



Minor Civil Claims: Information Sheet

This service is regularly approached for advice and assistance in respect of recovering money from third parties. This fact sheet is intended to briefly outline the process for a Minor Civil Claim in Tasmania.

Initial Matters for Consideration

Before embarking in drafting and filing a *Civil Claim* it is important to consider the following:

- **Are you within time to file a Claim?** Limitation periods typically commence from the date of the breach, incident or last payment and can be anywhere from 12 months to 6 years (and beyond) depending on the type of claim (cause of action) you intend to pursue.
- **Does the person owing you money or property have any capacity currently (or in the near future) to pay you anything?** For example, if a Defendant is solely in receipt of a Centrelink benefit and has no significant assets, it may be very difficult to recover from them.
- **Is the amount you are seeking to recover worth the filing fee, time, effort and stress required to pursue your Claim through the *Magistrates Court* to a conclusion?** This will depend on the amount you are legally able to recover and your own individual circumstances.

You should seek legal advice prior to commencing any action through the *Magistrates Court*. If you require advice in relation to pursuing a *Minor Civil Claim*, you may contact the *North West Community Legal Centre* on 6424 8720 or email office@nwclc.org.au to seek our assistance.

What is a Minor Civil Claim?

A *Minor Civil Claim* is a claim (i.e., for money or relating to property) that does not exceed \$15,000.

If the amount involved exceeds \$15,000 this is known as a *Civil Claim* and is dealt with either in the *Magistrates Court* (Claims up to \$50,000 - unless consented to by both parties), or the *Supreme Court* for larger sums of money/property.

Why does this matter? A *Minor Civil Claim* is different to a Civil Claim above \$15,000 in the following ways:-

1. The Court process is prescribed to occur without the usual legal formalities of an ordinary Court proceeding and the Court is not bound by the Rules of Evidence (i.e., Hearsay and other legal complexity).
2. While general Court processes are adversarial, a Minor Civil Claim is inquisitorial. This means that the Court is to inquire as to the issue between the parties to reach a decision.

3. Parties are not able to be represented by a lawyer unless both parties agree, the other party is a lawyer, or the Court considers it appropriate to allow representation (i.e., because a party would be disadvantaged if being required to self-represent).
4. Given the parties are generally not represented, there is a very small risk of costs being awarded against the unsuccessful party (Costs will only be awarded if the Court is satisfied special circumstances apply warranting a Costs Order).

The above means that it is easier to self-represent in these types of cases although it is good practice to try and comply with the Rules of Evidence as much as is possible.

What should I do before filing a Minor Civil Claim?

Before filing any civil claim, it is recommended that you do the following:-

1. Obtain legal advice as to the merits of any claim; and
2. Serve on the proposed Defendant (the other party to the claim) a brief letter outlining why you allege they owe you money/property and offering them a reasonable timeframe to voluntarily reach agreement to resolve the dispute. You may wish to consider offering a reduced amount as a compromise to incentivise the Defendant to reach agreement with you to avoid instituting court proceedings.

How do I file a Minor Civil Claim?

You must obtain and complete a Claim Form (Form 1- Available at the *Magistrates Court* website). The filing fee for a *Minor Civil Claim* at the time of publication is \$133.50. Please check the *Magistrates Court* website for the current filing fee.

When completing a Claim, it is important to state the cause(s) of action (i.e., breach of contract, detinue and conversion etc) and outline the basic material facts that you allege prove that cause of action using consecutively numbered paragraphs. Depending on what cause of action is pursued, other documents may need to also be completed and filed.

It is strongly recommended that you seek legal advice before filing any Claim with the Court to ensure your case:

- Is worth pursuing.
- Is drafted in a form the Court can consider.
- Has the best chance of success.

To file your Claim, you must do the following: -

1. Fully complete the Claim Form;
2. Print out the Claim and sign and date it where indicated on the document;
3. Make 4 copies of the Claim;
4. Take the original Claim and 4 copies to your local *Magistrates Court* and file them at the Registry. You will need to pay the filing fee of \$133.50 unless eligible for a fee waiver. The Court will return 4 sealed copies of the Claim to you (that is, they will be stamped by the

Court as proof of them being filed). The filing fee waiver form can be obtained from the *Magistrates Court* website.

5. You must then attend to serving the Defendant. That can generally occur by either Registered Post to their last known address (which should be noted on the Claim) or by having the person personally served (by a Process Server or independent person). You cannot serve a Claim yourself. If the Defendant is a company, you will need to serve the sealed Claim on the “Registered Address” of that company. This can be obtained through seeking a *Current Company Extract* via the *Australian Securities & Investments Commission* (ASIC) website. We have a list of Process Servers available on request.
6. The person who served the Claim must then complete an Affidavit of Service to swear/affirm service of the Claim on the Defendant and file that Affidavit with the Court.
7. The Defendant has 21 days from the date they were served with your sealed Claim to file a ‘Defence’ with the *Magistrates Court*.
 - a. If they file a Defence this will cause the *Magistrates Court* to action the matter, whereby they will send you written confirmation of a court date you are required to attend in order to progress your matter.
 - b. If the Defendant fails to file a Defence within 21 days after being served with your sealed Claim, then you can draft and file a “Default Judgment”. This form is available on the *Magistrates Court* website.
8. If you are successful in obtaining judgment and the judgment debtor refuses to pay the judgment sum, you will then need to take enforcement action. This can include a warrant to seize and sell property, a garnishee order to deduct an amount from their wages, or an Order requiring the judgment debtor to be orally questioned in court as to their financial capacities.

NOTE: A Flow Chart of the Court Process can be found on the Magistrates Court website here:

https://www.magistratescourt.tas.gov.au/about_us/civil/minor_civil_claims/minor_civil_claim_flowchart

Other Helpful Resources:-

Magistrates Court:-

1. Guide: https://www.magistratescourt.tas.gov.au/going_to_court/civil_disputes
2. Forms: <https://www.magistratescourt.tas.gov.au/forms>
3. Legislation:

Magistrates Court (Civil Division) Act 1992:

<https://www.legislation.tas.gov.au/view/html/inforce/current/act-1992-027>

Magistrates Court (Civil Division) Rules 1998:

<https://www.legislation.tas.gov.au/view/html/inforce/current/sr-1998-025>

Published: January 2024

North West Community Legal Centre Inc.

56 Formby Road

DEVONPORT, TAS, 7310

Ph: (03) 6424 8720

Email: office@nwclc.org.au

Website: www.nwclc.org.au

Disclaimer: *This document is provided for informational purposes only. The information contained in this document may not be appropriate to your specific circumstances and whilst all endeavours have been made to ensure its accuracy at the time of publication, it may not be accurate at the time of reading. You should seek independent legal advice with respect to your individual circumstances.*

The financial assistance provided to the NWCLC from both the State and Commonwealth Governments via the National Legal Assistance Partnership (NLAP) is gratefully acknowledged.