
The Creditor's Kit

When someone owes YOU money!



A guide to the debt recovery process

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IMPORTANT NOTICE

1. You should only use this Kit after a lawyer has explained it to you.
2. You should only use this Kit if you lent somebody money in New South Wales.
3. This Kit is a guide only and does not deal with every possibility that may arise.
4. Do not use this Kit as a substitute for legal advice. While we have tried to ensure that the information in this Kit is as accurate and up to date as possible, you should seek legal advice about your particular debt, the recovery process and associated legal matters.
5. This Kit tells you about the debt recovery process in the NSW Local Court only.
6. Hawkesbury Nepean Community Legal Centre does not accept responsibility for the outcome of your particular case.

NB: This Kit is current as at 30 June 2011

ACKNOWLEDGEMENTS

Information contained in the Kit is summarised from the following sources:

Barry R (ed.), *The Law Handbook: Your Practical Guide to the Law in New South Wales*, 10th Edition (Redfern Legal Centre Publishing: Sydney, 2007)

Debt – Recovering a Debt in Fast Answers, <http://www.lawsociety.com.au/page.asp?partid=6646>

Ritchie's Uniform Civil Procedure NSW (LexisNexis, Butterworths)

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PART A - PURSUING A DEBT OUT OF COURT

1. WHAT HAPPENS IF SOMEONE OWES ME MONEY?

If someone owes **you** money, there are legal steps you can take to get that money back.

If someone owes you money, you are called the **creditor**. The person who owes you money is called the **debtor**.

If you are owed money by a business or a company, you may be able to take legal action in the Consumer Trader and Tenancy Tribunal (CTTT), rather than the Local Court. You must start your action in the CTTT within **3 years**. You should obtain legal advice about your particular circumstances and whether you should pursue your debt through the CTTT or the Local Court.

2. WHAT CAN I DO TO RECOVER THE DEBT?

Depending on the circumstances of your case, if a debtor owes you money you may:

- (a) contact the debtor to discuss how they might pay back the debt;
- (b) make a demand for payment. This is usually by way of a letter of demand;
- (c) if you have supplied someone with goods, you may take steps to repossess those goods;
- (d) if you have been supplying someone with goods and they do not pay for those goods you may withhold or end the supply of goods or services;
- (e) if the debtor has provided a mortgage or a personal guarantee for a loan made by you to the debtor or to someone else, you can seek to enforce this by taking possession of the mortgaged property or by suing the person who provided a guarantee;
- (f) start legal action against the debtor through the courts;
- (g) if the debtor is a company, you may issue the debtor with a statutory demand to repay the money in a specified time.

This kit focuses on how creditors who are owed less than \$100,000 can try to get their money back through the Local Court.

You should not use this kit if you wish to repossess goods you have supplied or to cease to supply goods, if you are seeking to recover money as a landlord or under a mortgage or personal guarantee. Instead you should seek legal advice.

3. CONTACTING THE DEBTOR

The first step is to contact the debtor to discuss payment of the debt. You can do this by letter or telephone. The aim is to try to reach an agreement about how much you are owed and how and when the debtor will repay you. You should keep a record of when and how you tried to contact the debtor and of what you said and what the debtor said in reply.

If you reach an agreement with the debtor you should put your agreement in writing. Each of you should also sign and date the agreement and keep a copy. This agreement can be used as evidence if the debtor fails to keep to the agreement and you need to take the matter to Court. An example of such an agreement is the Deed of Release in Part E of this kit.

4. WHAT IS A LETTER OF DEMAND?

This is a formal letter you send to the debtor asking the debtor to pay you the money you say they owe you by a certain date (usually within 14 days). It is intended to be a final notice to the debtor that you will take action to recover the debt, including by taking legal action, if they do not pay the debt.

There are **important** things you should include in the letter of demand. These are:

- (a) a statement of how much you say the debtor owes you;
- (b) a request for payment of the debt;
- (c) the time within which the debt must be repaid. This is usually 14 days, although you may wish to give the debtor longer or shorter to pay;
- (d) a statement that if the debtor does not respond, you may be left with no other option than to take the matter to Court.

