

*A Guide for  
Self-Represented Litigants  
in the Civil Jurisdiction of  
the County Court*





The County Court of Victoria moved to its present site at the corner of William and Lonsdale Streets, Melbourne in May 2002.

'The Lady of Justice' by William Eicholtz adorns the front of the building.

Front: The County Court Logo is based on the Lady of Justice Sculpture created by William Eicholtz.

Original Sculpture: William Eicholtz, 2002

Photo: The Liberty Group (Owner and operator of the County Court Facility)



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## *Foreword*

The County Court is committed to providing high quality services to all court users. This guide has been produced by the Court to help you represent yourself in civil proceedings.

The guide has been developed to assist you in understanding how the court works. It provides a general introduction to the Court Registry along with useful information about our processes and procedures, as well as resources which may assist you. While the guide is comprehensive, it is not exhaustive and it should not be taken as legal advice. You are encouraged to obtain independent legal advice prior to engaging in Court proceedings.

More information about practice and procedure is available on the Court's website, which can also be accessed from computers available for public use in the Court's Registry.

The Court can be a difficult place to navigate without knowing where to go or who to ask for information or assistance. I hope that this guide can help you find your way through.



*Michael Rozenes*  
Chief Judge

## Disclaimer

The content of this booklet is provided for general information purposes only. It does not constitute legal advice, and therefore, should not be used for such purposes. Litigants are encouraged to obtain legal advice prior to taking any step in the legal process. The County Court of Victoria does not accept any liability for loss or damage incurred as a result of reliance placed upon the content of this booklet.

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## *1. Information provided in this booklet*

This booklet has been prepared by the County Court registry to assist unrepresented litigants by providing information about practices and procedures in the Court. A flowchart, available through the court website, is designed to guide you through this booklet.

Few litigants are capable of conducting complicated proceedings without reliance on professional legal advice from a lawyer. All parties are encouraged to speak to a solicitor prior to issuing proceedings. A list of practitioners in your area, or experts in the relevant field, may be obtained from the Law Institute of Victoria (refer to the helpful resources section at the back of this booklet).



## *2. About the County Court*

The County Court of Victoria is an intermediate Trial Court, with both a civil and criminal jurisdiction. The Court is between the Supreme and Magistrates' Courts in the Victorian court hierarchy. The County Court may hear matters at first instance, (original jurisdiction) and may also hear cases from the Magistrates' Court on appeal. There is no limit to the monetary amount a party can claim in the civil jurisdiction of the County Court.

The Court's main registry is located in Melbourne on the ground floor, 250 William Street and is open weekdays from 9am until 4pm. Registries are also located within County Courts throughout Victoria: Bairnsdale, Ballarat, Bendigo, Geelong, Hamilton, Horsham, Mildura, Morwell, Sale, Shepparton, Wangaratta, Warrnambool and Wodonga. The above registries are open weekdays, however, a Judge does not sit (hear cases) on a full-time basis.

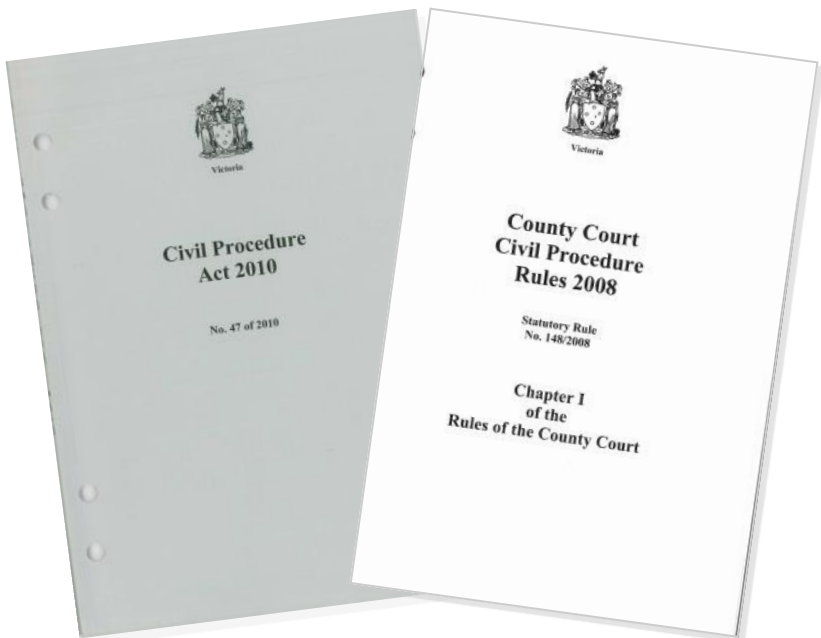
The County Court is governed by the *County Court Act 1958*. All proceedings in the civil jurisdiction must comply with the *County Court Civil Procedure Rules 2008* ('the Rules'). The Rules provide guidance and set out the processes to be adopted for civil litigation and include time limits for filing documents and the appropriate forms to be used. All parties must also comply with the obligations set out in the *Civil Procedure Act 2010*.



