

COMMENCING LEGAL PROCEEDINGS

Before commencing legal proceedings, here are some notes about issues that you should consider. These notes are provided to assist you in determining the best course of action for you. Lawyers from E C Legal are available to discuss your case with you personally. To obtain full and proper legal advice, you should consult a lawyer in person.

1. **Strength of your Case**

You need to assess carefully the strength of your case. The more that you are able to rely on documents rather than conversations to prove your claim, the stronger your claim will be.

Before commencing litigation, you must ensure that all relevant documents or notes have been provided to us. This can be a significant exercise and our clients sometimes attempt to provide only the documents that they think are relevant. The effort in providing all the documents before the start of a case is worthwhile. The case is much more likely to move to a satisfactory conclusion with less delay and less cost if this is done.

If you are relying on conversations to assist in showing what the arrangement was between you and the debtor then the details of these conversations should be recorded in writing and sent to us. We have available a blank Statement of Events document which you can use to detail what happened between you and the debtor.

As a part of the initial work, E C Legal will review the evidence in support of the claim and may, if your case does not have sufficient supporting evidence, advise you not to continue.

2. **Your Motivation**

You need to consider why you are considering litigation. Is a purely financial consideration or is it a matter of principle i.e. you do not want to let the debtor get away with non-payment. Litigation does not always go the way that you might expect and is therefore inherently risky. If your motivation is purely financial, you should be prepared to factor in an allowance for this risk in any settlement proposal that might come up.

3. **Capacity of the Defendant to Pay**

You cannot get blood from a stone. Even if you have an order from a Court or Tribunal, the debtor still may not pay due to the fact that they have no money to do so. This is one of the inherent risks of litigation.

Is the defendant bankrupt? Many debtors make this claim but very few are. In the event the defendant is bankrupt all debts incurred prior to bankruptcy are extinguished. eCollect can do a bankruptcy and / or a credit search on a person however the cost of this is significant (\$100.00 - \$500.00) and this cost

is not recoverable from the debtor in normal circumstances.

4. Tribunal or Court?

In each state and territory, a potential claimant has a choice of the forum in which to bring the claim.

Tribunals (e.g. Victorian Civil and Administrative Tribunal in Victoria or the Consumer Trader and Tenancy Tribunal in NSW) are established to provide a low cost option for you to make a debt claim. The Tribunals are do-it-yourself organisations and representation by lawyers is not permitted as a general rule. eCollect provides a service in which we will draft the initial claim paperwork on your behalf and file it with the Tribunal as well as providing you with some hints as to how to best present your case. The cost of this is around \$200 - \$300 and is not generally recoverable from the debtor.

For claims under \$1,000, the usual recommendation is to bring the claim yourself in a Tribunal without any assistance.

Courts usually make costs orders against defendants which means money paid to lawyers to bring the claim on your behalf can be recovered from the debtor – at least in part. Our experience is that claims brought in the Courts usually receive a higher level of attention from debtors than claims brought in Tribunals.

E C Legal will consider and advise on the appropriate jurisdiction if you wish to proceed with the fixed price engagement to commence proceedings.

5. Alternative Jurisdiction

If the parties are in the same state or territory, that state or territory will be the appropriate jurisdiction for the claim and you do not need to consider this section.

However, if the parties are in different states or territories, a careful choice will be need to be made about which state or territory is the most appropriate. Considerations as to where the agreement is made and the most convenient place for all the parties need to be made.

E C Legal lawyers will cover these considerations as they draft the claim for issuing by the court.

6. Time and Effort

You need to be prepared to give the necessary time and effort towards obtaining a successful result. This means not glossing over any part of the case and providing all the available documents before any further action is taken. Where conversations are going to be used to support the claim the most detailed account of the conversation possible should be written and sent to us. The more time and effort you commit, the better will be the chances of a successful case.

7. Two Pieces of Practical Advice

- a.** Make a decision about starting litigation or not without delay. Debts rarely get easier to collect.
- b.** Take the litigation one step at a time. The path that litigation can take is highly variable despite the best efforts of your lawyers to direct it to the outcome we seek. Discussions about possible outcomes can waste a large amount of time especially the further away the outcome is from the current position. The option is available for you to have detailed discussions with the lawyers about all possible options however the cost of those discussions will not usually be recoverable from the debtor. We recommend you should authorise litigation at one step at a time with a fee estimate as to the price of that step.