

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.



The litigation process

There are exceptions, but most non-criminal litigation roughly follows this simple pattern:

**CLAIM then DEFENCE then CONFERENCE
then HEARING then RESULT**

First, a party called the plaintiff or applicant or claimant starts proceedings by lodging an application or claim at the registry of the court or tribunal and paying a **filing fee**.

Next, a copy of the claim is issued to the other party. The other party is called the respondent or defendant. Once the claim is issued, the respondent has the opportunity to respond to it within a certain time by lodging a written defence. Once the defence is lodged a copy of it is then forwarded to the plaintiff.

Although in some instances a case can proceed without a written defence, usually if no defence is lodged within the specified time, the plaintiff can proceed quickly and have the case dealt with at this early stage by applying for judgment. This is called **default judgment**.

If a defence is lodged within time, the next stage of the case is often a meeting between the parties arranged by the court or tribunal. There are various names for this meeting, such as **preliminary conference** or **case management conference** or **mediation**. Its purpose is to clarify the issues in the case and explore any options for settling the dispute without it going to a hearing. At the conference, the parties meet with an official of the court or tribunal and discuss the case. If they find a solution, the terms of settlement are drawn up and signed by the parties

and the matter ends there. Or there may be further steps arranged towards a settlement on mutually agreed terms. If the case does not settle at this conference and the parties are no closer to a resolution, a hearing date will be set.

If it does not settle but isn't yet ready for a hearing because more preparations must be made, often a minor hearing date will be set. This is called a **directions hearing**. For example, more evidence may need to be collected, more documentation completed or the availability of a witness confirmed. At the directions hearing, the court or tribunal issues directions about what must be done to ensure that all preparations are completed before the final hearing date. There are other versions of preliminary hearings, called **call-overs** and **mentions** that deal with setting dates, completing arrangements, dealing with adjournments and generally keeping a case moving forward.

In the early stages of a case, the court or tribunal is sometimes asked by a party to grant preliminary orders that operate until the main hearing takes place. These are called **interim orders** or **interlocutory orders**. The applications for these orders can be complex.

At the final or main hearing, the case is heard in its entirety, with each party having the opportunity to present its case and reply to the other party's case. The party making the claim – the plaintiff – goes first in presenting their case.

The burden of proof, that is, the obligation to prove the case, is on the party who is making the claim. If it is not adequately proved, the claim fails and, in effect, the party defending the claim – the respondent – has won.

The test used for the burden of proof in non-criminal cases, to determine whether the plaintiff has adequately proved their case, is the **balance of probabilities**. This test isn't as tough as the one used for criminal cases. It means that the plaintiff's case doesn't have to be proved beyond reasonable doubt, but rather that it is more probable than not.

The result or decision might be given verbally at the end of the hearing or else is **reserved**, that is, made available at a later date. A written copy of the decision or the orders that are made is usually made available immediately or sent to the parties soon after.

Most decisions can be appealed to a higher body, but there are often strict guidelines for appealing and strict time limits apply.