An example of a Letter of Demand is in Part E of this Kit.

Don't forget to **keep a copy** of your Letter of Demand and all letters between yourself and the debtor. You should also try to get proof that the debtor received the letter of demand, for example by sending it by registered post or faxing the letter and keeping the fax receipt.

At this point, you should collect together all of the documents you have which relate to the debt, including the Letter of Demand and any confirmation of receipt of the Letter of Demand by the debtor, and file them in a folder. Make sure you keep this folder safe, as documents are the most helpful form of evidence available if you have to go to Court later.

Remember! It is against the law to send a Letter of Demand that is designed to look like a Court document.

5. SETTLING A CLAIM

Given the costs, expense and risks you may face in taking a matter to Court, sometimes it is sensible to settle a claim with the debtor out of Court.

If the debtor responds saying that they cannot pay the whole amount at once or within the time demanded, try to negotiate with them. For example, you may consider agreeing to:

- (a) give the debtor time to get legal advice;
- (b) give the debtor an extension of time to pay the debt;
- (c) accept payment of the debt in instalments; or
- (d) accept a reduced amount if you will be satisfied with that amount and want to avoid going to Court.

When you are negotiating a settlement with the other party, all negotiations should be conducted on a “**Without Prejudice**” basis. This means that on the top of every letter, you should write the words “Without Prejudice” so that the letter and any offer you make or accept cannot be used as evidence in any later Court case, except in limited circumstances (for example if one party breached the agreement that was reached).

If you agree to settle the debt, you and the debtor should both sign a **Deed of Release**. An example is in Part E of this Kit. A Deed of Release legally binds you and the debtor to the agreement. If either of you breaks the agreement, the other party can take you to Court to enforce that agreement.

Remember! If you reach an agreement with the debtor you should put your agreement in writing. Each of you should also sign and date it and keep a copy. You should also keep copies of receipts for money paid by the debtor and copies of all correspondence and place them in your file.

6. WHAT HAPPENS IF THE LETTER OF DEMAND IS UNSUCCESSFUL?

If the debtor does not respond to the letter of demand or does not otherwise agree to pay the debt, you will need to commence legal proceedings to recover the debt.

You need to consider whether you think the expense and stress of taking a matter to Court is worth it. You also need to know whether the debtor will actually be able to pay the debt if you win your case.

7. IS THERE A TIME LIMIT ON SEEKING REPAYMENT OF A DEBT?

You must start proceedings in Court to recover your debt within a certain period of time.

Different time limits apply depending on the type of claim you are making against the debtor.

The general rule, however, is that you must commence legal proceedings to recover a debt within **6 years** of when the debt becomes payable.

You are unlikely to be able to go to Court to recover a debt that was payable more than 6 years ago.

PART B - COMMENCEMENT OF LEGAL PROCEEDINGS

1. SHOULD I GO TO COURT?

In deciding whether or not to go to Court you should consider whether or not:

- (a) the debtor has assets or income to repay the debt, or is likely to have assets or income in the next 12 years. If the debtor can't pay, you won't get your money back even if you win;
- (b) you have a good chance of being successful. If you are unsuccessful you will probably have to pay your own costs of going to Court as well as the debtor's costs of going to Court;

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- (c) you have tried the other options. Going to Court is expensive and time consuming. You should only go to Court as a last resort; and
 - (d) you are certain you have identified the correct debtor. For example, if it is a company that owes you money you probably can't get the money back from a director or employee of the company.

2. WHICH LOCAL COURT DIVISION DO I START PROCEEDINGS IN?

The Local Court has two divisions:

Small Claims Division: deals with claims for up to \$10,000. Proceedings conducted in the Small Claims Division are conducted with less formality so the proceedings can be resolved quickly. They are less expensive than proceedings in the General Claims Division and you can represent yourself without the assistance of a lawyer.

