

Help! My Client has Problem Debts #1: How to navigate internal dispute resolution



Redfern Legal Centre



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Acknowledgement Of Country

Outline

- Internal Dispute Resolution
- Thomas' Story
- Step 1: Identify
- Step 2: Gather Information
- Step 3: Determine the issues
- Step 4: Assess Urgency
- Step 5: Negotiate a resolution
- Thomas' Story: The Outcome

Resources: rlc.org.au/training/resources/debts

Internal Dispute Resolution (IDR)

What is Internal Dispute Resolution?

- Referred to as IDR
- Internal process for consumers to resolve disputes quickly and directly
- Raises awareness of systemic problems

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graph LR; A[Internal Dispute Resolution (IDR)] --> B[External Dispute Resolution (EDR)]; B --> C[Court];
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Internal Dispute
Resolution (IDR)

External
Dispute
Resolution
(EDR)

Court

Who has IDR procedures?

- Businesses that provide consumer credit and loans
- Insurance companies
- Utility providers



Thomas

Thomas' story

- 30 years old
- Disability support pension
- Living with parents in social housing
- \$45,000 credit card debt to big bank

Thomas' story (cont.)

- Thomas comes to see you with a file full of bank statements spanning the last 10 years
- Repayments are unmanageable, stopping him from living independently
- Stress from debt is exacerbating his mental illness

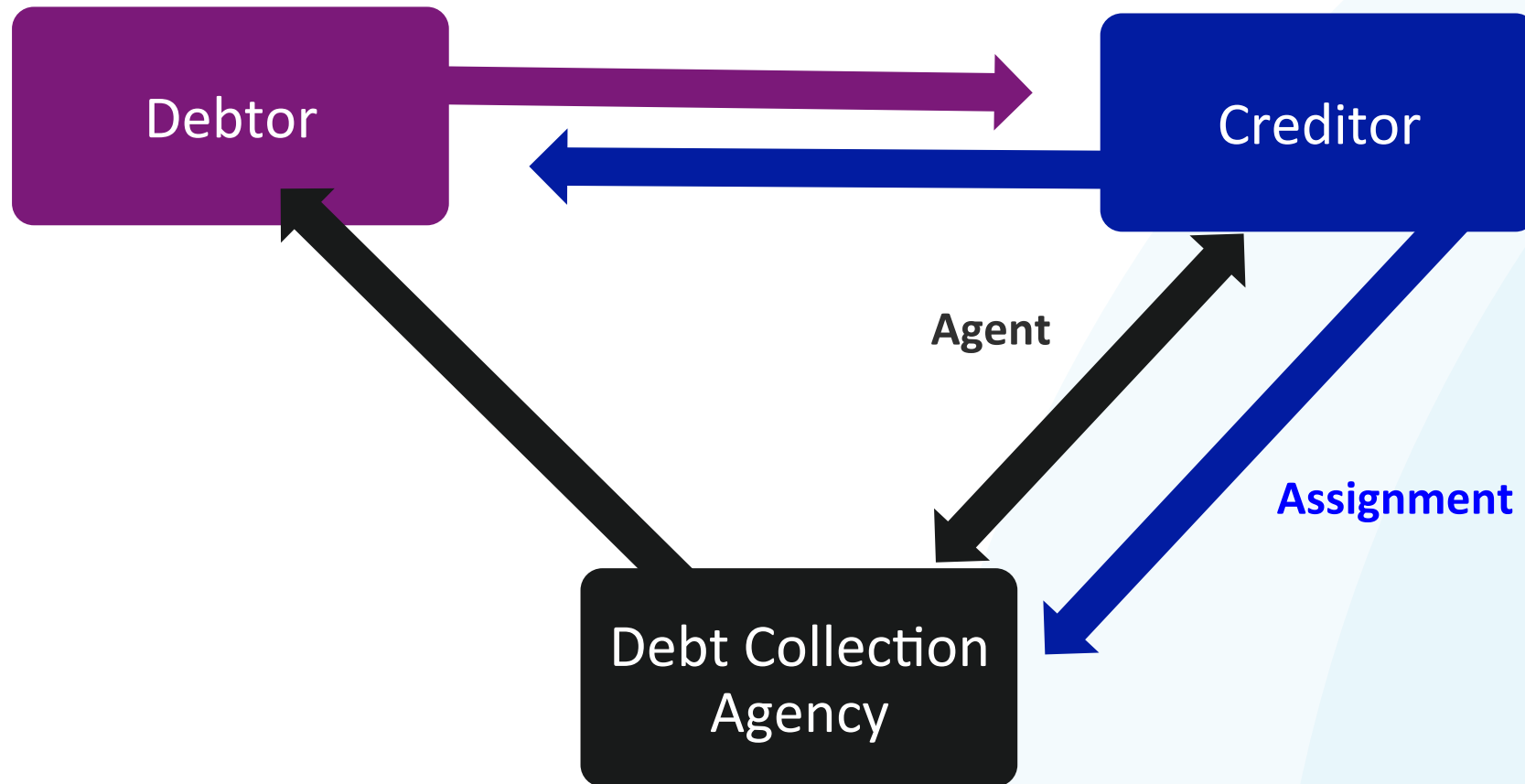
What would you do?

