

# Factsheet: Debt Recovery Process

This factsheet looks at the debt recovery process. It provides information on what to do if you owe someone money or if money is owed to you.

## Information for Debtors – is someone chasing you for money?

- Responding to Letters of Demand
- Responding to Local Court Statements of Claim
- Responding to Judgment Debts
- Default Judgment – Set Aside Process
  - a. Formal process
  - b. By consent
- Instalment Orders

## Information for Creditors – does someone owe you money?

- Sending a Letter of Demand
- Filing a Statement of Claim

## What Time Limitations Apply to Debt Recovery Action?

- What is the time limit for legal action to recover debt?
- What is the time limit to enforce a judgment debt?
- What happens if I have a debt that is "out of time"?

## Safety Concerns

If you are concerned about your safety in the debt recovery process, you can speak to the Local Court, [1800RESPECT](https://www.1800respect.org.au) (call 1800 737 732) or obtain legal advice before taking any steps. If there is an AVO in place, either preventing you from contacting the other party or preventing them from contacting you, seek legal advice. Consider the time limits in this fact sheet.

## Information for Debtors – is someone chasing you for money?

A debt is created when one person (the debtor) owes money to another (the creditor). A dispute about a debt can be resolved either by negotiations between the debtor and the creditor or by court action.

This section outlines what to do if someone is chasing you for money. If someone owes you money, see 'Information for Creditors' below.

## Responding to Letters of Demand

A letter of demand is a letter from, or on behalf of, the creditor which demands that you pay the whole debt, or part of the debt, by a certain date or court action will be taken against you. A letter of demand is not a court document.

If you receive a letter of demand, you should first check whether the amount of money demanded, as well as the other details provided about the debt, are correct.

If you disagree with the amount that the letter says you owe, write a letter to the creditor (make sure it is dated), note your disagreement and explain why you disagree.

If there is an AVO in place, you should get legal advice about responding to the letter of demand.

If the details provided in the letter of demand are incorrect or unclear, write a letter to the creditor (make sure it is dated) requesting further information and a more detailed statement of what they say you owe.

If the creditor's letter refers to documents you do not have a copy of, you should request copies of the documents. If necessary, request an extension to give you more time to respond to the letter of demand after receiving the documents. Make sure you keep copies of all letters sent and received, and take written notes of any conversations with the creditor.

If you do not dispute the amount, and the details provided about the debt are correct, you should consider paying it in full if you are able to do so.

If you are unable to pay the full amount, you can try to negotiate with the creditor for a payment arrangement, including by offering to pay in instalments, offering a reduced lump sum, asking them to write off the debt, or asking them to postpone payment.

Again, make sure you keep a written record of your conversations with the creditor, and obtain receipts for any

amount you pay (this may include your bank statement if the money is electronically transferred and/or a written acknowledgement from the creditor that you have paid the debt).

For further guidance on how to negotiate with creditors, please see **RLC's "Negotiating with Creditors" Factsheet**

### ***Responding to Local Court Statements of Claim***

A Statement of Claim is a court document used to start a court case about a debt. If you receive a Statement of Claim, you must respond to the Court within **28 days** of receiving it, by filing the appropriate court form.

You can get legal advice about a Statement of Claim from a community legal centre, a Legal Aid office or LawAccess.

If you do not dispute the amount, you should consider paying the claim:

- Pay the debt in full, including costs. This requires you to complete a 'Notice of Payment' (Form 34) and lodge it with the Local Court. This form, and others, can be found and lodged online at the 'Online Registry LawLink NSW' website. Blank forms are also available at [ucprforms.nsw.gov.au](http://ucprforms.nsw.gov.au).
- You might be able to negotiate with the creditor for a payment arrangement. If you reach an agreement you will need to make the Court aware of this by filing 'Consent Orders' (Form 44) signed by both you and the creditor.
- You can apply to the Court to pay by instalments. See 'Instalment Orders' at section 3 below.