General Claims Division: deals with claims for between \$10,000 and \$100,000. This division is more formal than the Small Claims Division and while you can represent yourself, there are more formal procedures for first proving that a debt is owed and then enforcing the debt. Rules of evidence must be followed. This division is also more expensive.

3. HOW DO I COMMENCE PROCEEDINGS?

To commence proceedings in the Local Court you will need to:

- (a) complete a Statement of Claim;
- (b) file the Statement of Claim at the Local Court where you want the case heard;
- (c) arrange for the Statement of Claim to be served on (given to) the debtor.

The **Chamber Service at the Local Court** or **LawAccess** can assist you with completing the Statement of Claim and explaining the process to you.

Go to web address below at Lawlink NSW to download the forms:

http://www.lawlink.nsw.gov.au/lawlink/spu/ll_ucpr.nsf/pages/ucpr_forms

4. WHAT IS THE STATEMENT OF CLAIM?

The Statement of Claim is a Court document that you complete to commence legal proceedings in the Local Court.

At a minimum, in the Statement of Claim you must set out:

- (a) how much money you are owed including interest (interest will be recoverable on most debts);
- (b) who owes the debt to you (the debtor);
- (c) why you believe the person owes you the money; and
- (d) when the debt was incurred.

5. FILING THE STATEMENT OF CLAIM

Once you have completed the Statement of Claim, you must file it with the Local Court. There is a fee for filing this form and the fee depends on the amount that you are claiming and whether you are an individual or a company.

The fees to file a Statement of Claim are as follows:

<i>Individual in Small Claims Division</i>	<i>Fee</i>
Claim for an amount between \$ 0.01 - \$10,000.00	\$ 83.00
<i>Individual in General Division</i>	<i>Fee</i>
Claim for an amount between \$10,000.01 - \$100,000.00	\$ 205.00

Please Note – The fees are set by the Attorney General’s Department and are subject to change. These fees are current at 1 July 2011.

6. HOW DO I SERVE THE STATEMENT OF CLAIM ON THE DEBTOR?

The Statement of Claim must be served on (given to) the debtor. When you file the Statement of Claim with the Local Court, the Court will sign and stamp it. You must give the debtor a stamped copy of the Statement of Claim (called a **sealed copy**).

You can serve the Statement of Claim on the debtor any time within **6 months** from the date it is filed. If you have not served the Statement of Claim by then you will either need to go back to the Court to file a new Statement of Claim, which will require you to pay the filing fee again, or you can apply to the Court for an extension of time to serve the Statement of Claim.

You can serve a Statement of Claim on a debtor by one of the following methods for service:

- (a) **Give it to the debtor personally** - you can deliver a copy **personally** to the debtor. If the debtor will not take the copy, you can put the copy down in the debtor's presence and tell them what it is.
- (b) **Service by sheriff or process server** - you can pay a fee to a sheriff or a process server to serve the Statement of Claim on your behalf.
- (c) **Get someone else to serve it** – you can get someone else who is over 16 to serve the Statement of Claim on your behalf.
- (d) **Postal service by the Court** – you can arrange with the Court for them to post the Statement of Claim to the debtor’s current address. Service is assumed to have taken place **4 working days** after posting, unless the Statement of Claim is returned to the Court. It must be posted by a Court officer and put in an envelope with the return address of the Court. The fee for postal service by the Court is \$35.00.
- (e) **Postal service by you** - if the debtor is a **company or business**, you can post the Statement of Claim (preferably by registered mail) to the registered office of the company.

It is very important to make sure the documents are served correctly otherwise you may not be able to proceed with your claim.

Once the claim has been served, you or the person who served the document must file an **Affidavit of Service** with the Court. This is a written record setting out the details of service. The person who served the Statement of Claim must fill out an Affidavit of Service stating where, when and to whom they gave the Statement of Claim. The person must sign the Affidavit of Service in front of a person who is authorised to witness affidavits, for example by a lawyer or Justice of the Peace. An Affidavit of Service proves to the Court that the debtor has received the Statement of Claim.