Step 1: Identify

Is there problem debt?

- Get a list of all debts the person is aware of
- Ask questions – shame or limited financial literacy can be barriers to disclosure of debts
- Rarely only one problem debt

Who is making the claim?



Step 2: Gather Information

Request information from the debtor

- Any written communication from the creditor or debt collector regarding the debt, eg. bills, emails, texts, letters, default notice, letter of demand, court document
- Information about any verbal communication from the debtor, eg. phone calls, in person
- Evidence of current income, eg. pay slips, Centrelink income statement, Business Activity Statement (BAS)

Request information from the debtor (cont.)

- Evidence of any health issues, .g. letter from GP, report from psychologist, test results summary
- Current living situation, eg. tenant, home owner, homeless
- Family situation, eg. any dependents , partner contributing to household expenses (or not contributing)
- The value of any assets, eg. motor vehicle, property, investments

Request information from the creditor / debt collector #1

- Ideally request in writing
- Get a signed written authority to release information (some creditors have specific authority forms)
- Letter should identify the debtor's name, date of birth, account number / reference number (if known)
- Refer to “alleged debt”

Request information from the creditor / debt collector #2

Request the following information:

- Copy of the original contract / agreement
- Most recent bill / invoice / claim
- Account summary with payout figure
- Any default notices sent to the client

Request information from the creditor / debt collector #3

For credit / loans from financial service provider, also request:

- A copy of the credit card application form
- A copy of the final credit assessment
- Any notices under the National Credit Code previously sent to the client
- Details of the original limit and any limit increases on the client's credit card account including date of the limit increase

Request information from the creditor / debt collector #4

Request the documents to be provided within 30 days of the letter, and ask the creditor to refrain from taking any further legal action until 30 days after the documents requested above have been received.

If the creditor is unable to make this undertaking, inform the client in writing immediately.

Step 3: Determine the issues

Red flags for legal issues #1

Expert legal advice is required to determine a legal cause of action and the prospects of success, but some obvious signs to look out for include:

- Client was on a Centrelink income when they were approved for a credit card / loan
- Client had multiple payday loans at the same time
- Client's bill is extremely high compared to previous bills
- Client has multiple loans from the same / different lenders

Red flags for legal issues #2

- Client has experienced domestic violence – see RLC’s webinar on financial abuse in intimate personal relationships for specific information on how to resolve debts arising from financial abuse
- Client does not speak English or has another significant vulnerability that was exploited by the creditor
- The debt is 6 years old or more.

Time limit for debt recovery

For most debts, a creditor must begin court action to recover the debt **within 6 years** of:

- the date that the debt first arose, or
- the date that the client last made a payment; or
- the date that the client last acknowledged **in writing** that they owed the debt,

