
DEBT RECOVERY – SMALL CLAIMS PROCEDURE (NORTHERN TERRITORY)

Introduction – letter of demand

This information sheet assumes that the contracts under which money is owed are legally enforceable, and that the debts are not subject to the National Consumer Credit Protection Act 2009 (Cth) or the National Credit Code. If you are unsure, please contact Arts Law on (02) 9356 2566 or toll-free on 1800 221 457.

When chasing payment for goods or services, the first step is generally to send a letter of demand to the other party telling them of the dispute and the money outstanding, and giving them a defined period within which to settle the matter or else face legal action.

When sending a letter of demand, you should be careful not to:

- harass the debtor – they have the right to complain about this behaviour to particular government agencies and the police; or
- send a letter which is designed to look like a court document because this is illegal.

A guideline on acceptable and unacceptable debt collection practices is published by the Australian Securities & Investment Commission (ASIC) as *ASIC Regulatory Guide 96 - Debt collection guideline: for collectors and creditors*. It is available at the ASIC website at www.asic.gov.au.

For assistance with drafting a letter of demand see Arts Law's information sheet on [Debt recovery Letter of Demand](#).

Response to letter of demand

In response to a letter of demand, a debtor may:

- pay the full amount owing;
- show that no money is owed;
- negotiate a compromise, for example, payment by instalments or part payment; or
- ignore the letter or respond to it in a way that is unsatisfactory to the creditor.

If you agree a compromise with the debtor, make sure that it is, or is confirmed, in writing to avoid later disputes. You can seek the assistance of Arts Law regarding the form and terms of that agreement including any release you are asked to provide in return for part payment.

You may consider writing off the debt – if for example the debtor's response to your letter of demand makes it clear that there is no prospect of repayment, or because the size of the debt is so small that you decide that it is not worth pursuing further. If you decide to write the debt off, you may be able to claim an income tax deduction or a Goods and Services Tax (GST) adjustment, so that you do not pay income tax or GST on the amount that you do not recover from the debtor. See the *'Taxation implications of bad debts'* section of this information sheet.

Small Claims debt recovery action

Many people decide to write off a debt because of the perception that it is too difficult and expensive to pursue, especially if lawyers are retained. However, a "do it yourself" legal action is available. All State and Territory courts in Australia offer a **small claims** division of their local court or tribunal that provides a simple debt recovery procedure. Advantages are that the process is relatively informal, and that costs awarded against an unsuccessful party are limited.

So, what is a "small claim"? In the Northern Territory, a small claim is a claim:

- for an amount of money up to \$10,000; or
- a claim against someone for work, or the return, repair or replacement of goods up to \$10,000.

If the debt is over that limit, you can still bring an action against the debtor, but you will probably need legal representation or at least legal advice. For example, in the Northern Territory, the Local Court can deal with debt recovery claims up to the value of \$100,000. If the money that is owed exceeds \$100,000 you must commence action in the Supreme Court of the Northern Territory.

Debt recovery court action is actually a twostep process:

- after commencing proceedings, you must either negotiate a settlement (which you can do at any time up to the hearing) or obtain a judgment in your favour; and
- you must actually recover the money owed to you, which may involve taking enforcement action against the debtor. Briefly, these measures include obtaining a writ of execution against the debtor's property, securing a garnishee order against the debtor's wages or bank account, or (but this is uncommon with small claims) forcing the debtor into bankruptcy.

To sue or not to sue...

Things to think about when deciding whether or not to commence a debt recovery action and when you should do this, include:

- whether the debtor can pay. If the debtor has a number of creditors seeking payment of debts and is basically bankrupt or insolvent (i.e. unable to pay their debts as they fall due) it may not be worth pursuing legal action. If, after a company search, you find that a company is in the hands of a receiver or liquidator, contact that person directly;
- whether there is a genuine dispute over the facts, and whether the evidence to support your claim is strong. If your claim is unsuccessful and the other party retains a solicitor to represent

them (this is not common in small claims), the party will apply for a legal costs order against you;

- the fact that it is generally worth the effort to settle a matter out of court as this is unquestionably preferable to spending time and money on court proceedings. Again, if you do reach agreement with a debtor, make sure that the agreement is in writing, to avoid later disputes;
- there is a time limit on starting debt recovery court action. In the Northern Territory an action for debt (which is founded on the basis of a contractual breach) must be brought within 3 years from the date that the debt first arose. Limitation periods can start again, though, in certain circumstances, such as when a debt is confirmed by a debtor signing a contract that states the money owed to the creditor. You may need help from a lawyer to work out the relevant time limits, if they are an issue.

The [Northern Territory Community Justice Centre](#) operates a mediation service which may assist you to negotiate a settlement in relation to your claim before you resort to legal action. Phone: 1800 00 473; Fax: 08 8999 6226; Email: cjc@nt.gov.au, Address: GPO Box 1722 Darwin NT 0801.