An example of an Affidavit of Service and instructions for completing an Affidavit of Service are at:

http://www.lawlink.nsw.gov.au/Lawlink/lawaccess/ll lawassist.nsf/pages/lawassist_instructions_for_filling_out_an_affidavit_of_service

7. WHAT CAN THE DEBTOR DO WHEN THE STATEMENT OF CLAIM IS SERVED?

The debtor may do a number of things when you serve them with the Statement of Claim, including:

- (a) **Acknowledge the debt and pay in full** – the debtor can pay you the money you are seeking and the matter is finished.
- (b) **Acknowledge the debt and pay by instalments** – The debtor can contact you and ask you to pay by instalments. If you agree, you should require the debtor to come to Court to admit that they owe the debt to the Court and ask the Court to enter judgment on your behalf.
- (c) **Ignore the Statement of Claim** – The debtor can ignore the Statement of Claim. If the debtor does not file a reply to the Statement of Claim (**Defence**) within 28 days of being served with the Statement of Claim, you can ask the Court for **default judgment** against the debtor (Part C below sets out information about obtaining default judgment).
- (d) **Defend the claim** – The debtor can file a Defence to your Statement of Claim saying he or she does not owe you part or all of the money. The debtor has **28 days to file a Defence** with the Court. The Defence must explain to you and the Court why the debtor believes they do not owe you the money. If the debtor files a defence the matter will go to hearing. Part 9 below sets out what happens if your case goes to a hearing.
- (e) **Seek more information** – The debtor can ask you for more information so he or she can decide whether to defend the claim. This will usually be done by way of a request for better and further particulars. If you receive a request for better and further particular, you must respond and answer their questions as completely as possible.
- (f) **File a Notice of Appearance** – If you do not agree to give the debtor more time, they may consider filing a **Notice of Appearance** with the Court, which will give them more than the usual 28 days to prepare their Defence and stop you from obtaining default judgment against them.
- (g) **File a Statement of Cross-Claim against you** – The debtor can file a **Statement of Cross-Claim** against you if they believe you owe them a debt. The Cross-Claim sets out why the debtor believes they have a claim against you. The debtor must file the Statement of Cross-Claim within **28 days** after the service of the Statement of Claim.

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- (h) **File a Statement of Cross-Claim against a third party** – If the debtor thinks that another person (a third party) is responsible, either completely or partially, for the debt they can file a Statement of Cross-Claim to join him or her in the action. The debtor can claim the third party should pay all or part of the debt to you. If the debtor files a cross-claim against a third party, it may complicate or delay the proceedings, as the Court will need to deal with both claims simultaneously.

8. SMALL CLAIMS DIVISION

8.1 What happens at Court?

Once the Statement of Claim is filed and served, the debtor has **28 days** to file a Defence with the Court.

If a debtor files a Defence, the Court sets a date for Pre-Trial Review in approximately 6 weeks from the date of filing. The Court will notify the parties and send out an information sheet explaining how to prepare for Pre-Trial Review.

8.2 What happens at the Pre-Trial Review?

Pre-Trial Reviews are managed by the Registrar of the Court. The Registrar will call out your name when he or she is ready to deal with your case. During the Pre-Trial Review, the Registrar will ask you questions to identify the facts and legal issues that are in dispute and so that the Registrar can determine whether your matter is ready for hearing. You must come prepared to present your argument and to say what evidence you intend to rely on if the matter were to go hearing and how long you will need to prepare this evidence.

At the Pre-Trial Review the Registrar may encourage and assist you to reach a settlement. If, at the end of the Pre-Trial Review, a settlement cannot be reached the Registrar will set a timetable to prepare the matter for hearing.

