

Factsheet: How do I defend a claim in the Small Claims Division of the Local Court?

This factsheet provides some information and tips on how you can defend a claim in the Small Claims Division of the Local Court and will answer questions such as:

- What documents do I need?
- What happens the first time I go to Court?
- How do I prepare for a hearing?
- What happens at the hearing?
- Will I have to pay costs if I lose?
- What happens if I lose and I don't have the money to pay?
- I need an interpreter. Will there be one available?

Safety Concerns

If you are concerned about your safety in the debt recovery process, you can speak to the Local Court, [1800RESPECT](tel:1800737732) (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 factsheet.

The Small Claims Division of the Local Court deals with claims of \$20,000 or less. The person making the claim is called the 'Plaintiff'. The person the claim is made against is called the 'Defendant'. This factsheet is for Defendants.

If you cannot afford, or do not want, a solicitor to act for you, you can represent yourself in the Local Court. You can still get information and assistance about court forms and procedure from a community legal centre, legal aid offices, or LawAccess. There is detailed information about representing yourself in the Small Claims Division on the [LawAccess website](#).

Cases in the Local Court are open to the public. You might find it helpful to spend some time in court watching other cases before you have to go to court for your case.

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

If you agree with all the claims made by the Plaintiff you can:

- pay the Plaintiff the money and any interest claimed and file a form called a Notice of Payment with the court (this means that there will be no judgment against you and the proceedings will cease);
- file a form called 'Acknowledgment of Liquidated Claim' and a notice of motion to pay by instalments with the court. By doing so, you are telling the court that you agree you owe the money and you will pay by instalments; or
- negotiate with the Plaintiff to reach an agreement about settling the matter.

If you do not agree with all or some of the Plaintiff's claims you need to fill out a court form called a Defence. You can get the Defence form – Form 7B from any local court registry or from the [Uniform Civil Procedure Rules \(UCPR\) website](#).

You can also complete and file this form online using the [NSW Online Registry](#).

You must file the Defence with the court within 28 days of being served with the Statement of Claim. If you don't file a Defence within 28 days, the Plaintiff may get a default judgment against you without you being notified.

You should file the original and two copies of the Defence with the court. There is no filing fee. If there is more than one Plaintiff, you will have to make a photocopy of the defence stamped by the court, so that each Plaintiff can be provided with a copy.

The court will give you a copy of the Defence with the court stamp on it. The Court may also agree to send a copy of your Defence to the Plaintiff and any other Plaintiffs and Defendants if there are more than one. You should check this with the Court when you file your defence. After you have filed a Defence, the court will send you a letter notifying you of the date you have to attend court.

In some cases, you may think that the Plaintiff owes you money or you have some other claims against the Plaintiff. If this is your situation, you can file a document called a Statement of Cross-Claim. This must also be done within 28 days of being served with the Statement of Claim.

You should get legal advice before filing a Defence or Cross-Claim as you can be ordered to pay legal costs to the other party if your Defence or Cross-Claim is not successful.

You must serve a copy of the Statement of Cross-Claim on the Plaintiff.

You will still need to file a Defence, as well as the Statement of Cross-Claim, if you deny owing all or part of the money claimed by the Plaintiff in their claim. If you only file a Cross-Claim without also filing a Defence, the Plaintiff can get a judgment against you.

You can get the Statement of Cross-Claim form – Form 9 from any Local Court or from the [Uniform Civil Procedure Rules \(UCPR\) website](#). You can get more information about Cross Claims from the [LawAccess website](#).

What happens the first time I go to court?

The first time you go to court is for a Pre-trial Review. It is likely that there will be other Pre-trial Reviews happening on the same day and you may have to wait for your turn.

Pre-trial Reviews are usually run by a Registrar. You should call him or her "Registrar". In some courts, a magistrate or assessor may be dealing with the Pre-trial Review. If the Pre-Trial Review is before a Magistrate you should call the Magistrate "Your Honour". If your case is dealt with by an assessor, you can call him or her "Sir", "Madam" or "Assessor".

The court list will indicate whether a Magistrate or Registrar or an assessor is running your Pre-trial Review. The court list is published online at <https://onlineregistry.lawlink.nsw.gov.au/Landing.html> each day at 3.30pm for the following day. A copy of the court list will also be at the court.

The first aim of the Pre-trial Review is to see if the parties can come to an agreement to settle the claim. If settlement is not possible, the second aim of the Pre-trial Review is to give the Plaintiff and the Defendant directions about preparing for a hearing, and setting a date for the hearing.