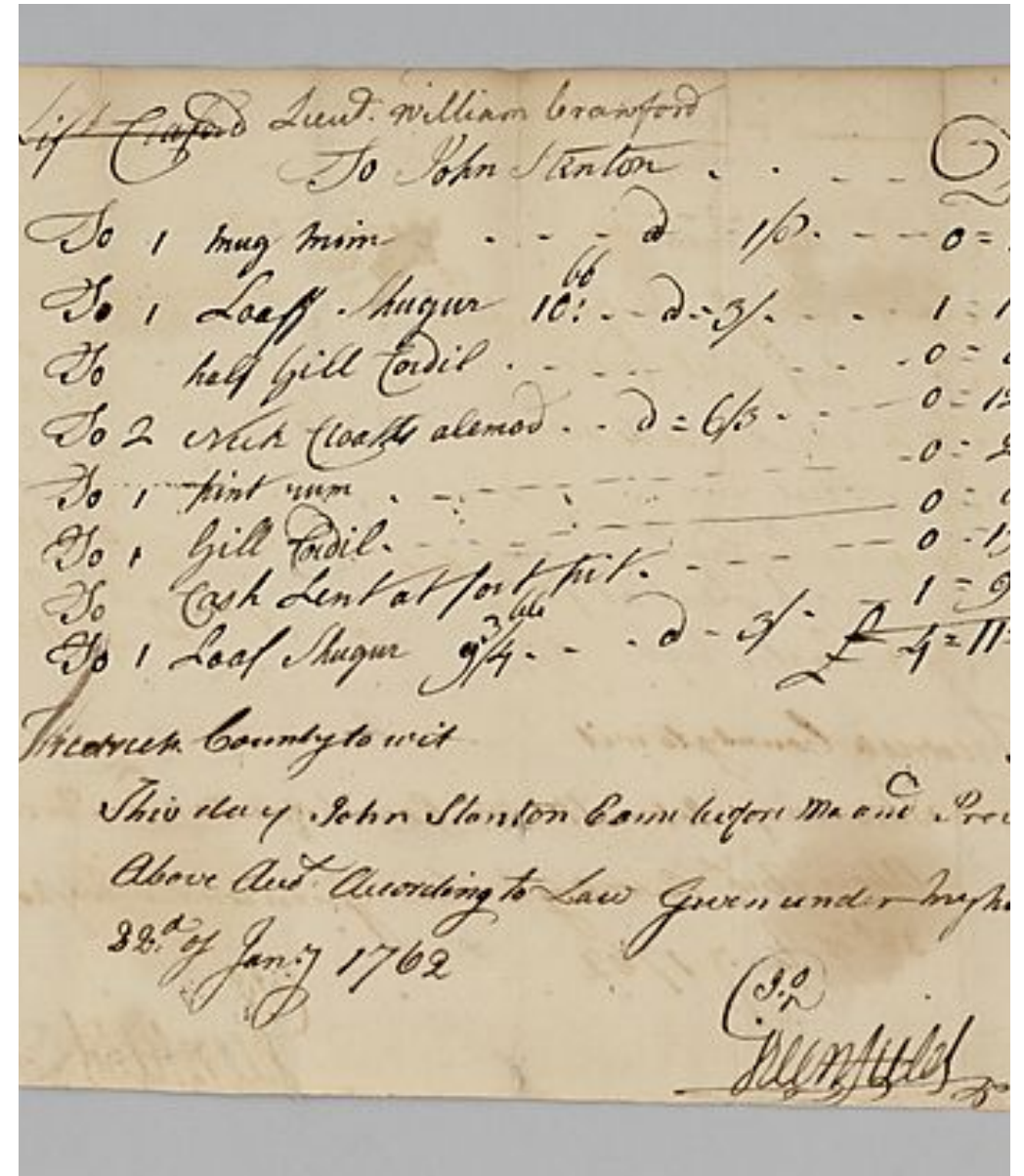
whichever is the most recent.

Old debt #1

If the debt is past the 6 year time limit, it is an old debt.

DON'T:

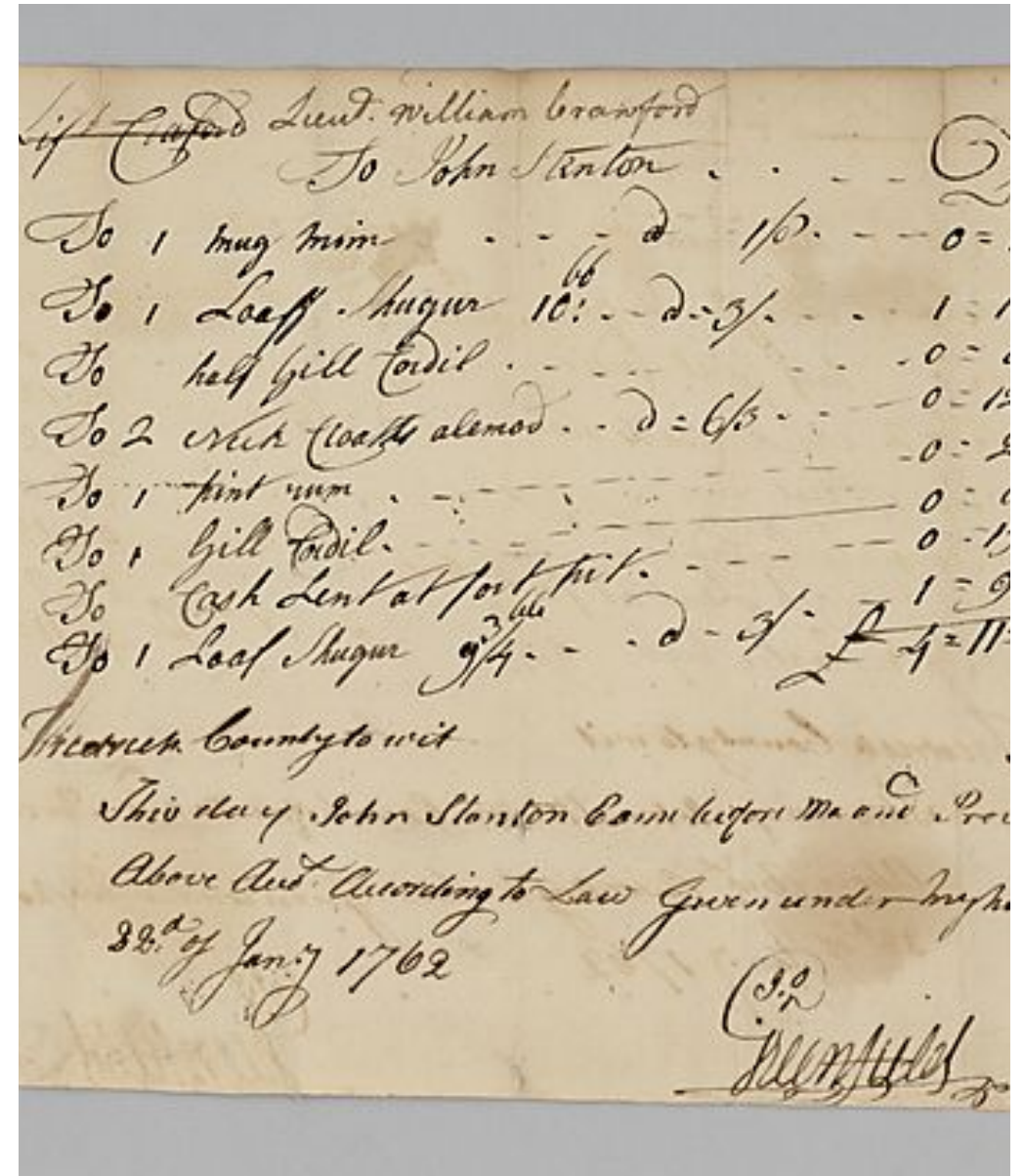
- Make a repayment
- Confirm in writing that client owes the debt



Old debt #2

DO:

- Get legal advice immediately
- Tell the debt collector/creditor that the debt is disputed because it is statute barred (more than 6 years old)
- Request debt collector/creditor to provide copies of the contract and account statements – be careful NOT to acknowledge alleged debt, use the term “alleged debt” to avoid acknowledgement.



Financial hardship

- Debtor agrees they owe the money and the amount is not in dispute but cannot afford to pay
- Change in circumstances eg. loss of work, health problems
- Can occur with a legal / other dispute

Step 4: Assess urgency

Stages in a Debt

Overdue

Creditor chasing client

Formal demand

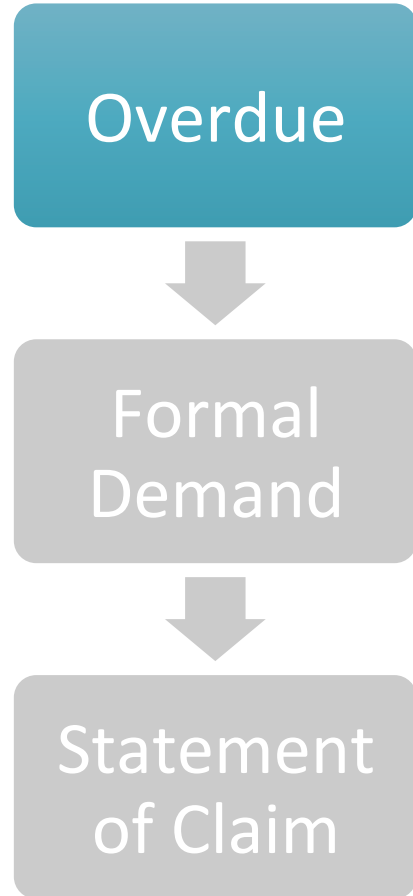
Creditor or **Debt Collection Agency** threatening court recovery.

