

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.

Glossary of terms

administrative law the law regulating government decisions.

admissible acceptable to the court.

adversarial system a legal system that treats the parties to a case as competing adversaries.

affidavit a written statement sworn or affirmed in the presence of an authorised person.

affidavit of service a sworn or declared statement verifying the delivery of documents.

aggravated damages are not often awarded in Australia; they apply where the injury has been aggravated by the wrongdoer's behaviour, for example, their cruelty.

amended defence a document that amends the original defence.

applicant a party initiating an application to the court.

application a claim or motion to the court or tribunal seeking orders.

application for leave to appeal an application asking for permission to appeal.

application for review an application to the court or tribunal seeking reconsideration of an administrative or other decision.

associate the decision-maker's assistant.

balance of probabilities the civil burden of proof in which the plaintiff must prove that their version of the case is more probable than not.

barrister a lawyer who specialises in court work.

Bar table the table in court where the lawyers sit, or where you sit if you are representing yourself.

bench where the judge or magistrate sits in court.

binding if a decision is binding, the court is compelled to follow it.

burden of proof the obligation to prove the case. In non-criminal litigation, the test used to determine whether the plaintiff has adequately proved their case is the balance of probabilities.

call-over a brief hearing in which a date is set for the final hearing.

case citation a system for identifying a case according to its location in

a particular law journal or report.

case management conference a meeting between the parties presided over by a court official.

certificate of readiness a document lodged by a party stating their preparations are complete and their case is ready for hearing.

certified copy a copy of a document that contains a verification by an authorised person that they have seen the original and the copy is a true copy.

certiorari a prerogative writ that orders an inferior court or tribunal or administrative body to produce a written record of proceedings to be reviewed by a higher court.

chamber magistrate a court official who provides free legal advice.

chronology a list of the events of the dispute arranged in date order.

civil law non-criminal law, which gives a remedy to the aggrieved party.

civil litigation non-criminal legal action, a lawsuit.

claimant a party initiating a claim.

common law precedent law, law that comes from cases rather than from legislation.

compensatory damages are awarded to compensate for loss suffered; most damages awarded in Australia are compensatory.

compliance certificate a document lodged by a party indicating that the case is ready for hearing.

conference a meeting between the parties presided over by a court or tribunal official.

counter claim where you admit liability for the original claim but want it offset by an amount you are now claiming.

criminal law the law of crimes, in which the state prosecutes or punishes the offender.

cross-claim where you are denying liability for the original claim and making your own claim.

cross-examination the examination of a witness by the party that did not call the witness.

declaration an equitable remedy that sets out the final state of affairs between the parties; for example, a declaration may set out that a debt is not owed.

default judgment judgment made against the defendant where there has been no defence lodged.

defence the defendant's case or a document that sets out the defendant's case.

defendant the party defending a criminal charge or civil claim made against them, sometimes also called *respondent*.

directions hearing a type of minor hearing in which the court does not decide the final result but directs the parties to do certain things in preparation for the main hearing, and then checks whether the directions have been carried out before scheduling a date for the main hearing.

directions list a list of the court's directions hearings for the day.

disbursements expenses for the case that the lawyer needs to recoup; for example, filing fees, the cost of serving documents, the cost of witness or expert reports and any barrister's fees.

discovery a court process that enables a party to obtain a list of and inspect the documents that the other party will be relying on in their case.

enter an appearance in some cases, a respondent or defendant is required to lodge a form notifying the court that they are defending the action either in person or are represented by a solicitor.

equity a body of judge-made law developed over the years to redress injustice within the legal system.

examination-in-chief the examination of a witness by the party that called the witness.

exemplary damages are not commonly awarded in Australia; they apply to punish the wrongdoer, not just compensate the victim.

extension of time if the time limit for lodging a document expires, you may be able to apply for an extension of time in order to lodge it.

family law law that deals with the breakdown of family relationships.

file to lodge a document with a court or tribunal.

filing fees the fees charged for lodging a document with the court.