Generally a Pre-Trial Review is the only time the Court will make orders regarding the preparation of the case. Such orders can have a big impact upon your case. For example, you may need access to documents which the debtor or a third party holds. To help you obtain these documents, the Court may allow you to issue a "subpoena" on the debtor or a third party. A subpoena is a Court order that requires the person who holds the documents to give you access to documents specified in the subpoena. Another example of an order the Court can make is to give you (or your lawyer) permission to cross-examine the debtor or a witness at the final hearing. This gives you (or your lawyer) the opportunity to ask that person questions about their case.

8.3 What happens at the hearing?

The Small Claims Division operates on an informal basis and you will not be required to follow the formal rules of evidence. Cases in the Small Claims Division are often decided by an Assessor appointed by the Court.

At the hearing **you** must prove to the Court that on the **balance of probabilities** (ie more likely than not), the debtor owes you the money. If you do not prove this on the balance of probabilities, the Court will dismiss your claim.

It is important that you give the Court all the documents that prove the debtor owes you money. Those documents might include your contract with the debtor, letters where the debtor admits he or she owes you money or documents showing the debtor acted in a way which was consistent with them owing you money such as bank statements which show the debtor made payments into your bank account.

You will be given a chance to present your case first and later to challenge the evidence of the debtor. The debtor will also be given the opportunity to present their case and challenge your evidence.

Once both of you have presented your case, you will each be given the opportunity to give a summary of your case and point out any weaknesses in the other party's case. The magistrate or assessor will then consider the arguments and the evidence from both parties before making a decision and recording a judgment. If the matter is complex, a magistrate or assessor may reserve their judgment and give their reasons at a later date.

If the Assessor decides in **your** favour, the debtor will be ordered to pay the debt to you. This is called the **judgment debt**. The judgement debt includes:

- (a) the amount you claimed;
- (b) filing and serving fees paid by you;
- (c) pre-judgment interest – either contractual interest as agreed between you and the debtor, or if there is no agreement for interest and the debt is more than \$1000.00, interest fixed by the Court rules (currently the pre-judgment interest rate is 8.75%). Interest must be claimed in the Statement of Claim;
- (d) your solicitor's costs (if any);
- (e) if the judgment debt is not paid within **21 days**, the debtor can claim interest on the judgment debt until it is paid. Currently the post-judgment interest rate is 10.75%.

When a judgment is made, it is **final and binding**. The debtor must pay you the full amount of the debt or comply with any Court order about payment of the judgment debt.

The Assessor may also require the debtor to pay your legal costs.

However, if the Assessor decides in the debtor's favour, then your Statement of Claim will be dismissed and the debtor will not have to pay the debt. You may also be required to pay the legal costs of the debtor.

8.4 Can I appeal a decision?

There are **very limited rights of appeal** against a decision in the Small Claims Division and you can appeal only to the Supreme Court on grounds of procedural fairness.

There is also a time limit on appealing a decision.

As a result, a decision by a Small Claims Assessor will most often be the final judgment in the proceedings. You should **seek legal advice** before proceeding with an appeal.

8.5 Costs

If you lose the case, you will have to pay the debtor's costs of defending the proceedings. There are limits to the costs you can be ordered to pay in the Small Claims Division. However, you will have to pay costs such as Court filing and service fees, costs of preparing the Defence and any witness expenses.

Where the debtor has a lawyer, you may have to pay for the lawyer's legal costs. However, these costs are capped based on the amount of the debt being claimed.

9. GENERAL DIVISION

9.1 The call-over

Once the debtor files his or her defence, the Court will list the proceedings for a call-over.

A call-over is not a hearing. A call-over is the first time you and the debtor will appear in Court before the magistrate or registrar. Usually the Court will just make directions about how the case should progress.

The Court may:

- (a) make orders about how parties should prepare the matter for hearing. This may include setting a timetable for you to file your evidence in Court and serve the evidence on the debtor, and also listing the matter for further directions;
- (b) allow you to issue subpoenas on the debtor or others to obtain documents that will help your case;
- (c) set a hearing date;
- (d) refer the case to arbitration (where a third party meets both sides and tries to resolve the matter);
- (e) adjourn the call-over if the Court believes you and the debtor can reach an agreement; or
- (f) dismiss the action altogether (also referred to as **striking out** the matter) although this will only happen in exceptional cases.