Statement of Claim

Court recovery commenced

DANGER ZONE

Stage 1: Low urgency



- Overdue Bill
- Reminder Letter

Debt Collection Guidelines

A debt collector must not:

- Use physical force or coercion
- Harass or hassle the client to an unreasonable extent
- Mislead or deceive the client
- Take unfair advantage of any vulnerability, disability or other similar circumstances affecting the client

(Source: ASIC and ACCC)



Debt Collector Conduct

As a guide, if contact is necessary, it should be limited (unless client agrees otherwise) to:

- A maximum of 3 phone calls or letters per week (or 10 per month)
- No contact on national public holidays
- Phone contact only 7:30am-9pm weekdays and 9am-9pm weekends
- Face to face contact only between 9am-9pm weekdays and weekends
- Home visits only if there is no other effective way of contacting client
- Showing up at client's workplace as a last resort if all above fails.

Avoid Debt Negotiation Firms

- Debt negotiation firms market themselves as ‘professional debt negotiators’, but do not need to have any qualifications, skills or training.
- They are not required to satisfy any particular requirements or standards or disclosure obligations to the client. This leaves the client vulnerable.
- Firms can charge a fee based on the percentage of amount of debt, fees can add up to thousands depending on the size of client’s debt.
- There are free alternatives: financial counselling, Community Legal Centres or Legal Aid, National Debt Hotline in NSW.

Stage 2: Don't panic, but don't ignore



- Letter and/or default notice requesting full payment by a particular date
- Will threaten further recovery action if not paid
- May be sent from the creditor / debt collector's lawyer

Stage 3: High urgency, act quickly!

Overdue



Formal Demand



Statement of Claim



DANGER ZONE

- **Statement of Claim:** A document that starts a court claim
- Must be personally served on client or posted by the court
- Creditor / Debt Collector is the “plaintiff”
- Debtor is the “defendant”

Stage 3: High urgency, act quickly (cont.)

Overdue



Formal Demand



Statement of Claim



DANGER ZONE

- Client has 28 days to respond.
- If no response, after 28 days, the plaintiff can apply for default judgment.
- Judgment can be enforced through the court.
- Get legal advice **immediately**.

Sample statement of claim - debt

This is an example of a completed statement of claim. It is important to complete this form using your own details and based on your own circumstances. If you need more help, get legal advice.

Form 3B (version 6)

UCPR 6.2

STATEMENT OF CLAIM

COURT DETAILS

Court	Local Court
Division	Small Claims Division
Registry	Blacktown
Case number	

TITLE OF PROCEEDINGS

[First] plaintiff	Meena Vishwana
[First] defendant	Fiona Frame trading as Fantastic Florists

FILING DETAILS

Filed for	Meena Vishwana, Plaintiff
Contact name and telephone	Meena Vishwana 02 2222 1111
Contact email	meena.vishwana@chillmail.com

TYPE OF CLAIM

[Select type of claim from the list provided in section 6 of the Guide to preparing documents, available on the UCPR website www.ucprforms.justice.nsw.gov.au by clicking on the link to Publications, or at any NSW court registry]

Mercantile Law - Sale of Goods and Services - Work done

Sample statement of claim - debt

This is an example of a completed statement of claim. It is important to complete this form using your own details and based on your own circumstances. If you need more help, get legal advice.

[on separate page]

[Note: If the completed RELIEF CLAIMED will fit in the available space appearing after TYPE OF CLAIM on the first page of this form, you may delete the page break, include the RELIEF CLAIMED on the first page and start this page with PLEADINGS AND PARTICULARS.]

RELIEF CLAIMED

1 That the defendant pay the plaintiff the total amount claimed below.

[If you are making a liquidated claim (ie claiming a specific amount of money), include the following information:]

Amount of claim	\$4,000.00
Interest	\$44.10
Filing fees	\$ 97.00
Service fees	\$ 41.00
Solicitors fees	\$0.00
TOTAL	\$4,182.10

PLEADINGS AND PARTICULARS

- 1 In April 20xx in Blacktown NSW the plaintiff and defendant agreed that the plaintiff would maintain the defendant's website and provide IT support services for up to 20 hours per month at a fee of \$1,333.34 per month including GST starting from May 20xx.
- 2 The plaintiff provided these services to the defendant in the months of May, June and July 20xx.
- 3 The plaintiff issued an invoice to the defendant dated 10 August 20xx, payable within 30 days for services provided in the months of May, June and July 20xx.
- 4 The defendant has failed to pay the invoice. The total amount outstanding is \$4,000.
- 5 The plaintiff claims:
Debt of \$4,000.
Interest pursuant to section 100 *Civil Procedure Act 2005* from 10 September 20xx – 19 November 20xx.

SIGNATURE

Sample only. This is not legal advice.

Sample statement of claim - debt

This is an example of a completed statement of claim. It is important to complete this form using your own details and based on your own circumstances. If you need more help, get legal advice.

