

Debt Collection – FAQs

When running a small to medium business, protecting your cash flow and maintaining good relations with your customers and clients is of the utmost importance.

To assist you we have prepared the following Debt Collection FAQs (Frequently Asked Questions).

I run a small business so cash flow is very important to me. How can I best protect my business from bad debtors?

Prevention is always better than cure. Firstly, consider implementing a rigid debtor management system by ensuring each new client transaction is subject to Terms of Trade. Terms of Trade will help clients understand what is required of them, and can provide creditors with suggestive means of achieving prompt payment in addition to the usual terms of payment.

For example, in appropriate circumstances Terms of Trade could allow a creditor to cease the supply of goods to a debtor where an invoice has not been paid for 30 days.

I don't have the time to chase debts, so what should I do?

Two things. Firstly, find the time to be aware of your debts otherwise your cash flow will disappear. Secondly, consult with McKean Park about how to put in place the necessary preventative action that will save you time chasing debts further down the track.

What would be considered the minimum debt worth pursuing?

Every debt is worth pursuing with our assistance for two good reasons. Firstly, writing off debts not only signals to debtors that a creditor is a "soft target", but will also encourage slovenly practices within the creditor's business.

How old does the debt have to be before I can take action?

That depends on the terms of any agreement at creditor has with a debtor. If there are no terms of trade and payment has not been received within 7, 14, or 30 days then a letter of demand should be sent by you or by a Solicitor.

What happens if my lawyer tries to get my money back and the client doesn't end up paying anything at all? Do I still have to pay legal costs?

Of first action is to send a letter of demand. If the debtor still does not pay and you do not pursue the matter further, then your legal costs will be \$150.

If the matter proceeds then your costs will be payable by the debtor in accordance with the relevant Court scale. The Court scale is usually about 60-70% of what you pay us. The risk that a debtor will not pay up is something that is reviewed on an ongoing basis, so there are no surprises for our clients.

What's the difference between using a lawyer and a debt collection agency?

Whilst it may seem cheaper to use debt collection agencies, the reality is often quite different. Debt collection agencies charge hefty fees for their work, notwithstanding that the debt may be small. Sometimes a one off fee is applicable and other times a percentage of the debt being collected is payable.

If legal proceedings are required, creditors (with the benefit of Terms of Trade drafted by McKean Park) can rely on our standard clauses to recoup legal costs incurred chasing the debt. The main difference however is the level of service and expertise.

I don't want to scare my clients, but I also want them to realise I need them to pay on time. Is there a way I can do this?

Make your clients appreciate your circumstances. Provide your clients with Terms of Trade which make the obligation to pay on time an explicit contractual obligation. Speak to your clients immediately when an account is overdue. Clients that systematically fail to pay accounts do not respect your business, deserve your sympathy or continued business relationship.

Debt Collection – FAQs (...continued)

Once a lawyer is involved, what happens then?

In terms of procedure, we advise our clients constantly of their available options and risks, and clients then instruct us to act. A relationship characterised by strong communication between lawyer and client will ensure no surprises in costs or results.

Is going to court going to cost me much?

The costs of going to Court range widely depending on the size of the debt involved, and the competency of your lawyer. Deciding to institute proceedings requires a consideration of many factors, including the size of the debt, prospects of success and whether a debtor has any money to pay.

Two jurisdictions most commonly used by clients are the Small Claims Tribunal (**SCT**) at the Victorian Civil and Administrative Tribunal (**VCAT**) and the Magistrates' Court.

The SCT can hear monetary matters of less than \$10,000. However, lawyers are not permitted, and the matter must be conducted by the creditor. No costs can be sought against debtors in VCAT.

The Magistrates' Court now has jurisdiction to hear monetary complaints up to \$100,000, avoiding the necessity to suffer the more expensive and time consuming County Court process for debts between \$40,001 and \$100,000.

Clients who are successful at the Magistrates' Court will usually have 60-70% of their legal costs ordered to be paid by the debtor. The Court orders costs paid according to a scale of costs in most instances, and that scale falls below the amounts charged by solicitors on a time basis with clients. Every situation is different and requires specific advice as to likely costs.

What preventative action can I take so that future clients won't be able to take advantage of me?

Creditors can save thousands by simply being 'on the ball' with debtors and making contact by telephone when an account becomes overdue. Being proactive will reduce the necessity for legal action.

Who should I contact at McKean Park to help me?

For assistance in this area, please email David Brett, our Consultant Lawyer, Accredited Specialist in Commercial Litigation and Nationally Accredited Mediator, at david.brett@mckeanpark.com.au or call him direct on (03) 8621 2888. He will be happy to assist you.

David Brett
Consultant Lawyer

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