9.2 What happens if I have to go to a mediation?

A mediation is an out of Court dispute resolution process designed to try to get the parties to reach a settlement.

A mediation is conducted by a mediator who is independent of you and the debtor. A mediator cannot impose an agreement on you. Their job is to facilitate discussions between you and the debtor to try to get you to come to an agreement.

If you are ordered to mediate with the debtor, you must go to the mediation on the date nominated by the Court. Anything you say in a mediation cannot be used later in Court against you. For this reason, it is important to approach the mediation with an open mind and a willingness to consider any reasonable offers made by the debtor to settle the matter.

If you cannot reach an agreement that is acceptable to you and to the debtor you can have the matter determined by the Court.

Remember! In considering whether to settle the proceedings at a mediation you should consider what costs and risks are involved in running the matter to hearing.

9.3 What happens at the hearing?

The General Division of the Local Court operates on a more formal basis than the Small Claims Division. You will be required to present your case in a way that complies with the rules of evidence. For example, both parties will have an obligation to call witnesses to give their evidence in person at the hearing. The witness can be cross-examined on their evidence.

At the hearing **you** will have the responsibility of proving to the Court that on the **balance of probabilities** (i.e. more likely than not), the debtor owes you the money. You can use witnesses and other evidence such as documents to argue your case.

You will be given a chance to present your case first and later to challenge the evidence of the debtor. The debtor will also be given the opportunity to present their case and challenge your evidence.

Once both of you have presented your case, you will each be given the opportunity to give a summary of your case and point out any weaknesses in the other party's case. The magistrate will then consider the arguments and the evidence from both parties before making a decision and recording a judgment. If the matter is complex, a magistrate may reserve their judgment and give their reasons at a later date.

If the magistrate decides in **your** favour, the debtor will be ordered to pay you the debt. This is called the **judgment debt**. The judgement debt includes:

- (a) the amount you claimed;
- (b) filing and serving fees paid by you;
- (c) pre-judgment interest – either contractual interest as agreed between you and the debtor, or if there is no agreement for interest and the debt is more than \$1000.00, interest fixed by the Court rules (currently the pre-judgment interest rate is 8.75%). Interest must be claimed in the Statement of Claim;
- (d) your solicitor's costs (if any);
- (e) if the judgment debt is not paid within **21 days**, the debtor can claim interest on the judgment debt until it is paid. Currently the post-judgment interest rate is 10.75%.

When a judgment is made, it is **final and binding**. The debtor must pay you the full amount of the debt or comply with any Court order about payment of the judgment debt.

9.4 Can I appeal a decision?

There is **only one ground of appeal** from the General Division. The appeal is to the Supreme Court and to succeed on appeal you will need to show that the magistrate made an **error in law** in entering a judgment against you.

There is a set time limit to appeal a decision. You should **seek legal advice** before proceeding with an appeal.

9.5 What happens if I lose the case?

If you lose the case, you will be ordered to pay the debtor's costs in going to Court. You will have to pay costs such as Court filing and service fees, costs of preparing the Defence and any of your own witness expenses.

Where the debtor has a lawyer, you are likely to have to pay for the lawyer's costs. These are capped and depend on the amount of debt owed.

10. DEFAULT JUDGMENT

Where you have served the debtor with a Statement of Claim and they do not file a Defence within **28 days**, you can ask the Court to enter a **default judgment** against the debtor.

To obtain a default judgment, you will need to file in Court the following documents:

- (a) Notice of Motion for Default Judgment;
- (b) Affidavit proving how the debt arose and stating that the debt is still outstanding; and
- (c) Affidavit of Service (to prove how and when the other party was served with your Statement of Claim).

In the Local Court, applications for default judgment are dealt with in the Registry, not in Court, and usually take approximately 6 weeks to process. You do not need to attend.

A default judgment is enforceable like any other judgment.

