Whether by the conduct pleaded in the Claim the Respondent contravened s 98 of the FW Act, and thereby s 44 of the FW Act.
21. The appropriate measure of compensable loss and damage suffered by Claimants as a result of the contraventions of ss 89 and 98 of the FW Act.

Representative action

The Applicant brings this application as a representative party under Part IVA of the *Federal Court of Australia Act 1976 (FCA Act)*.

The group members to whom this proceeding relates comprise all persons:

- (a) who in the period from 15 December 2019 to 31 December 2023 were employed by the Respondent;
- (b) to whom, in their employment in (a), the:
 - (i) *SDA Hungry Jacks (South Australia and Northern Territory) Certificated Agreement 1999*;
 - (ii) *the Hungry Jack's National Enterprise Agreement 2019*; and/or
 - (iii) *Fast Food Industry Award 2020*,
 applied; and
- (c) who during their employment in (a) were based in South Australia for work purposes and:
 - (i) on one or more Sundays during the said employment performed work but were not paid for that work at the public holiday rate(s) prescribed by the 1999 HJ Agreement, the 2019 HJ Agreement or the Fast Food Award (as applicable); or
 - (ii) were employed on a full-time or part time basis and –
 1. took paid annual leave or paid personal/carer's leave on one or more such Sundays;
 2. were taken by the Respondent to be on paid annual leave or paid personal/carer's leave on the Sunday(s) referred to in (ii)(1); and
 3. by reason of (ii)(2), had their paid annual or paid personal/carer's leave balance deducted in relation to that period of leave.

Applicant's address

The Applicant's address for service is:

Place: Level 6, 299 Elizabeth Street, Sydney, NSW 2000

Email: [REDACTED]

The Applicant's address is c/- Level 6, 299 Elizabeth Street, Sydney 2000.

Service on the Respondent

It is intended to serve this application on the Respondent.

Date: 15 December 2025

A handwritten signature in black ink, appearing to be 'V. [unclear]', written over a light grey rectangular background.

Signed by [REDACTED]
Lawyer for the Applicant