I acknowledge that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature *Meena Vishwana*

Capacity Plaintiff

Date of signature 19/11/20xx

NOTICE TO DEFENDANT

If you do not file a defence within 28 days of being served with this statement of claim:

- You will be in default in these proceedings.
- The court may enter judgment against you without any further notice to you.

The judgment may be for the relief claimed in the statement of claim and for the plaintiff's costs of bringing these proceedings. The court may provide third parties with details of any default judgment entered against you.

HOW TO RESPOND

Please read this statement of claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the claim you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the claim from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

You can respond in one of the following ways:

- 1 If you intend to dispute the claim or part of the claim, by filing a defence and/or making a cross-claim.
- 2 If money is claimed, and you believe you owe the money claimed, by:
 - Paying the plaintiff all of the money and interest claimed. If you file a notice of payment under UCPR 6.17 further proceedings against you will be stayed unless the court otherwise orders.
 - Filing an acknowledgement of the claim.
 - Applying to the court for further time to pay the claim.
- 3 If money is claimed, and you believe you owe part of the money claimed, by:
 - Paying the plaintiff that part of the money that is claimed.

Sample only. This is not legal advice.

What to do if your client is served with a statement of claim?

1. Defendant should get legal advice about a defence / possible settlement.
2. If the plaintiff is a member the Australian Financial Complaints Authority (AFCA), the defendant can lodge a complaint with AFCA and all enforcement action (including court proceedings) will be on hold while AFCA determines the complaint. See next webinar on External Dispute Resolution for more information about this process.

Other circumstances when your client should seek legal advice immediately!

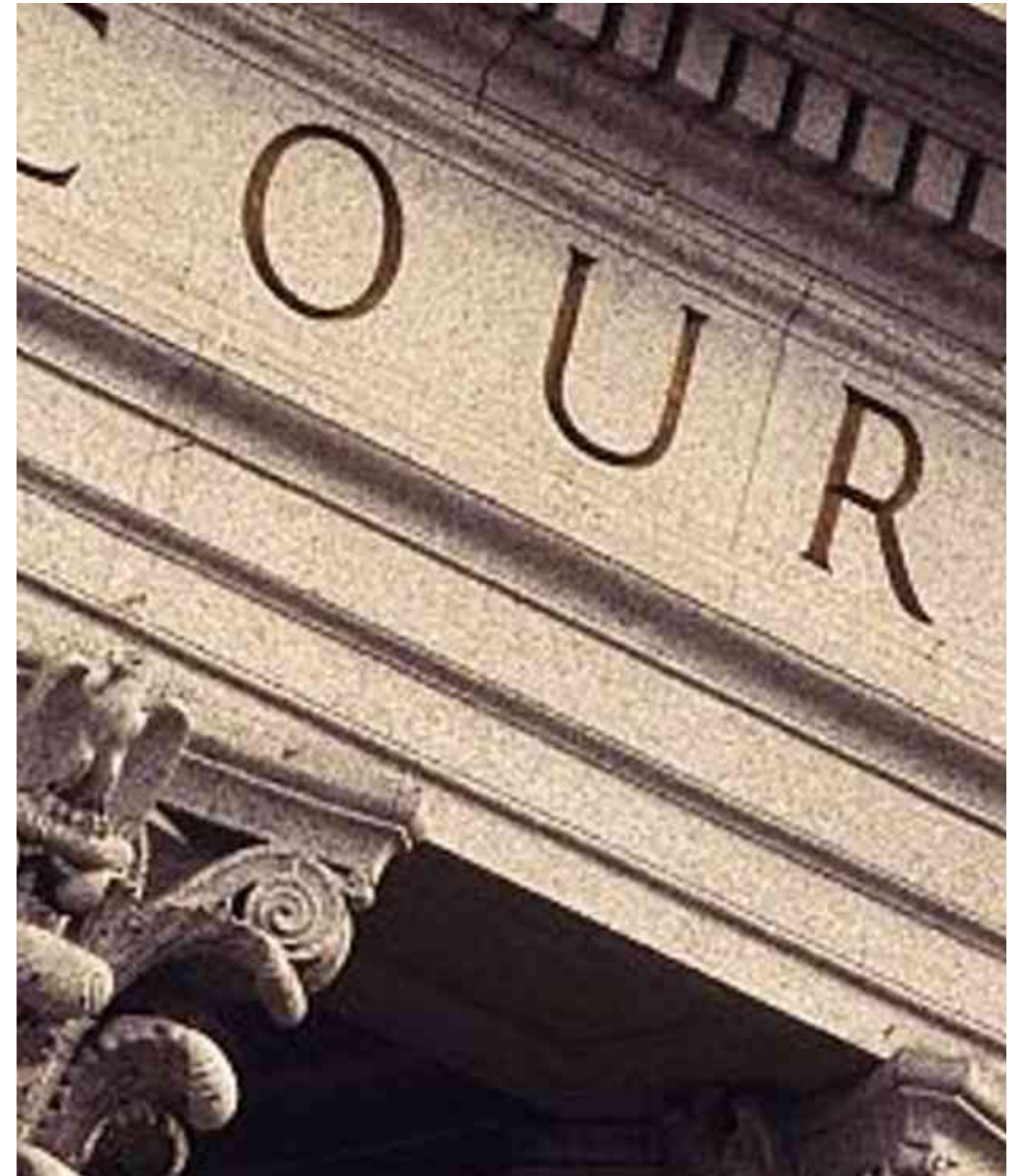
1. The client has a **judgement order** against them.
2. Enforcement action has been taken against the client, for example, a **garnishee order** for their wages or bank account.
3. The client is required to attend court under an **examination order**.
4. Any **court proceedings** are on foot.
5. The debt is more than 6 years old.