If a default judgment has been made against a debtor, the debtor can apply to the Court to set the judgment aside. A Court will set aside a default judgment where the debtor:

- (d) provides an explanation to the Court as to why they were not able to respond to the Statement of Claim within **28 days**; and
- (e) demonstrates to the Court that they have an arguable defence to your Statement of Claim.

The application to set aside a default judgment can be made at any time, even if you have already commenced enforcement action. However, the later the application, the more difficult it will be for the debtor to explain to the Court why they did not respond as soon as possible.

PART C - ENFORCEMENT OF JUDGMENT

1. HOW DO I ENFORCE THE JUDGMENT?

If the debtor does not pay the judgment debt voluntarily you will need to enforce the judgment. There are a number of ways you can enforce judgment, including:

- (a) asking the Court to issue an examination notice asking the judgment debtor about their income and assets. This allows you to find out about the assets and income of the judgment debtor so you can decide how to enforce the judgment;
- (b) garnisheeing the debtor's wages or savings. A garnishee order is a Court order telling someone who owes money to a debtor (usually an employer or a bank), to pay money to the judgment creditor instead of the debtor;
- (c) obtaining a Court order that the debtor pay the debt in instalments;
- (d) obtaining a writ of execution, which allows the sheriff to go to the debtor's home and take certain goods up to the value of the debt;
- (e) issuing a bankruptcy notice (if the debt is \$5000 or more).

2. HOW LONG DO I HAVE TO ENFORCE THE JUDGMENT DEBT?

A judgment debt may be enforced up to **12 years** after the date of the judgment. If the Court permits, a judgment debt may be enforced beyond 12 years.

3. BANKRUPTCY PROCEEDINGS

If you successfully obtain judgment, you may serve a bankruptcy notice on the debtor if they fail to pay the judgment debt.

Once you serve a debtor with a bankruptcy notice, they will have **21 days** to respond by either repaying the debt or offering a payment proposal to you.

If the debtor does not respond to the bankruptcy notice within 21 days, you may file a Creditor's Petition in the Federal Magistrate's Court to have the debtor declared bankrupt. This will be a new Court proceeding. You will have to pay costs to start proceedings and you may, in some circumstances, have to pay the debtor's costs. You should seek legal advice if you decide to apply to make the debtor bankrupt.

4. DEBTS OVER \$100,000

If someone owes you more than \$100,000, you need to start legal proceedings in the District or Supreme Court. It is **recommended** that you seek legal representation in these cases.

PART D – OTHER THINGS YOU SHOULD KNOW ABOUT GOING TO COURT

1. WITNESSES

As a general rule, witness statements should be written in the first person and should attach all supporting documentation.

Generally, documents are the best evidence and should be relied upon if available. Whoever appears as a witness in the proceedings is obliged to tell the truth, especially when cross-examined, even if their evidence is not helpful to your case.

If the debt relates to a car accident, you should obtain written statements from any witnesses as soon as possible after the accident. The Statement should have details such as the date, time, weather, traffic conditions and the event itself.

2. LEGAL AID

Legal Aid provides a free 15-minute interview for **credit and debt advice**. To make an appointment ring your nearest Legal Aid Office.

You may also be eligible for legal aid if you satisfy certain tests. These tests relate to your income and assets, and to the nature and merits of your case. Legal Aid is not usually provided for simple debt cases.

3. INTERPRETERS

Check with the Court to see if they can organise an interpreter for you. If not, you will need to organise and pay for one for yourself. Remember to book your interpreter about **5 days** prior to your Court hearing.

