

# HOW TO RUN YOUR OWN COURT CASE

A practical guide  
to representing yourself in  
Australian courts and tribunals

{NON-CRIMINAL CASES}

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*Note for the reader*

While every effort has been made to make the information contained in this book as up to date and accurate as possible to reflect the laws and the legal system of Australia as at August 2008, its contents are not intended as legal advice. Use it as a guide only and be sure to obtain legal advice for your specific legal problem.

## 5 Should your case end up in court?

This is the most important question of all. The legal system is not always the best option for resolving a dispute. Many disputes that end up in court could have been better solved by other means.

Community justice centres and dispute resolution services, for example, can perform miracles in helping people sort through entrenched conflict without resorting to the legal system. Whether the problem is at home or work, or with neighbours, tenants or business associates, these services help the parties negotiate their own agreement to end the conflict. And they find that these agreements work better than orders imposed by a court. A list of these services and their telephone numbers is included at the end of the book.

As an alternative to legal proceedings, or in addition to them, there are often other avenues to pursue as well. If your dispute is with a government agency or an institution that belongs to a certain industry like banking, credit, insurance, superannuation, telecommunications or energy, there are a range of state, federal and industry ombudsmen, as well as particular dispute resolution schemes that investigate and help resolve complaints, usually before they reach the litigation stage. Some of them cannot help you once legal proceedings have started. A list of these free services and their telephone numbers can be found at the end of the book. If your complaint concerns a government agency, you can also contact your local Member of Parliament (MP).

If you cannot resolve your dispute by other means and your

case does need to go to court, there are certain advantages and disadvantages to using the legal process. The advantages are that it gives a powerful and impartial decision-maker the responsibility of finding a solution to the problem that you have not been able to solve. This provides an opportunity for you to air your grievance publicly and for the conflict to be contained and ended in a systematic and lawful way. If successful, the decision in your favour has the full force and authority of the law.

There are a number of disadvantages to using the legal system. First, in big letters with flashing lights:

**WARNING! WARNING! WARNING! There is the risk that costs will be awarded against you if you lose the case.**

This means that when the court issues its decision it may also order you to pay the other party's legal costs. Although they are usually calculated according to a fixed scale, these expenses can be considerable and can be more than what was at stake in the case. Take this risk very seriously when you are deciding whether or not to use the legal system.

Remember that some courts and many of the tribunals are no-costs jurisdiction where no such order about costs can be made and each party must bear their own legal expenses. Check this with the court or tribunal involved, as it is important to know their position regarding costs.

If you use the legal system and there is the risk of costs, try at an early stage to get written agreement from the other party that you will each pay your own costs in the case.

Another disadvantage of going to court is that sometimes the court process itself increases the conflict rather than ending it. Some parties use the legal system for retaliation rather than resolution and the emotional tit-for-tat can actually escalate. This creates a great deal of drawn-out and unnecessary hostility that could have been avoided if the matter had been solved by simpler means.

So if you are the one bringing the case to court, it's worthwhile to examine your motives. Are you seeking resolution, or revenge?

Likewise, if you are the one deciding whether to defend a case brought against you, examine your motives. Are you pointlessly fighting a legally legitimate case?

Another disadvantage is that once you go to court, you may be stuck with the decision of that court. And you may not like it.

So try exhausting other possibilities before involving the legal system. If someone is threatening to sue you, try to negotiate with them before they take legal action. It may save you time and expense in the long run.

Likewise, before you sue for a debt, first issue a letter of demand. If this strategy works, it saves you considerable time, effort and uncertainty. If it doesn't then you can use the letter of demand in court to show that you've made reasonable efforts to obtain the money.

## CASE STUDY **HELEN'S LETTER**

Helen was tired of making telephone calls asking for the money she was owed. She figured she might have to resort to the Small Claims Court to get results. But first she sent a letter of demand. In it she outlined the details of the debt with all the relevant dates and amounts and requested payment, giving 28 days to pay. She also stated in the letter that if payment wasn't received by that date, she wouldn't hesitate to take legal action to recover the money. She signed and dated the letter and kept a copy for her records.

The time limit did expire without Helen receiving her money, but Helen was satisfied now that she'd tried all the options. She felt much better about issuing a claim. Without delay, she obtained a claim form, filled it out and lodged it along with all the relevant documentation.

At court, Helen was able to easily establish her case. She provided all the paperwork concerning the debt and had maintained accurate records. The court was satisfied with her evidence and her attempts to recover the money and made an order in her favour for the amount owed as well as the filing fees.