

# ALL DAY FENCING

## Debt Recovery



### Commencing Legal Action for Debt Recovery

This information sheet is designed to provide information on how to commence legal action to recover money.

The Local Court has jurisdiction to deal with debt recovery claims up to the value of \$60,000, or if all parties consent - up to \$72,000.

If the amount of money that is owed exceeds \$72,000 you will be required to commence action in either the District Court or Supreme Court.

#### Before Starting Legal Action

Before you commence legal action you should contact the person who owes you money and attempt to come to an agreement regarding payment. Assistance in resolving disputes can be obtained through mediation services offered by the Community Justice Centre.

If this is unsuccessful you should send the person a letter of demand. A letter of demand is a formal request for the money to be paid within a certain timeframe and indicating your intention to take legal action if the money is not paid. A copy of a Letter of Demand is available through these links.

It is not essential for you to obtain the services of a legal practitioner when commencing action in the Local Court. Claims under \$10,000 are dealt with in the Small Claims Division of the Local Court where procedures for court hearings are less formal. It is recommended that you obtain legal advice prior to commencing a court case.

#### Commencing Legal Action

Legal action to recover money is commenced by filing at a Court Registry a document called a **Statement of Claim**. The person commencing legal action is called the **Plaintiff**.

#### Preparation of a statement of Claim

There are two types of claims which may be filed with the Local Court:

**Liquidated Claim (Form 2)**- this is used for most debt recovery actions and motor vehicle accident claims where the amount of money owed is fixed.

**Unliquidated claim (Form 2)**- this is used for claims where the amount of damages is not fixed, such as personal injuries claims and claims relating to detention of goods.

You may obtain guidance in the preparation of the form from your nearest Local Court.

When you are completing a Statement of Claim you must ensure that you have the following information:

##### 1. The Defendant's details

This includes the name and current address of the defendant. You must ensure that the defendant is correctly described. If the defendant is a company then the correct name of the company must be listed. If the defendant operates a business you should identify the

proprietor of the business and indicate that they are trading under a particular business name. If the defendant is a company or business you will need to obtain the registered company or business address. Information on names and registered addresses are available for companies from ASIC Phone (02) 9911 2500 and for registered businesses from the Department of Fair Trading Phone: 13 32 20. All registered businesses are registered with Fair Trading, those that are not are referred to as an "unregistered business".

If the defendant has moved location it will be necessary for you to attempt to find their new address. You may search State and Federal Electoral Rolls, Telephone Directory Listings or seek the assistance of a legal practitioner or debt recovery agency.

### **2. Pleading and particulars**

The pleadings are a description of why the money is owed to you. You must outline the facts surrounding the debt. The cause of action must describe:

- a. when the debt arose
- b. where the debt arose
- c. Brief description of event(s) which show why the money is owed. You should where possible include particulars of any invoices unpaid, details of motor vehicle or property damages or details of the breach of any contractual agreement.

The cause of action must also fall within the time limit for commencing a claim. If you are unsure on this point you should seek legal advice.

### **3. Interest**

Interest may form part of the claim and under Section 100 of the Civil Procedure Act 2005 indicates that the Plaintiff may claim interest from the date that the cause of action arose at the prescribed rate of interest if the amount claim is \$1,000 or more. Interest on amounts under \$1,000 can only be included in the cause of action if there was an agreement for interest to be paid. If you are entitled to claim interest prior on a Statement of Claim you must outline the amount of interest and the basis for claim interest in the Statement of Claim.

### **Filing Fees**

The Local Court Civil Claims) Regulation sets out the fees which must be paid when lodging a Statement of Claim. In addition to the filing fee you may also be required to pay for a service fee if you wish to arrange for the Sheriff's Officer or the Court Registry staff to serve the claim upon the defendant. The amount of the filing and service fees paid by you may be included on the Statement of Claim and, if you are successful with the claim, you may recover these costs from the defendant.

### **Lodging a Statement of Claim**

You may lodge the Statement of Claim in person at your nearest Local Court Registry, or it may be lodged on your behalf by a solicitor or agent. If you are lodging the Statement of Claim it will be necessary to have four copies (more copies will be necessary if there is more than one defendant). One copy will be retained by the Court Registry, one copy will be returned to you and the other two copies will be required for service upon the defendant. For more information on service of a Statement of Claim select this information sheet link. When a Statement of Claim is lodged the Registry staff will seal the copies of the Statement of Claim and allocate a court file number.