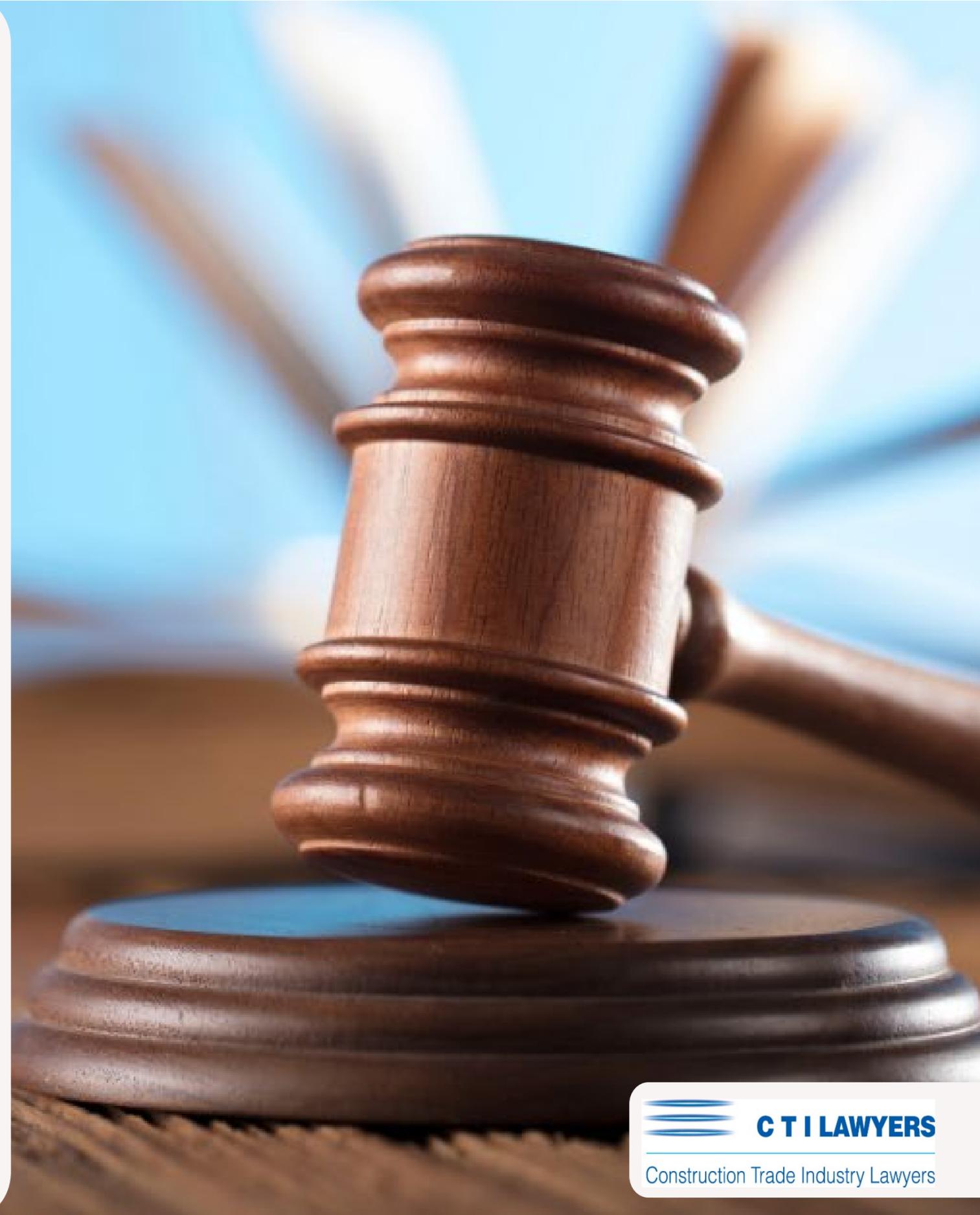




NECA Legal Webinar Series: Session 7

A Guide to Debt Recovery





Webinar Agenda

1. Contractual Rights and Obligations
2. Issuing Payment Claims
3. Initial Steps to recover outstanding debt
4. Options moving forward
 - a. Alternative Dispute Resolution
 - b. Security of Payments
 - c. Court Proceedings
5. Enforcement Options

Presenter:

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1. Contractual Rights and Obligations



Contractual Rights and Obligations

- Know and understand your contractual rights and obligations.
- For example, check your contract to know when and how to submit claims for payment. This is important because submitting claims at the wrong time may invalidate your claim under the *Building and Construction Industry Security of Payment Act 2009*(Tas).



2. Issuing Payment Claims



Payment Claims

- Issued on or from date stipulated in contract OR the last day of each month
- The manner in which the Claim should be served is usually stipulated in the contract – where this is not the case, service can take effect in the following ways:
 1. in person;
 2. by email or fax; or
 3. sending it to the principal place of business or the company's registered office.



3. Initial Steps to Recover Outstanding Debts



Initial steps to recover outstanding debt

1

Get your accounts department to telephone the debtor

2

Send the debtor emails demanding or requiring payment

3

Issue a Letter of Demand to the debtor giving them 10 days to make payment – we will do free Letters of Demand, for anyone who attended or registered for this webinar. We have had reasonable success rates of free Letters of Demand resulting in payment of debt without needing to take matters further. For free Letters of Demand, send us an email on law.clerk@neca.asn.au.



