

Debt recovery

Maintaining cash flow is essential to any business. Writing off debts may not be the best approach to take as it may make your business appear to be an easy target.

RRR Lawyers can handle your debt recovery matters so that you can concentrate on doing what you do best. Our aim is not to push clients to Court but to engage with our clients beforehand to advise them on some of the steps they can take to strengthen their processes for a better debt collection system within their organisation.

If the debt remains unpaid, we have the ability to issue legal proceedings and advance unremittingly. Some of the ways in which you can take better control of debt collection and have a smoother process going forward are explained below.

Fine tuning your processes

It is important to have your processes right before you embark on legal proceedings and incurring the legal costs. Debt recovery becomes more effective when the processes of an organisation have been fine tuned to avoid delays and the associated costs. Here are some of the processes you can fine tune:

- 1) Good record keeping is essential:
 - a) Do you have a contractual arrangement under which payment is due?
 - b) Do you have the signed contracts?
 - c) Do you have the invoices? Is payment of default interest specified in the invoice?
 - d) Do you have a credit application process?
 - e) Do you secure guarantees from the Directors of a company?
 - f) Are there any correspondence from the debtor saying that the debt is acknowledged or that the debtor is seeking time for making payment.
 - g) Ensure that your accounts staff have files on each of your debtors with the above information. Good record keeping helps with good debt recovery.
- 2) Have a proper monitoring system. What is the timeframe stated in your invoice for payment to be made?
- 3) When do you start discussing with the debtor regarding payments?

If you do not have a contractual arrangement for payment, we can draft a Terms of Trade for your organisation. A Terms of Trade specifies how the supply will be conducted, how payment is to be made and what happens in the event of default. We can include a retention of title clause so that the title to the goods supplied remains with you until payment is made.

Non payment

As a creditor there are some options available to you prior to any legal proceedings to encourage the debtor to pay. In the event the debtor refuses to pay without any legitimate reason, we can take these initial steps:

1) If the Debtor is a person

We issue a demand letter for payment of the debt within a stipulated timeframe. A demand letter sets out the amount that is owed and also prescribes a timeframe within which payment is to be made. The demand letter will say that if payment is not made within the stipulated timeframe, legal proceedings shall be issued.

When can a demand letter be sent? In most cases it depends on your Terms of Trade. If you do not have a Terms of Trade then it should be done within a reasonable timeframe, not earlier than 7 days. This gives the Debtor ample opportunity to negotiate payment; perhaps they need time.

It is our experience that demand letters from solicitors have a greater impact and a better response than those of the organisation itself. Creditors who make the “loudest noise” get paid first.

Most businesses realise that when they receive a letter from solicitors, the chances are that non payment of the debt would result in legal proceedings against them. Most businesses are aware that the legal fees of the proceedings have to be met by them. The company could also be liable for interest on the debt.

We can draft a Deed of Settlement which will have an acknowledgement of debt. Should the payment terms be breached, the Debtor will be sued on the basis of the Deed as the debt will be acknowledged through signing of the Deed. This sets you up for Court as liability will not be difficult to prove.

2) If the debtor is a company

A Statutory Demand can be issued to the company requiring payment. A Statutory Demand can be served on a company provided the debt is \$2,000.00 or more. After service of the Statutory Demand, the Debtor has 21 days within which to pay the debt or come to an arrangement for payment to your satisfaction. Should an arrangement be entered into, we can formalise this by a Deed of Settlement. If the company does not pay within 21 days, the company is deemed to be insolvent and winding up proceedings can be issued.

Debt collection agency vs. Law Firm

You should consider the level of service and legal expertise of a law firm over a debt collection agency. While we may not have a “no win no fee” policy, we will not charge large sums of commissions upon recovery of the debt.

As we do not rely on commissions, we will discuss all the options with you as we go along to help you make a better commercial decision regarding the debts owed to you.

Where do you sue?

Should legal proceedings be required, we have the ability to pursue the matter in all Courts in Victoria including VCAT, Magistrates Court and County Court. The Courts (except VCAT) in most instances orders payment of legal costs to cover some of the legal costs incurred by you.

Post judgment

Judgment is not the end of the matter. The judgment needs to be enforced. Some of the ways this can be done are:

- Winding up of a company;
- Summons for oral examination;
- Warrants of seizure and sale;
- Attachment of earnings; and
- Bankruptcy.

We have experience in debt recovery and have acted for individuals and companies in various Courts in Victoria. For further information please contact one of our lawyers or in the first instance contact:

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Associate