

## WHY YOU SHOULD ACT QUICKLY IN TRYING TO RECOVER DEBTS

It is a fact of life that any business will have some bad debts. Often the view is taken that it may be better not to do anything about these debts immediately, in the hope that the debtor's financial position will improve. This view is often encouraged by the debtor itself who will make promises that it may or may not be able to keep.

Generally, court proceedings for the recovery of a debt can be started at any time within six years after the debt becomes due. However, it is not a good idea to wait nearly six years to try and enforce the debt.

Over time, memories fade, and documents and other evidence may be lost. Particularly if the debtor is a company, there is always the possibility that it would have gone into liquidation or been removed from the register by ASIC, meaning that the debt cannot be pursued. In addition, the debtor, particularly a serial debtor, may take the view that, because nothing has been done for some years, the creditor does not intend to pursue the debt.

Most businesses require payment within 28 or 30 days. If a debtor does not pay within that time, we recommend:

- Ringing the debtor as soon as possible and asking why payment has not been made.
- A strongly worded letter of demand from a solicitor showing that you mean business.
- If this does not work, a claim can be issued in the appropriate state court.
- Alternatively, if the debtor is a company and owes you in total more than \$2,000.00 a Statutory Demand under the Corporations Act can be issued. A demand only needs to be served on the company's registered office.
- The Demand requires that the company must, within 21 days of service, pay the debt, come to a suitable arrangement or compromise to pay the debt (e.g. by instalments) or file and serve an application to set the demand aside. It is critical that the demand be both filed and served within the 21 day period, as the courts have no jurisdiction whatsoever to extend this time limit.

It is surprising how many debtors pay up when they realise that you mean business, and will not simply ignore the outstanding debt. Please contact us on 07 3849 6263 or at [reception@oneillslawyers.com.au](mailto:reception@oneillslawyers.com.au) if we can be of any further assistance.