

Debt collection FOR BUSINESS

WITH BEN MCLEAN FROM WIGHTONS



Running a business can be hard enough without having to deal with debtors who owe you money. Try as you may, sometimes it can be very difficult to recoup these debts yourself.

Engaging a lawyer to act on your behalf can allow you to focus on the running of your business, rather than using your valuable time to chase debtors.

Debt collection via legal action begins with a letter of demand. In our experience, this is often all that is required for the debtor to pay the amount owing to you. A letter of demand sent from a lawyer is generally more effective than one sent personally.

Should the debtor fail to respond or pay the amount owing to you, your lawyer would then seek your instructions to start legal proceedings against the

debtor personally or against their company, depending on the situation.

Legal proceedings are commenced by filing an initial statement of claim with the appropriate court. The appropriate court to file the statement of claim depends on the amount claimed. Filing a statement of claim will allow you to identify what is owed to you, claim interest on the outstanding amount and claim for legal costs on scale. The Magistrates' Court of Victoria has a jurisdictional limit of \$100,000 and most debt matters under this amount can be dealt with here.

After filing your statement of claim it will then be served on the debtor, after which they will have 21 days to file a defence. Should they fail to file a defence, your lawyer will make an application for a default judgment, which is an order in your favour for the amount sought. This judgement will be registered

against the debtor's name personally, or if they are a company, against the company name. There are initial fees for filing and serving the complaint, however these can also be claimed back from the debtor.

The registered judgment will remain on the debtor's credit report for 15 years and will likely affect any applications they make regarding finance.

If the debtor does not pay the amount owing following the default judgement being entered against them, enforcement proceedings will be commenced in which a Summons for Oral Examination is typically served. This results in the debtor being summoned to attend court to answer a range of questions regarding their financial position under oath. The answers to these questions are then provided to your lawyer, which will enable them to

ascertain which enforcement method will be most effective for you to have the debt repaid.

There are a number of different enforcement methods available to the court but some of the more common methods are: Attachment of earnings order, Attachment of debt, Instalment order and a Warrant to seize property. There are filing fees for each of these enforcement methods however these fees can also be claimed back from the debtor in addition to the debt owed.

Should the debtor fail to attend court for the summons, a warrant may be issued for their arrest and they will be forced to attend court to undertake the oral examination.

Should you require assistance with recovering money owed to you or your business we invite you to contact Ben McLean on 5221 8777.

Wightons Lawyers

We'll be there

With over a century of service to the community our team are dedicated to building and maintaining long lasting relationships which span over multiple generations – we always have been there and we always will be there.

Wightons Lawyers are your local experts for Family Law, Intervention Orders, Wills & Estates, Property Law, Conveyancing and Litigation.

With offices in Geelong, Corio, Ocean Grove & Winchelsea our experienced team has a commitment to delivering services in a prompt, honest and professional manner.

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