If you dispute the amount claimed, you can either:

- Request more information from the creditor (be aware that the 28-day time limit for filing the appropriate form still applies).
- File a 'Defence' (Form 7B) if you disagree with what the creditor is claiming.
- File a 'Statement of Cross Claim' (Form 9) if you believe the creditor actually owes you money. Note that you will still need to file a 'Defence' (Form 7B) as well.

See **RLC's "What happens if I receive a Local Court Statement of Claim" Factsheet** for more details on how to respond to a Statement of Claim.

If the claim relates to a consumer credit debt (e.g. a home loan, a credit card debt or a personal loan), you can try external dispute resolution. See **RLC's "Complaints and External Dispute Resolution (EDR)" Factsheet**.

### ***Responding to Judgment Debts***

If a Statement of Claim is filed by the creditor and you do nothing within 28 days of the claim being served, the creditor can apply to the Court for a default judgment against you.

To obtain default judgment the creditor needs to file a 'Notice of Motion' (Form 38), an 'Affidavit of Service' (Form 41) and an 'Affidavit in Support' (Form 40), setting out how much the debtor owes you, including court costs. Note that an affidavit of service is not required if the documents were served by the Local Court.

If the Statement of Claim, Notice of Motion and Affidavits are in proper form, the default judgment is made without a court hearing and without the creditor having to prove the claim.

### ***Default Judgment – Set Aside Process***

#### **(A) Formal process**

You may apply to set aside a default judgment. If you are successful, the Court will make an order cancelling the judgment, giving you an opportunity to defend the claim.

This application is made by filing two documents:

- A 'Notice of Motion' (Form 20)
- An 'Affidavit in Support' (Form 40).
- The affidavit should:
  - Explain why a Defence was not filed before default judgment (for example, because the Statement of Claim was not served on you)
  - Explain any delay in bringing proceedings to set aside judgment
  - Contain details of the grounds of Defence (for example, illegality or lack of good faith). There should be enough detail to satisfy the Court that the Defence has merit, and to give the creditor advance notice of what grounds you will rely on in your Defence.

You should file a Defence with the Notice of Motion, or at least attach a draft Defence to the Affidavit in Support.

You should also apply for a stay of proceedings at the same time so that the creditor cannot seek to enforce the judgment until the application to set judgment aside has been dealt with.

You can get legal advice about making an application to set aside a default judgment from a community legal centre, a Legal Aid office or LawAccess.

Usually, the Court will set aside a judgment if it is satisfied that the debtor has a good defence. If the Court does not set the default judgment aside, you may apply again later (there is no limit to the number of times you can apply, although bear in mind that the Court is likely to award costs against you if your application fails).

### (B) By consent

It is also possible to have default judgment set aside by consent, as long as the rights of third parties are not affected. If the creditor consents to default judgment being set aside, the debtor should file 'Consent Orders' (Form 44), which set out any agreed terms. Usually, the terms will specify:

- The date of the default judgment being set aside
- That the debtor will file a defence within 14 days
- That the debtor will pay the creditor's costs.

### ***Instalment Orders***

If the Court orders that you have to pay the money back, you can try to negotiate with the creditor for a payment arrangement.

If agreement is reached on the payment arrangement by the creditor and debtor, the agreement should be filed with the Court along with 'Consent Orders' (Form 44). Once the agreement is signed by both parties and filed, it becomes a court order.

If you cannot reach an agreement, you can apply to the Court to pay by instalments. To do this you will need to complete two forms: an 'Acknowledgement of Liquidated Claim' (Form 35) and a 'Notice of Motion to Pay by Instalments' (Form 46). You will need to provide information about your employment, income, property (both goods and land), liabilities (household expenses such as maintenance or child support, medical expenses, other debts and insurance premiums) and what amount you are able to pay.

