# Sample VCAT Particulars of complaint

This document was prepared by the Equality Law Program. We are a specialised team of lawyers at Victoria Legal Aid providing advice and representation to eligible people experiencing discrimination, sexual harassment and victimisation.

## Case Study 1: Discrimination in employment

### Background

1. The Applicant was employed by the Respondent from (date) to (date), as a packer, on a casual basis.

This establishes what area of ‘public life’\* the discrimination occurred in. Here it is employment.

1. The Applicant usually worked between 4 and 6 shifts per week, with each shift averaging 6 hours.
2. The Respondent is an incorporated entity and capable of being sued.
3. The Applicant’s manager was (name).
4. The Respondent is vicariously liable for the conduct of the Applicant’s manager pursuant to section 109 of the *Equal Opportunity Act 2010* (Vic).
5. The Applicant has a chronic back condition as diagnosed by Dr (name) in 2010.
6. The Applicant’s back condition is a ‘disability’ for the purposes of section 6 of the *Equal Opportunity Act*.

This establishes what the Applicant’s ‘protected attribute’\* is.

1. On (date) the Applicant informed her manager that she would no longer be able to lift boxes weighing more than 8 kilos, as required on occasion, due to her back condition.

**PARTICULARS**

If you need to give more details about a key fact, do this under a heading titled ‘Particulars’.

On (date) the Applicant entered her manager’s office in the morning and explained that her doctor had diagnosed her with a chronic back condition which would restrict how much weight she could lift. The Applicant provided a letter from Dr (name) dated (date) which outlined that she could not lift more than 8 kilos. The Applicant requested that she have her duties adjusted to accommodate this medical issue.

1. On (date) the Applicant’s manager told her to lift a 10 kilo box of staples. The Applicant refused.
2. The Applicant’s manager stated to the Applicant that she would be disciplined for failing to properly fulfil her role.

This states how the Applicant alleges they were treated unfavourably.

**PARTICULARS**

On (date) the Applicant’s manager called the Applicant into a meeting and stated to the Applicant that she was being issued with a first and final warning because she had been deliberately insubordinate to the lawful request of her employer that she lift the 10 kilo box of staples. The Applicant reminded her manager that she could not lift boxes heavier than 8 kilos due to her chronic back condition. The Applicant refused to comply with the direction because she was concerned that lifting a heavier weight than 8 kilos could exacerbate her medical condition.

1. The Applicant’s manager terminated the Applicant’s employment.

This also states how the applicant alleges they were treated unfavourably.

**PARTICULARS**

On (date) the Applicant’s manager stated to the Applicant that it was a requirement of her job that she lift boxes for packing, and that because of her refusal to do so she would not be given any more shifts.

Allegation 1: Direct discrimination by disciplinary action

The allegations set out how the conduct of the Applicant’s manager breaches the *Equal Opportunity Act 2010* (Vic).

1. By reason of the conduct set out in paragraph 10 above, the Respondent directly discriminated against the Applicant within the meaning of section 8 of the *Equal Opportunity Act* by disciplining her substantially because of her disability.
2. By reason of paragraph 12 above the Respondent directly discriminated against the Applicant in contravention of section 18(d) of the *Equal Opportunity Act.*

Allegation 2: Direct discrimination by dismissal

1. By reason of the conduct set out in paragraph 11 above, the Respondent directly discriminated against the Applicant within the meaning of section 8 of the *Equal Opportunity Act* by dismissing her substantially because of her disability.
2. By reason of paragraph 14 above the Respondent directly discriminated against the Applicant in contravention of section 18(b) of the *Equal Opportunity Act.*

Allegation 3: Indirect discrimination by dismissal

You should use numbered headings where you are alleging multiple breaches of the Act.

1. In the alternative to paragraph 14 and 15 above, by reason of the conduct set out in paragraphs 8 to 11 above, the Respondent indirectly discriminated against the Applicant within the meaning of section 9 of the *Equal Opportunity Act* in that:
2. the Respondent imposed a requirement that the Applicant lift boxes weighing more than 8 kilos and
3. the requirement had the effect of disadvantaging the Applicant as a person with a disability because she was at risk of further injury if she complied and she was disciplined for failing to comply and
4. the requirement was not reasonable.
5. In the alternative to paragraph 15 above, by reason of paragraph 16 above the Respondent has indirectly discriminated against the Applicant in contravention of section 18(b) and 18(d) of the *Equal Opportunity Act*.

Allegation 4: Failure to make reasonable adjustments

1. Further to paragraphs 15 and 17 above, by reason of the matters set out in paragraphs 8 to 11 above the Respondent contravened section 20 of the *Equal Opportunity Act* in that:
2. the Applicant required adjustments in order to perform her role because of her disability and
3. the adjustments required were reasonable and
4. the Respondent refused to make the adjustments required.

These are elements of the relevant legal test.

1. By reason of the Respondent’s contraventions of sections 18 and 20, the Applicant has suffered hurt, humiliation, loss and damage.
2. The Applicant claims (outline the remedies sought).

## Case Study 2: Sexual harassment in education

### Background

1. The Applicant is a student of the University, and commenced a course entitled Business Essentials on (date).

This establishes the area of ‘public life’\* that the sexual harassment is alleged to have occurred in. Here it is education.

1. The University (‘Respondent’) is an incorporated entity and capable of being sued.
2. Mr (name) was the Applicant’s teacher (‘the teacher’) for the subject Intro to Business Essentials.
3. On (date) the teacher made a sexual advance to the Applicant and/or engaged in conduct of a sexual nature towards the Applicant.

**PARTICULARS**

The Applicant’s teacher called the Applicant to stay back after class, approached the Applicant and tried repeatedly to kiss the Applicant on her mouth. The Applicant stated she was uncomfortable and tried to push the teacher away on each occasion that he tried to kiss her. The Applicant then left the room.

1. By reason of the conduct set out in paragraph 4 above, the teacher sexually harassed the Applicant within the meaning of section 92 of the *Equal Opportunity Act* *2010* in that:
2. the sexual advance was unwelcome and
3. a reasonable person would have anticipated that the Applicant would be offended, humiliated or intimated by his conduct.

These are elements of the legal test for sexual harassment.

1. The Respondent is vicariously liable for the conduct of the Applicant’s teacher pursuant to section 109 of the *Equal Opportunity Act*.
2. By reason of the matters set out in paragraph 5 above the Respondent has contravened section 98(1)(b) of the *Equal Opportunity Act*.
3. By reason of the Respondent’s contraventions of section 98 of the *Equal Opportunity Act*, the Applicant has suffered hurt, humiliation, loss and damage.
4. The Applicant claims (outline remedies sought).

\*See VLA factsheet: ‘What is Discrimination?’ for more information.

## Where to get help

Contact our Legal Help telephone information service for free information about the law and how we can help you. It’s open Monday to Friday, 8.00 am to 6.00 pm. Call us on 1300 792 387.

If we can’t help you with your legal problem, we may be able to refer you to other organisations that can.

You can also contact the Victorian Equal Opportunity and Human Rights Commission, the Fair Work Ombudsman, or the Australian Human Rights Commission for more information.

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