4. OTHER USEFUL CONTACTS

Interpreters	Phone: 131 450
LawAccess	Phone: 1300 888 529
Local Court	
Windsor Local Court	Cnr North Pitt & Court Streets WINDSOR NSW 2756 Phone: (02) 4577 3023 Fax: (02) 4587 7272
Penrith Local Court	62-74 Henry Street PENRITH NSW 2750 Phone: (02) 4720 1510 Fax: (02) 4720 1555
Creditline	Phone: (02) 9951 5544
Credit Helpline	Phone: 1800 808 488
Office of Fair Trading - Department of Commerce	1 Fitzwilliam Street PARRAMATTA NSW 2150 Phone: (02) 9895 0111 http:// www.fairtrading.nsw.gov.au
Consumer Credit Legal Centre	Phone: (02) 9212 4111 http:// www.cclcnsw.org.au
Legal Aid Commission	http://legalaid.nsw.gov.au Parramatta Office (Civil Law) Level 5, 91 Phillip Street PARRAMATTA NSW 2150 Phone: (02) 9891 1600 Penrith Office 95 Henry Street PENRITH NSW 2750 Phone: (02) 4732 3077

PART D - EXAMPLES OF LETTERS AND DOCUMENTS

1. LETTER OF DEMAND

[Your Address]

[Date]

[Debtor's Name]

[Debtor's Address]

WITHOUT PREJUDICE

Dear [Debtor's Name]

I am writing about the debt you owe me.

On [23 June 2005] I loaned you [\\$3000.00]. I did this by [giving you [\\$3000] in cash/ transferring [\\$3000] to your bank account/ writing you a cheque for [\\$3000]].

We agreed that you were to repay this loan within three months with [5% interest]. The total amount now owing is [\\$ 3150.00].

You have not repaid the loan to me.

Please pay me the sum of [\\$ 3150.00] (original sum loaned plus 5% interest) within 14 days. If you do not pay me this amount by [date] I will be left with no other option than to commence legal proceedings against you.

You can pay me the money by [insert payment method].

I look forward to hearing from you shortly.

Yours sincerely,

[Creditor's signature]

[Creditor's Name]

2. LETTER OF DEMAND (ALTERNATE VERSION)

[Your Address]

[Date]

[Debtor's Name]

[Debtor's Address]

Dear [Debtor's Name]

I am writing concerning the amount of \$[amount] which was due to be paid on [date] and remains outstanding despite my requests for payment. This amount relates to: [include whatever is appropriate, eg * *goods supplied to you by me at your request, and being [insert a brief description of the goods and any relevant dates]*

* services provided to you by me at your request, and being [insert a brief description of the type of service and any relevant details]

* monies due to me pursuant to the terms of our contract dated [date] and being for [insert a brief description]

I **enclose** [attach documents appropriate to identify the amount owing, e.g. a copy of my original invoice dated [date] OR a copy of our contract].

I demand that payment of the full amount be paid to me at the address stated below within [no. of days usually 7 or 14 days] days from the date of this letter.

If this matter is not resolved by the time specified above, I reserve the right to commence legal proceedings to recover the debt without further notice to you and this letter may be tendered in Court as evidence of your failure to pay.

Yours sincerely

[Creditor's signature]

[Creditor's Name]

3. DEED OF RELEASE

This deed of release is made between [your name] (the **creditor**) and [debtor's name] (the **debtor**). [Make sure if the parties are incorporated, their ABN, ACN or ARBN are included after the name of the party]

The creditor hereby agrees to and accepts the amount of [\$.....] paid by the debtor in full and final settlement of all claims for [explain circumstance in which the debt arose] involving [.....] (name) and [.....] (name).

OR

The debtor agrees to pay to the creditor the sum of [\$.....] in equal [fortnightly/monthly] instalments of [\$.....]. The first payment shall be made on [.....] and each payment thereafter shall be made on [.....] eg. The 15th day of each month or each alternate Wednesday thereafter].

If the debtor does not make the payments as agreed under this deed, then the balance remaining and outstanding as at the time of the default, shall become immediately due and payable by the debtor to the creditor.

This deed of release is made on the [(date)] day of [(month and year)] at [(place)].

Executed as a deed.

.....
Name of signatory

.....
Signature

In the presence of:

.....
Name of witness

.....
Signature of witness

.....
Creditor

.....
Name of signatory

.....
Signature

In the presence of:

.....
Name of witness

.....
Signature of witness