The Court will consider your application and if you have the capacity to pay the debt within a reasonable time based on the information you have provided in your application. The creditor has 14 days to file an objection (Form 50). If they do object, the Court will hold a hearing to determine your application, and if the Court refuses to grant the application you have 14 days to file an objection to this.

### **Information for Creditors – does someone owe you money?**

[This section outlines what to do if someone owes you money.](#)

#### ***Sending a Letter of Demand***

If someone owes you money, you can send them a letter of demand. You should seek legal assistance for this.

If a debtor does not pay, reach an agreement with you, or show that they do not actually owe you money, you can commence legal proceedings by completing a Statement of Claim, and the debtor may be ordered by the Court to pay the amount, including your legal costs.

You should consider whether sending a letter of demand is a choice that is suitable in all of your circumstances, including if there is an AVO in place restricting contact with the other party. If you are concerned about your safety or the effect of starting legal proceedings, you should obtain legal advice prior to sending a letter of demand.

### ***Filing a Statement of Claim***

To take action in the Local Court to recover a debt, the creditor (plaintiff) must file and serve a Statement of Claim on the debtor (defendant). You can get legal advice about a Statement of Claim from a community legal centre, a Legal Aid office or LawAccess.

A Statement of Claim is a court document that states what the plaintiff claims, and on what basis. Statement of Claim forms are available from any Local Court or online at the 'LawLink NSW' website. You can commence a claim using Form 3B if you are representing yourself.

If the debtor does nothing within **28 days** of receiving this document, you can apply to a Local Court officer for default judgment against the debtor. To obtain default judgment you need to file a 'Notice of Motion – default judgment' (Form 38 for a liquidated claim and Form 39 for an unliquidated claim), an 'Affidavit of Service' (Form 41) and an 'Affidavit in Support' (Form 40), setting out how much the debtor owes you, including court costs.

A liquidated claim is when relief sought can be quantified, for example, a claim for a specific amount of money.

An unliquidated claim cannot be accurately quantified without further evidence and determination by the Court.

Note that an 'Affidavit of Service' is not required if the documents were served by the Local Court.

If the Statement of Claim, the Notice of Motion and the affidavits are in proper form, the judgment is made without a court hearing and without you having to prove the claim.

You have **9 months** from the date on which the debtor's 28-day response period has expired to apply for default judgment.

### **What time limitations apply to debt recovery action?**

This section looks at the time limitations that apply to debt recovery action.

#### ***What is the time limit for legal action to recover a debt?***

A creditor can take legal action to recover a debt any time within **6 years** from the date it becomes "due and payable" in full.

For some debts, the 6-year limitation period starts from the date the debt is incurred (for example, the date of a car accident, or the date goods or services are provided to you). For other debts, the 6-year period starts at a later date (for example, the date you miss a repayment, which may be months or years after the date of the contract).

If at any time during the 6-year period, or after the 6-year period has expired, you make a payment towards the debt or acknowledge in writing that you owe the debt, the 6-year period starts again from the time of the payment or acknowledgement.

Make sure you get legal advice before paying or refusing to pay an old debt, or writing to the person who is chasing you for a debt.

***What is the time limit to enforce a judgment debt?***

A judgment debt is a debt that a Magistrate or a Judge has ordered you to pay. Judgment debts may be enforced any time within **12 years** from the date the order was made.

Judgment debts can be enforced by seizing and selling property, or by taking money from wages or bank accounts.

***What happens if I have a debt that is "out of time"?***

In most circumstances you will not have to pay back a debt that is "out of time" - a debt more than 6 years old, or a judgment debt that is more than 12 years old.

It is possible that a court might give a creditor an extension of time to start legal action for a debt, or to enforce a judgment debt. However, this is rare.

Remember, if you have confirmed the debt, either by acknowledging you owe the money or making a payment, the time limit starts again. This only applies if you acknowledge the debt in writing.

If you have a debt that is "out of time", you should get legal advice.

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