Why it is best to avoid court

- Costs orders can be made against the unsuccessful party
- Evidence standards are higher than IDR and EDR
- Legal representation is expensive / unattainable for most people
- Stress from meeting court deadlines
- Loss of income from attending court hearings
- Judgment order is enforceable for 12 years
- Court enforcement options
- Pre and post judgment interest may be added to the debt

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Impact on credit report

- Late or missed payments will show up on credit report
- Judgment debt stays on client's file for 5 years from the date of judgment



Step 5: Negotiate a Resolution

What debts can be dealt with by IDR?

- **Financial services** are required to have in place an internal process to resolve complaints with consumers
- **Insurance companies** who have adopted the General Insurance Code of Practice are required to have an IDR process
- **Utility providers** have financial hardship teams that help customers who are struggling to pay their bills.

General process

1. Identify the IDR contact for the creditor
2. Send a written dispute / submission
3. Record the date when a response is required
4. Request a written response from creditor

General process (cont.)

5. Receive a response – rejection or offer
6. Seek instructions from client
7. Negotiate further if required
8. Agree an outcome – always in writing and ideally signed by both parties

How to find the IDR contact

If creditor is:

- **a member of AFCA** (Australian Financial Complaints Authority), you can search the website
- **a telco**: find contact on Telecommunications Industry Ombudsman (TIO) website on Members Listing
- **energy or water company**: search for contact on the Energy & Water Ombudsman NSW

[Home](#) > [Make a complaint](#) > [Find a financial firm](#)

Find a financial firm

Use our search tool below to find the contact information for a financial firm.

If you cannot find the firm you are looking for, call us on 1800 931 678, or proceed to our [online complaint form](#) to lodge a complaint.

Name



Member number

ABN/ACN

Search

Clear

Search results

2 results displaying 5 per page

Commonwealth Bank of Australia

Member number: 10008

ACN/ABN: 48123123124

Also known as CBA

Homepath

Trading asCommonwealth Financial
Services[View contact details](#)

Search

Clear

Search results

2 results displaying 5 per page

Commonwealth Bank of Australia

Member number: 10008
ACN/ABN: 48123123124

Also known as CBA
Homepath
Trading as Commonwealth Financial
Services

[Hide contact details](#)

Member details

Date joined: 1/07/2008
Website: www.commbank.com.au

Complaint contact



Group Customer Relations
Commonwealth Bank of Australia
GPO Box 41
Sydney NSW 2001

Toll Free No: 1800 805 605
Business: 02 9841 7000
Fax: 02 9841 7700
Email: customerrelations@cba.com.au



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Optus

Trading name:	Optus
Member name:	Optus Satellite Pty Limited
Member status:	Member - Active
Carrier License:	No
Address:	PO Box 888 NORTH RYDE NSW, 1670 ←
Facsimile number:	1 300 555 221
Customer service number:	133 937
Web address:	http://optus.com.au

[Return to the members listing](#)



[Home](#) > [Member providers](#) > [Providers in NSW](#)

Providers in NSW

It is a condition of licence for electricity and gas retailers and distributors to be members of EWON. The legislative provisions which state this can be found at:

- [Electricity Supply Act 1995 Sect 96B](#) for electricity distributors
- [Gas Supply Act 1996 Section 11A](#) for gas distributors
- [National Energy Retail Law \(NSW\) Section 86](#) for electricity and gas retailers

You can [make a complaint](#) about any EWON [electricity](#), [gas](#) or [water](#) members, including those operating embedded networks for residential customers as exempt entities.

