

RULE 5.02(1)

FORM 5A

2016 ~~01~~ 2582

**IN THE SUPREME COURT OF VICTORIA
AT WARRNAMBOOL
COMMON LAW DIVISION
CIVIL CIRCUIT LIST**

No. S CI

COLIN DAVID GRANT

Plaintiff

and

V/LINE PTY LTD

Firstnamed Defendant

and

WARRNAMBOOL CITY COUNCIL

Secondnamed Defendant

WRIT

Date of document: 1 July 2016

Filed on behalf of Plaintiff

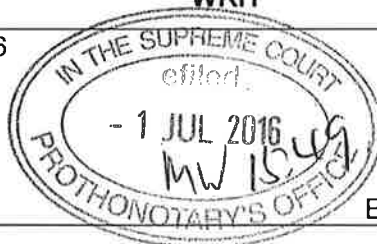
Prepared by:

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PORTLAND VIC 3305

TO THE DEFENDANTS



Solicitors Code: 103422

30501 PORTLAND VICTORIA

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Ref: MJB:BSV:21301229

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TAKE NOTICE that this proceeding has been brought against you by the Plaintiffs for the claim set out in this writ.

IF YOU INTEND TO DEFEND the proceeding, or if you have a claim against the Plaintiffs which you wish to have taken into account at the trial, 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 writ has been filed in the office of a Deputy Prothonotary, in the office of that Deputy Prothonotary; and
- (a) on the day you file the Notice, serving a copy, sealed by the Court, at the Plaintiffs address for service, which is set out at the end of this writ.

IF YOU FAIL to file an appearance within the proper time, the Plaintiffs may OBTAIN JUDGMENT AGAINST YOU on the claim without further notice.

THE PROPER TIME TO FILE AN APPEARANCE is as follows:

- (b) where you are served with the writ in Victoria, within 10 days after service;
- (c) where you are served with the writ out of Victoria and in another part of Australia, within 21 days after service;
- (d) where you are served with the writ in New Zealand or in Papua New Guinea, within 28 days after service;
- (e) where you are served with the writ in New Zealand under Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth, within 30 working 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;
- (f) where you are served with the writ in any other place, within 42 days after service.

**IN THE SUPREME COURT OF VICTORIA
AT WARRNAMBOOL
COMMON LAW DIVISION
CIVIL CIRCUIT LIST**

No.

BETWEEN:

COLIN DAVID GRANT

Plaintiff

and

V/LINE PTY LTD

Firstnamed Defendant

and

WARRNAMBOOL CITY COUNCIL

Secondnamed Defendant

STATEMENT OF CLAIM

Date of Document:
Filed on behalf of:
Prepared by:
STRINGER CLARK
Solicitors
129 Timor Street
Warrnambool Vic 3280

1 July 2016
The Plaintiff

Solicitors Code: 103423
DX 28017 Warrnambool
Tel: 5562 5733
Fax: 5562 8817
Ref: MJB: 21301229

1. The First and Second Defendants are incorporated pursuant to law and are capable of being sued in the State of Victoria.
2. On or about the 19th day of March 2013 Samuel David Grant died when the motor vehicle he was driving, registration YUS-770, was struck by a train on the Brown Street, Allansford Railway Crossing (hereinafter referred to as "the accident").
3. The Plaintiff is the father of the deceased, Samuel David Grant, who died as a result of the accident.
4. At all material times the First Defendant had the control, management, supervision and responsibility for the Brown Street, Allansford Railway Crossing (hereinafter referred to as "the Crossing").
5. At all material times the First Defendant owed the Plaintiff a duty of care with respect to the operation, management, and control of the Crossing.
6. At all material times the Second Defendant had the responsibility, management and control of Brown Street, Allansford including the approaches to the Crossing.

7. At all material times the Second Defendant owed the Plaintiff a duty of care with respect to its management, control and supervision of Brown Street and the approaches to the Crossing.
8. The accident was caused by the negligence of the First Defendant as to the duty owed by it to the Plaintiff.

PARTICULARS OF NEGLIGENCE

- (a) Failing to have the Crossing controlled by –
 - (i) boom gates;
 - (ii) flashing red lights;
 - (iii) warning bells.
 - (b) Permitting the Crossing to be used when it was –
 - (i) unsafe;
 - (ii) not properly controlled.
 - (c) Failing to close the Crossing when the First Defendant knew or ought to have known that it was unsafe and/or dangerous to members of the public.
 - (d) Failing to have adequate and/or appropriate warning signs in position on Brown Street, Allansford on the approaches to the Crossing.
 - (e) Permitting and/or allowing the Crossing to used and/or operated with only passive traffic controls.
9. Further and in the alternative, the accident was caused by the negligence of the Second Defendant.

PARTICULARS OF NEGLIGENCE

- (a) Failing to have the Crossing controlled by –
 - (i) boom gates;
 - (ii) flashing red lights;
 - (iii) warning bells.
- (b) Permitting the Crossing to be used when it was –
 - (i) unsafe;
 - (ii) not properly controlled.
- (c) Failing to close the Crossing when the First Defendant knew or ought to have known that it was unsafe and/or dangerous to members of the public.
- (d) Failing to have adequate and/or appropriate warning signs in position on Brown Street, Allansford on the approaches to the Crossing.
- (e) Permitting and/or allowing the Crossing to used and/or operated with only passive traffic controls.