You should prepare for a Pre-trial Review by:

- reading through your documents. These documents could include a letter of demand, the Statement of Claim and your Defence;
- thinking about what you would agree to in order to settle (which means resolving it by agreement) the claim and avoid a court hearing;

- working out what evidence you have to support your Defence, and whether there are any witnesses who can prepare statements to support your case; and
- finding out if there are any dates that you can *not* attend a hearing in the next few months.

If the claim is not settled at the Pre-trial Review, the court will set a date for a hearing of the claim. The court will also set dates for you and the Plaintiff to send your evidence and witness statements to the court and to each other. This is usually no later than 14 days before the hearing.

If you would like a witness to attend the hearing to give evidence in person, you should ask the Registrar or Magistrate for permission during the Pre-trial Review. You should also ask the Registrar or Magistrate for permission if you want to issue a subpoena.

A subpoena is a court order which requires a third party to produce documents to the court at a specific time. There is no filing fee for issuing a subpoena. However, you will be required to reimburse that third party for their reasonable costs of producing those documents to the court. A subpoena can also be granted for particular persons to attend to give evidence at the hearing. You will also be required to reimburse the person attending court under a subpoena for their reasonable costs in attending court. You can get more information about subpoenas from the [LawAccess website](#).

You and the Plaintiff will also be asked to fill in a form called a Pre-trial Review Sheet setting out a summary of your case and a list of your witnesses. You will file this form in court at the next Pre-trial Review unless otherwise advised by the Court.

You can get more information about Pre-trial Reviews at the [LawAccess website](#).

How do I prepare for the hearing?

To prepare for the hearing you need to gather your evidence to support your Defence. Your evidence can include things such as:

- receipts;
- bank statements;
- contracts;
- photographs; and
- letters, emails and text messages.

You should write a witness statement yourself setting out events and conversations relevant to your Defence. If you have any other witnesses you should ask them to write and sign a witness statement setting out what they saw or heard that is relevant to your Defence.

Your evidence and witness statements should be sent to the court and the Plaintiff by the date set at the Pre-trial Review. When you send your evidence to the court, make sure you have a covering letter with your name and the Plaintiff's name, and the case number.

You can get more information about preparing for a hearing and writing witness statements on the [LawAccess website](#).

What happens at the hearing?

Hearings in the Small Claims Division will be in front of a Magistrate or an assessor. They are usually short and informal. It is common for people to represent themselves.

In most cases, witnesses do not give evidence in person and there is no cross examination of witnesses. The court usually relies on the written witness statements.

At the hearing you and the Plaintiff will each go through your evidence. Each of you will explain to the court why your version of events should be accepted.

The Magistrate or assessor may give you a decision at the end of the hearing, or they may decide to give you a decision on a later date. The decision could be that you owe the money claimed by the Plaintiff, that you do not owe the money claimed by the Plaintiff, or that you owe some of the money claimed by the Plaintiff.

If you are ordered to pay money to the Plaintiff, this order is called a judgment debt.

Will I have to pay costs if I lose?

If you lose the case and a decision is made that you have to pay all or part of the Plaintiff's claim, it is likely you will be ordered to pay some legal costs to the Plaintiff if the Plaintiff had a lawyer.

However, there is a cap on legal costs that you can be ordered to pay in the Small Claims Division.

The maximum amount of costs you can be ordered to pay after the Court gives a judgment is between \$629.60 and \$1,259.20 (as at June 2022), depending on the amount of the claim. The maximum amount could increase by 25% if you or the plaintiff did not accept a genuine offer of settlement and the refusal was not reasonable.

You can get more information about legal costs at the [LawAccess website](#).

What happens if I lose and I don't have the money to pay?

If you cannot afford to pay the judgment debt, the Plaintiff can take a range of actions to force you to pay. These include:

- selling your goods (writ for levy of property);
- taking money from your bank account (garnishee);
- taking money from your wages (garnishee); or
- making you bankrupt (if the debt is for more than \$10,000).

The Plaintiff may also issue an Examination Order or Examination Summons to get information from you about your financial position.

You may be able to avoid enforcement action by making an application to the court to pay the judgment debt by instalments.

For more information see RLC's factsheet "I have a judgment debt against me but can't pay?" and the [LawAccess website](#).

I need an interpreter. Will there be one available?

If you cannot speak English fluently you can ask the court for permission to use an interpreter. The court will not usually provide free interpreters in Small Claims Division cases. You may need to arrange and pay for your own interpreter. For more information about interpreters you can go to the Multicultural NSW (Language Services) website or [TIS \(translating and interpreting service\) National website](#).

Published on 9 August 2022.

Produced by Redfern Legal Centre.

This factsheet is not a substitute for legal advice. If you have a problem, please contact Redfern Legal Centre at www.rlc.org.au/contact or phone 02 9698 7277.