Electricity providers and gas providers

Some of EWON's energy members are both retailers and distributors, and it is important to note the difference between them:

- Retailers are responsible for opening/closing accounts, issuing bills and liaising with the distributor about supply reconnection/disconnection. Generally, retailers provide selected services (electricity, gas or both) to selected areas in NSW.
- Distributors are responsible for disconnecting/reconnecting supply, new and existing connections to services, maintaining network assets, reading your meter and sending the data to the retailer.

Energy providers who supply small retail (and small to medium-sized business) customers must be



Send a written dispute / submission

- Include the client's name, contact details, date of birth, account / reference number.
- Explain the issue. A chronology of events may assist.
- State clearly the client's desired outcome (start with most ideal outcome so there is room to negotiate).
- Include evidence or supporting documents relevant to issues raised, eg. evidence of financial hardship such as a financial position statement.

How to decide on an outcome?

- Is the client's hardship short term or long term (eg. will they ever return to work)? When will they be able to get back on their feet?
- Do they have any savings, assets, expected payments that may assist in the short / long term?
- Can the client offer a lump sum in full and final settlement of the debt?

How to decide on an outcome? (cont.)

- Can the client maintain a reduced payment plan?
- Can the client start repayments again in the future if payments are put on hold for a period of time?
- Can the debt be reduced and a sustainable payment plan be agreed?
- Is the debt going to result in the restriction / cancellation of an essential service (e.g. electricity)?

When is a response required?

Depending on who the creditor is, different time limits apply requiring them to respond:

- **Financial service providers** like banks have up to 45 days to respond before consumer can escalate the complaint to External Dispute Resolution
- **Telco companies** have to acknowledge complaint or financial hardship within two working days, or provide reason for delay if longer
- **Insurance companies** are required to respond to the complaint within 15 days of receiving the complaint

Negotiating with the creditor

- Make sure you are dealing with the “advocates” or “represented customers” team if available
- Further information may be requested by IDR
- Don’t have to accept first offer
- Can request the dispute be escalated to a more senior team member / manager
- Some creditors / debt collectors have a second tier of IDR for special cases

Can't reach an agreement?

Consider making a complaint to the external dispute resolution service.

RLC's next webinar will discuss the options and process.

Agreement reached, now what?

- Make sure you have something in writing from the creditor accepting the agreement.
- The creditor may want your client to sign a written agreement / settlement deed / release.
- This is a document that sets out the terms and conditions of an agreement to resolve the issue.

Agreement reached, now what? (cont.)

- It is generally a confidential document.
- Often the creditor will make no admission of liability.
- May release creditor or any third party from any future liability or action.

Client should get legal advice before signing.



Thomas: The outcome

Thomas' outcome

- Requested credit card application, original assessment and assessment for each credit limit increase.
- Assessed as stage 1, low urgency due to no demands / court action but moderate urgency for client's health.
- Issues identified: responsible lending and financial hardship.

Thomas' outcome

- First level of IDR – no offer made.
- Escalated to senior team member – unsuitable offer made and rejected by client.
- Further submission made to second level of IDR: Big Bank agreed to waive the debt.
- Settlement agreement signed.

**Questions and more
information**

Questions?



Laura Bianchi

Credit, Debt and Consumer
Law Solicitor

Resources for this workshop: rlc.org.au/training/resources/debts

Where to get free confidential legal advice on debt related issues

- Redfern Legal Centre's Credit, Debt and Consumer Practice (local residents only)
- Most community legal centres:
 - NSW: <https://www.clcnsw.org.au/resource/community-legal-centres-nsw-directory-2018>
 - outside NSW: www.naclc.org.au/need_legal_help.php
- Legal Aid NSW www.legalaid.nsw.gov.au/contact-us/legal-aid-nsw-offices

Before You Go

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Please stay with us for another 60 seconds...



Training: rlc.org.au/training

Enquiries: Nick Manning
education@rlc.org.au

This workshop is a guide to the law in NSW, Australia. It is not a substitute for legal advice. If you have a legal problem, seek legal advice from a legal centre or Legal Aid.

We Can Come to You

RLC can present this workshop at your staff training or interagency – or we can customise training to suit your needs.



Enquiries: Nick Manning
(02) 9698 7277
education@rlc.org.au

Thank you



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