

Monetary Claims in the Local Court

Main Steps



Overview

When you are involved in a dispute over a relatively small amount of money, you are probably asking whether it is commercially sound to hire a lawyer for the entire process as the legal costs can quickly outgrow the disputed amount.

If you are a small business owner and have several outstanding invoices at any given time, it pays to educate yourself about the steps of a civil case in the Local Court.

Letter of Demand

- Prior to commencing proceedings, sending a letter of demand to the other side is a good idea.
- Letters of demand put the other side on notice that if the debt is not paid within a certain time, you intend to commence proceedings against them.
- Be careful with what you put in a letter of demand as it can become evidence and prejudice your claim.
- Marking letter of demands "without prejudice save as to costs" is common but each case is different and legal advice should be sought.
- Some disputes settle by serving a letter of demand, specially if the letter is drafted and served by a lawyer.

Statement of Claim

If the money is not paid pursuant to the letter of demand and you are considering litigation, take note of these points:

- Litigation is always risky and you can lose, in which case a costs order is likely to be made against you.
- Even worse, the other side can bring a cross-claim against you and they can win that claim. This would also mean adverse credit entry for you.
- or you can win with costs, but the other side is penniless.
Basically, you have thrown good money after bad.

Statement of Claim continued....

If all the risks have not dissuaded you from commencing litigation, it is now time to look at Statement of Claim.

A properly drafted Statement of Claim is crucial to success.

The Statement of Claim has to be crystal clear about:

1. How the debt has arisen; eg is it a debt pursuant to a contract for services or sale of goods; when was the contract entered and between whom; was it an oral or written contract; when were the services provided or goods delivered, etc
2. Amount claimed
3. The amount of interest claimed and how is it calculated
4. Any other issue relevant to cause of action

Bear in mind that statements of claim are not evidence and you should not treat it as a document to present your evidentiary material.

Statement of Claim continued....

You need to name the defendant and to be able to do that, you need to think critically as to who is the claim against. The claim can be against:

1. Individuals
2. Businesses, sole traders, partnerships (Run a business name search on ASIC)
3. Companies (Run a company search on ASIC)

FILING

Statements of Claim and other materials can now be filed online. Register an account on onlineregistry.lawlink.nsw.gov.au. and use the relevant guides

Statement of Claim continued...

SERVICE

You should now serve the statement of claim on the defendant. Depending on the legal entity of the defendant, rules of service differ. You can serve the document:

Yourselves or someone on your behalf, a process server, by asking the Court to serve it on your behalf.

For a detailed discussion around service, please [CLICK HERE](#)

AMENDING STATEMENT OF CLAIM

Mistakes happen. If you realised that parts of the statement of claim are not accurate, you can amend it within 28 days and serve a new copy on the defendant. If 28 days has passed since you filed the Statement of Claim, you need to seek leave (permission) from the court to amend the Statement of Claim.