Whom can I sue?

A small claims action can be brought against a person (sole trader), a group of people (partnership) or a corporate entity (company, incorporated association or cooperative). If the debtor is trading under a business name you need to do a business name search to identify the owner of the business. This can be done by carrying out a search at the Business and Consumer Affairs Office (or its equivalent) in your State or Territory or using the Australian Securities and Investments Commission (ASIC) National Names Index which can be accessed free, via their website, at www.asic.gov.au.

If the person whom you intend to sue is an individual under the age of 18 you will need to obtain further advice from a lawyer or from the court staff before proceeding. Any action against a minor will need to proceed through their "litigation guardian".

The owner of the business has to be identified in the Defendant or Respondent details of your claim form (often referred to as the Statement of Claim) as follows: Defendant – Glen X of 99 Surreal Crescent, Darwin, NT trading as (or 't/a') Fantasy Dressers.

If the debtor is a company – for example, Fantasy Dressers Pty Ltd – any business documents (such as invoices and business letters) should have its nine digit Australian Company Number (ACN) after the company name. A company search, using this ACN, should be conducted through ASIC to identify the address of the registered office at which to serve the Statement of Claim and to ensure that the company is not in liquidation (you will have to pay a fee to ASIC to complete a registered office address search. See the ASIC website www.asic.gov.au for more information).

Small claims procedure

In the Northern Territory, a small claim may be made in the Small Claims Division of the Local Court ('Small Claims Court').

When can I use the Court?

If you are a person who is capable of managing your own affairs (including a company, an association, or a person over 18) you may make a small claim in the Small Claims Division of the Local Court under the *Small Claims Act* where the value of your claim does not exceed \$10,000.

How do I make a Small Claim in the Local Court?

To start a claim you must fill in a Statement of Claim form, which you may obtain from any NT Local Court office or the Court's website at www.nt.gov.au/justice/ntmc/small_claims.shtml. Make sure you include accurate addresses both for yourself ('Plaintiff'), and the other party ('Defendant'). Then hand in (file) the completed form to the Local Court nearest to you and pay the fee. If that Local Court doesn't have a particular relationship to the Defendant or the claim, the Defendant may try to have the matter transferred to another Local Court in a different location.

The Statement of Claim and a Notice for the Defendant to defend, admit or counter claim the action (which is included on the Statement of Claim form) must be delivered to (served on) the Defendant personally. This means that the documents must be physically handed to the Defendant, and that mailing them is not sufficient. If you are unable to serve the Defendant with the Statement of Claim and Notice yourself, you may pay for a licensed process server or Court bailiff to do this.

You can serve the Statement of Claim up to 12 months after the date it was filed, after which you need to ask the Court for an extension of time.

If you serve the Statement of Claim and Notice on the Defendant yourself, you must file a Declaration of Service (a sample is provided on the Statement of Claim form) with the Court within 28 days of service. The Declaration is proof that the Defendant has been served with the Statement of Claim.

If you are claiming a sum of money, you may include a claim for interest on that amount.

How much will it cost?

A small fee is payable for filing the Statement of Claim with the court. The fees are available at the NT Courts website www.nt.gov.au/justice/ntmc/small_claims.shtml.

What happens next?

The Defendant has 28 days from the date on which the Statement of Claim is served to pay the claim, or reach an agreement with you to settle the claim, or to file with the Court either a Notice of Defence or a Notice of Admission (admitting all or part of the claim) or an offer to pay (eg. by instalments). A copy of any document filed by the Defendant will be sent to the Plaintiff.

If the Defendant fails to do any of these things within that time, the Plaintiff can apply for judgment without a court hearing by filing an Application for Default Judgment form, which may be obtained from the court office. Even after this has happened, though, there are circumstances in which the Defendant can apply to have that judgment set aside.

Can I settle before the hearing?

Yes. You may settle at any stage before judgment, but you must let the court know of the settlement. Again, ideally, you will have a written and signed settlement agreement which you can file with the Court. If the Defendant only agrees to make a part payment, we recommend that you get legal advice before accepting an offer to settle in this situation.

What happens at the hearing?

If you wish, you may have another person (eg. a lawyer, friend) represent you. If a lawyer represents you, it is up to you to pay their fees. If you are representing yourself be ready to prove your case. This means having all relevant papers with you (including any contracts, invoices, receipts, and diary notes) and arranging for any witnesses to attend the hearing.

The Court listens first to the Plaintiff's case and then to the Defendant's case. Note that the Court is not bound by the rules of evidence. When the Court has heard the case in full it will give a judgment and make orders which must be obeyed by the party against whom the orders are made.

