

COVID-19 and small businesses

Answering your questions

6 April 2020

Ward Keller's Debt Collection Manager, [Sandra Kantros](#), joined commercial partner [Leon Loganathan](#) and senior lawyer [Alecia Howland](#) to facilitate a Q & A session to answer your questions about how small businesses have been affected by COVID-19. We hope that the following Q & A answers any queries and concerns you may have.

General questions

1. How can I collect a debt during this difficult time?

Many small businesses are reeling from the impact of COVID-19 and facing the difficult question of how to collect money owed to them when their debtors are likely to be facing the impacts as well.

Here we give you some practical tips to assist with managing your debtors, which will in turn help you navigate this period with your creditors.

Many small businesses will have offered credit or payment terms to customers before the COVID-19 pandemic occurred, and those invoices are now overdue or payment deadlines are looming.

If a customer does not pay you when a debt falls due (subject to your agreement or arrangement with them providing otherwise), the standard process would be to:

1. contact the debtor by phone or email and send a statement of account
2. issue a notice of the default (called a 'letter of demand')
3. engage a debt collector, and eventually
4. commence proceedings in the [Northern Territory Civil and Administration Tribunal \(NTCAT\)](#) (for debts of less than \$25,000) or the appropriate court.

2. Has COVID-19 changed that process?

There is no restriction at this time on contacting your debtors to seek payment of overdue invoices. Given this situation, you may be willing to extend the payment timeframe for your customers who in the past have paid on time and may be suddenly dealing with their business having to close to the public, or having to stand down staff, or are impacted by the general downturn in sales, or navigating the overwhelm of information being circulated. This is certainly a time to be sympathetic towards those situations where possible; however, you also have a business to protect and may be relying on payment of outstanding invoices to meet your expenses.

3. How should I review my agreement?

Go back over your agreement or terms and conditions and check for terms that may assist in moving your debt towards the front of the queue. If interest is payable after a certain period, or the agreement allows for collection costs and legal fees to be added to the debt, remind the customer of those terms.

4. And if they still don't pay?

The next step remains the same as it did prior to COVID-19. Either issue a letter of demand or engage a debt collector. Provide your debt collector with copies of the invoices, your terms and conditions or agreement, and your communications with the debtor. A good debt collector will communicate effectively with the debtor on your behalf, keep you informed and can manage any payment plan agreed to, which is one less thing on your plate.

5. What is the impact of COVID-19 on starting proceedings?

This is where the process itself has been affected by COVID-19.

At the time of writing:

- [NTCAT](#) will receive and accept new applications, but no new proceeding will proceed past acceptance unless it is classified urgent.
- The [Local Court](#) will accept a Statement of Claim and issue it to you for service; however, the period before a conciliation conference is listed may be lengthy because many civil listings are being delayed or vacated. The court is adopting new measures to conduct some listings by audio visual link or teleconference.

The courts and tribunals are updating their processes regularly to adapt to the changing situation. You will find the most up to date information on their websites¹.

6. What else should I do?

Firstly, check if the limitation period is looming. Generally, an overdue debt will arise from a breach of contract, giving you a period of three years from the date the cause of action first accrues to commence proceedings².

If you have debts that are approaching three years old, you should seek legal advice or consider filing proceedings to protect that limitation period.

Also, you can use the time whilst the court process is on hold or delayed to prepare. Gather the information you will need if you have to commence the proceedings, such as copies of the invoices, agreements, terms and conditions and communications with the debtor. Check that your records are up to date. Take this opportunity to review your processes, identify problems and see if there are changes you need to make to keep the process smooth. Again, if you have contact with the debtor, either ensure it is in writing, or follow up with a written confirmation of your conversation and request a reply.

In summary:

- Communicate clearly, and be considerate of your debtor's circumstances but firm in what you require from them.
- Keep records of your contact with the debtor.
- Seek advice if you are unsure what steps you can take.
- Review your invoicing and debt collection systems to strengthen your business once the initial impact of COVID-19 has passed.

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References

- [1] 'Courts and Tribunals COVID-19 response', Supreme Court of the Northern Territory (Web Page) <<https://supremecourt.nt.gov.au/about/whats-new/2020/courts-and-tribunals-covid-19-response>>.
- [2] Limitations Act 1981 (NT) s 12.

Disclaimer: The advice provided in this article is of a general nature only and should not be substituted for obtaining your own independent legal advice. If you have any further queries, please contact Ward Keller on (08) 8946 2999 or wardkeller@wardkeller.com.au for further advice.

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