



Debt Recovery

A creditor is entitled to pursue a debtor at law once the contractual period for payment has passed.

The first step is to send a letter of demand. If this does not result in payment of the debt, then further contact should be made with the debtor to attempt to negotiate a resolution of the matter. Indeed, the *Civil Procedure Act 2010 (Vic)* requires "reasonable endeavours" be undertaken to resolve a dispute prior to issuing proceedings.

If these initial steps do not resolve the matter, then it is important to weigh up the costs of pursuing a debt with a realistic appraisal of its full recovery when deciding whether to issue proceedings.

Proceedings may be instituted in the Magistrates' Court for debts up to \$100,000 and the County Court for debts over \$100,000.

If an Order for payment is obtained from the Court, then there is still the issue of obtaining payment, known as "enforcement". There are numerous enforcement strategies available.

In the case of individuals, common forms of enforcement of Court Orders are as follows:

- Warrant to Seize Property
- Attachment of Earnings Orders
- Attachment of Debt Orders
- Instalment Orders
- Summons for Oral Examination

When pursuing a debt from a company, a statutory demand may be used. . In order to serve a Statutory Demand on a company, the debt must be at least \$2,000. The debtor has 21 days after the Statutory Demand is served in which to either pay you or come to an arrangement to your satisfaction in relation to the debt. If they do not do so within that time, the company is presumed to be insolvent and a creditor is able to commence proceedings in the Court for the company to be wound-up as insolvent.

PWD can provide overall assistance with all insolvency issues.

Contact: Pearce Webster Dugdales, Level 4, 379 Collins Street, Melbourne.