4. Options

Moving Forward



- Where you have exhausted the three initial steps to recover an outstanding debt and payment has still not been made, you have other options moving forward:
 - Dispute Resolution
 - Security of Payments
 - Court Proceedings

Options Moving Forward

Alternative Dispute Resolution

- An alternative to court proceedings
- Parties appear before a neutral third party and attempt to reach an agreement through mediation and conciliation
- However, where this proceeds to arbitration, the Arbitrator will make an enforceable decision that is binding on all parties involved



Adjudication under Security of Payments



- *Building and Construction Industry Security of Payment Act 2009(Tas)*
- Adjudicate Today provides a free printable flowchart of the process of debt recovery in Tasmania under the Security of Payment Act



Payment Claims and Payment Schedules

Payment Claim	Payment Schedule
Must be served by or on behalf of the Claimant	Served on Claimant by Respondent in response to a Payment Claim
Relate to work performed prior to a reference date*	Indicates Payment Claim to which it relates to
Identify the Respondent and the work performed	Indicates amount (if any) that the Respondent intends to make
"This Payment Claim is made under the Building and Construction Security of Payment Act 2009 (Tas)"	Provides reasons for withholding or reducing payment to an amount less than that claimed
Identify the claimed amount	

*Reference Date – the date that both parties agree to for the lodgment of a Payment Claim – where it is not provided, it defaults to the last day of each mor



Proceedings in the Magistrate's Court

- Minor Civil Claim - Claims up to and including \$5,000
- Civil Claim - Claims from \$5,001 up to and including \$50,000
- Supreme Court – Claims over \$50,000



Minor Civil Claim Division

- Claims up to and including \$5,000
- Deals with cases cheaply and quickly
- No legal costs as parties must be self-represented
- You may request legal representation in special circumstances (e.g. where the other party is a solicitor, or where you have an intellectual disability)
- All cases go through compulsory mediation before Hearing



Civil Claim Division

- Claims from \$5,001 up to and including \$50,000
- If the amount is more than \$50,000, it can be dealt with in this Division if agreed to by both parties
- Where an agreement is reached prior to taking further action, a Consent Judgement will be signed
- Defendant has 21 days to file a defence against a claim if disputed – where a claim is defended, the matter will be listed for Directions Hearing before a Magistrate or a Conciliation Conference with a mediator



Civil Claim Division Cont.

- Where an agreement cannot be reached, the matter will proceed to Hearing where a final judgement may be made and may be appealed to the Supreme Court

What if the Defendant does not file a defence?

- Claimant can ask the Court for a Default Judgement and enforce the action through an Enforcement Option.



5. Enforcement Options



Although many debtors pay once judgement has been made, this is not always the case. Where a debtor has failed to pay the debt owing, you can commence enforcement proceedings after judgement.

Considerations before Enforcing a Judgement



- Does the debtor have enough income or assets to pay the debt?
- Are you willing to pay fees for certain types of enforcement action?



Enforcing a Judgement Debt

- Judgement Debt – a court order against a judgement debtor requiring them to pay monies owed to the claimant.
- Enforced any time within 6 years of the date that the Judgement was made, or after that time with the permission of the Court
- Enforcement Options:
 - Payment by Instalment
 - Judgement Summons and Oral Examination
 - Periodic Garnishee Order
 - Warrant to Seize and Sell Property



Judgement Summons and Oral Examination

- Must be served at least 14 days before the Examination takes place
- Judgement Summons – summons for a Judgement Debtor to attend Court and be examined as to their means to pay the outstanding debt
- Oral Examination – means by which the Judgement Creditor can examine the Debtor under oath as to their income, assets and liabilities concerning their ability to make payment of the Judgement Debt.



Payment by Instalment

- Some debtors may request the debt be paid in instalments. This may occur by directly approaching you or by applying to Court.
- If the debt is to be paid through instalments, enforcement of the debt may only take place where the judgement debtor defaults by not paying one or more of the required instalments.



Periodic Garnishee Order

- Requires the Debtor's employer to make deductions from the employee's wages that are to be paid to the Creditor towards the Judgement Debt
- Employer required to garnish (withhold) part of debtor's wages or salary to repay a debt
- Within 21 days of receiving the order, the Debtor may apply to set it aside or reduce the amount of the order due to family or financial difficulties.

Warrant for Seizure and Sale of Property

- The money is used to pay the Judgement Debt
- Expires after 12 months
- *Magistrate's Court (Civil Division) Rules 1998*



130. Warrant to seize and sell property

- (1) A registrar may issue a warrant for the seizure and sale of a judgment debtor's property.
- (2) A warrant is to be in an approved form and is to contain a statement specifying –
 - (a) the amount of the judgment and any costs of the action that remain outstanding; and
 - (b) the costs of preparing and filing the warrant in accordance with Part 3 of Schedule 1; and
 - (c) the amount of interest claimed in accordance with section 26 of the Act; and
 - (d) the prescribed fee for the filing of the warrant; and
 - (e) the prescribed fee for the execution of the warrant by the bailiff; and
 - (f) any reasonable and necessary expenses incurred in executing the warrant.
- (3) A warrant issued under subrule (1) expires 12 months after the date on which it is issued.
- (4) After the expiry of a warrant and within the period referred to in rule 121, a registrar may issue a further warrant in respect of the same judgment.

131. Seizure of property

- (1) A bailiff, in executing a warrant issued under rule 130, is not to seize from a judgment debtor any of the following items:
 - (a) personal clothing and bedding;
 - (b) tools of trade up to a value of \$3000.
- (2) A bailiff may allow a judgment debtor to retain possession of any seized property –
 - (a) until a sale of the property is held; or
 - (b) for a period determined by the bailiff pending the payment of the judgment debt.

Warrant for Seizure and Sale of Property Continued



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Disclaimer: This presentation does not constitute legal advice and reliance should not be placed upon material presented to solve a specific industrial relations issue.