Costs

Either party can ask the Court to make an order that the unsuccessful party pay their costs of the proceedings (filing fees and legal costs). Costs may only be awarded if the claim is for more than \$5000 and the court thinks it is reasonable to do so. All costs are awarded entirely at the discretion of the court.

Enforcement

If you are successful and the Defendant does not pay you, there are a number of methods of enforcement. The Court may order the sheriff or bailiff to seize and sell the judgment debtor's property to satisfy the debt owed to you, or make an order 'attaching' the wages or earnings of the Defendant until you are paid. If you are in this position, seek advice from the Court or from Arts Law.

Appeals

An unsuccessful party can appeal a decision by the Registrar in the Small Claims Division to a Local Court magistrate. The appeal must be lodged within 14 days of the decision (or the leave of the Registrar or magistrate must be obtained). The appeal is conducted as a rehearing of the case.

Taxation implications of bad debts

You may be able to claim an income tax deduction or a Goods and Services Tax (GST) adjustment in respect of a bad debt.

In order to claim a tax deduction for a bad debt deduction under section 25-35 of the *Income Tax Assessment Act 1997 (Cth)*, the following minimum requirements must be met:

- The bad debt must be written off in writing;
- The bad debt must be written off in your financial accounts;
- The bad debt must be written off before the end of the financial year in which you are seeking to claim the tax deduction;
- You must retain written records relating to the writing off of the bad debt and to the claiming of the tax deduction; and
- If the tax deduction is claimed by a company, the company must meet the conditions in section 165-123 of the *Income Tax Assessment Act 1997 (Cth)* (about maintaining the same owners) OR meet the condition in section 165-126 of the *Income Tax Assessment Act 1997 (Cth)* (about satisfying the 'same business test').

For more information about income tax deductions for bad debts, see the Australian Taxation Office '*Taxation Ruling TR 92/18*' and/or seek advice from a taxation professional.

If you account for GST on an accrual basis, you may be able to claim a GST adjustment if you decide to write the debt off, or if the debt has been overdue for 12 months or more. If you have reported the GST in respect of the bad debt but have not received all or part of that GST from the debtor, you may have reported too much GST. You may be able to claim a decreasing adjustment on your Business Activity Statement (BAS) in the tax period in which the debt is written off, or if it has not been written off, in the tax period in which you become aware that the debt has been overdue for 12 months or more.

For more information about GST adjustments for bad debts, see the Australian Taxation Office '*Goods and Services Tax Ruling GSTR 2000/2*' and/or seek advice from a taxation professional.

More information

Arts Law cannot represent you at these proceedings and cannot draft your Statement of Claim, but we can advise you about your rights in an arts related matter both before and during any legal action you pursue. If the debt is over the limit provided for in the small claims division and you need legal representation, Arts Law can assist with referrals to an appropriate solicitor.

You can contact the nearest Local Court Registry Office for more information. Court staff can assist you with information about making a claim.

Darwin Local Court

Magistrate Courts
Nichols Place
Cnr Cavenagh St & Harry Chan Ave
Darwin NT 0800

Tel: (08) 8999 6225

Alice Springs Local Court

Law Courts Building
Cnr Hartley & Parsons St
Alice Springs NT 0870

Tel: (08) 8951 5698

Katherine Local Court

Court House
First Street
Katherine NT 0850

Tel: (08) 8973 8956

Nhulunbuy Local Court

Court House
Endeavour Square
Nhulunbuy NT 0880

Tel: (08) 8987 1378

Tennant Creek Local Court

Court House
Paterson Street
Tennant Creek NT 0861

Tel: (08) 8962 4377

You can also obtain advice on making a claim from a Community Legal Centre, the Office of Consumer Affairs and the Legal Aid Commission.

Darwin Community Legal Service

8 Manton Street
Darwin NT 0801

Tel: (08) 8982 1111

NT Legal Aid Commission (Darwin)

6th Floor, 9-11 Cavenagh St
Darwin NT 0801

Tel: (08) 8999 3099
www.ntlac.nt.gov.au

NT Legal Aid Commission (Katherine)

Government Centre, First St
Katherine NT 0850

Tel: (08) 8973 8551

NT Legal Aid Commission (Alice Springs)

77 Hartley St
Alice Springs NT 0870

Tel: (08) 8951 5378

**NT Office of Consumer Affairs
(Darwin)**

Ground Floor, Minerals House
66 The Esplanade
Darwin NT 0801

Tel: (08) 8999 1999 or 1800 019 319

**NT Office of Consumer Affairs
(Alice Springs)**

67 North Stuart Highway
PO Box 3796
Alice Springs NT 0871

Disclaimer

The information in this information sheet is general. It does not constitute, and should be not relied on as, legal advice. The Arts Law Centre of Australia (**Arts Law**) recommends seeking advice from a qualified lawyer on the legal issues affecting you before acting on any legal matter.

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