FOI laws Freedom of Information laws enabling a person to have access to government records and files.

further and better particulars information requested giving specific details of a claim.

garnishee order an order directing a third person, like an employer or bank manager, to pay the debtor's money (for example, from wages) directly into court or to the person who is owed the money.

general damages awarded in personal injury cases for non-economic loss; for example, pain and suffering and loss of amenity of life.

hearing information form a form lodged by a party providing information that the case is ready for hearing.

inferior court a lower court in the legal system, for example the Magistrates Court.

injunction an equitable remedy that orders certain behaviour; it can require a party to do a certain act but is mostly used to restrain a

party from doing a certain act.

inquisitorial system a legal system that treats a case as an inquiry by the decision-maker rather than a contest of competing adversaries presided over by the decision-maker.

interim orders orders made by the court that operate until the outcome of the main hearing, sometimes also called *interlocutory orders*.

interlocutory orders orders by the court that operate until the outcome of the main orders, sometimes also called *interim orders*.

interrogatories legal documents served on or by the other party, containing questions that must be answered as part of the preparation of the case for hearing.

jurisdiction the power of a court.

leave to appeal permission to appeal a decision.

leave to apply out of time permission to make an application although the time limit to lodge the application has expired.

limitation date* or *limitation period the time limit for initiating a legal action.

mandamus a prerogative writ that means ‘we order’; it orders a public official to carry out their public duty or else give reasons to the court for not doing so.

mediation a dispute resolution process.

mention brief preliminary hearing to determine what the status of the case is; for example, whether it needs to be listed for a directions hearing.

mitigate to minimise a loss.

motion a way of petitioning the court; some legal actions can only be initiated in this way.

motions list a list of the motions coming before the court on that day.

no-costs jurisdiction where a court or tribunal cannot award legal costs to a party.

nominal damages awarded where a wrong has been proved but no loss has resulted.

notice of appeal an appeal application.

notice of discontinuance a document lodged by the plaintiff notifying the court that they are withdrawing the claim.

notice of motion a particular application to the court.

notice of withdrawal a document lodged by the plaintiff notifying the court that they are withdrawing the claim.

plaintiff the party initiating a lawsuit, sometimes also called *applicant* or *claimant*.

- precedent*** a case that is binding on a court when deciding a similar case.
- preliminary conference*** a meeting between the parties presided over by a court official.
- prerogative writs*** a group of remedies that apply in administrative law.
- pro bono*** free, at no cost, done for the general good.
- prohibition*** a prerogative writ that forbids a public official from doing a certain act.
- re-examination*** the questioning again of a witness after examination-in-chief and cross-examination has taken place.
- registrar*** an official of the court with various duties ranging from minor decision-making to processing cases and giving advice.
- reserved decision or judgment*** a decision that is not given at the conclusion of the hearing but is made available at a later date.
- respondent*** the party defending a non-criminal court action taken against them.
- rules of evidence*** the rules that govern whether a piece of evidence is admissible in court.
- serve a document*** deliver the document to the other party or their lawyer.
- solicitor*** a lawyer who does a variety of legal work including wills, conveyancing, giving legal advice and minor court work.
- specific damages*** damages for economic loss, such as medical expenses.
- specific performance*** an equitable remedy that orders a party to a contract to perform that contract.
- statement of claim*** a particular form of claim initiating a civil court action.
- statement of facts and contentions*** a document sometimes required by a tribunal in which a party sets out the facts and the legal contentions of their case.
- statement of issues*** a document sometimes required by a tribunal in which a party states the issues of their case.
- statutory declaration*** a written statement declared in the presence of an authorised person, often a Justice of the Peace. It is similar to an affidavit but does not carry the same weight in a court or tribunal.
- stay of proceedings*** a court order which stops a decision being carried out until the outcome of an appeal or other court action.
- strike out application*** an application by one party to have the other party's application or claim dismissed.
- submissions*** a party's written or oral presentation of their case to the court.

subpoena a court document demanding attendance at court or the delivery of particular documents to court.

summons a court document demanding a person attend court.

superior court a higher court in our legal system; for example, the Supreme Court or High Court.

T docs tribunal documents, the documents provided by the tribunal that contain the relevant documents for your case.

tendering documents presenting the documents to the court during the hearing.

waiver exemption, waiver of fees mean you don't have to pay the fees.

without prejudice without detriment to any existing right or claim.

witness statement a statement signed by a witness outlining the relevant facts of their testimony.

written costs agreement an agreement between you and your lawyer setting out the billing arrangements for the lawyer's work.