## Rules

**NOTE:** It is important that you become familiar with the Rules as the County Court staff and this information booklet will make reference to the civil process set out in the Rules.

**A reference to the Rules in this booklet will appear like this: r 23.02(a).**







### ***3. Introduction to the civil registry***

The County Court of Victoria Registry staff are pleased to assist you in relation to procedural questions and may provide you with information about your case.

#### **Registry Staff may provide:**

- Advice about court process;
- Commonly used court forms;
- Helpful resources and publications; and
- Contact details for support services

#### **Registry Staff cannot:**

- Provide you with legal advice;
- Tell you what to say in Court or what to write on your court forms;
- advice on private settlements;
- Speak with the Judge on your behalf; or
- Adjourn your case, this must be ordered by a Judge.

# COURT CONNECT

Court Connect is a free online information search facility which is accessed through the home page of the County Court website. Information provided is drawn from the Court's case management system.

**County Court of Victoria - 250 William Street, Melbourne Victoria, 3000**

County Court of Victoria - 250 William Street, Melbourne Victoria, 3000  
[County Court of Victoria](#)

### QUICK LINKS

- » [Access to Court Records](#)
- » [Careers at the Court](#)
- » [Civil Directions Group](#)
- » [Court Connect](#)

### After Hours Contact

For all urgent applications after the Court has risen for the day or during any vacation, please contact the Associate to the Duty Judge on 0419 384 312. No general information or advice can be provided by calling this number.

## CourtConnect

- Search by person name or company name
- Search for judgments against a person or business
- Display case information and activities
- View Criminal Appeal Hearings
- View Court Listings

[Help for First Time Users](#)      Powered by **SCT**  
Web Technology

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## *4. Introduction to civil proceedings*

Civil law (as opposed to criminal law), is a branch of law dealing with disputes between individuals or companies, where damages (compensation) may be awarded to the complainant. There are a number of steps involved in the process of a civil case. These are listed here and explained in more detail in the following pages:

- issuing process;
- filing and serving court documents;
- Preparing for trial including discovery;
- pre-trial hearings;
- trial; and
- post trial, including enforcement.



## FEES

### Prescribed Fees

There are prescribed fees on a number of court documents, please see the County Court fees on the website to ascertain whether a fee is required and the amount to be paid. The Court accepts cash, money order or Cheque made out to the County Court of Victoria.

**EFTPOS and Credit Card facilities are available at the Melbourne registry.**

### Fee Waivers

In some circumstances, the County Court Registrar may exercise discretion to waive a prescribed fee. An application must be made for each fee and will only be waived where the Registrar considers the payment of that fee would cause financial hardship. The Registrar will consider both the application and supporting material in determining the outcome of the fee waiver application.

**The fee waiver application form may be obtained from the Registry.**



## *5. Do I need a lawyer?*

There are many good reasons to have a lawyer represent you in court:

- lawyers know the law;
- lawyers know the ‘ins and outs’ of processes that may be confusing if you are not familiar with them;
- lawyers know what to do when the other side does not ‘play fair’; they are aware of these situations as it is not always clear;
- lawyers know about judges and how they like to run their court room;
- lawyers know legal language;
- lawyers know the intricacies of juries – what juries are like, and what a jury may possibly do in your case;
- lawyers have gone through this hundreds of times; it’s their job!

### **I cannot afford a lawyer**

Not everyone can afford a lawyer to represent them in court. There are legal services available to give free legal advice and some may assist with the preparation of court documents. The Law Institute may be able to assist you with finding a service that best suits your needs.

**Refer to the ‘Helpful Resources’ section of this booklet for contact details.**



## ***6. Legal costs***

### **Litigants in person - cost entitlements**

Where a person acts as a litigant in person (i.e. without a solicitor) they cannot recover any costs for preparing the case or for appearing in Court.

The only costs you may recover are:

- copying documents upon which you seek to rely;
- fees required to be paid to the Court e.g. issue fee on writ, trial fees, jury fees etc;
- loss of earnings (if any) while attending Court as a witness, for the period that you are giving evidence; and
- any other out of pocket expenses for the preparation or attendance at court.

### **What happens if I am ordered to pay the other party's legal costs?**

If an order is made for the other side (i.e. against you) you may be liable to pay the other party's costs. These costs may add up to thousands of dollars. Costs are calculated by using the 'scale of costs' in the Rules. The scale of costs is found in Appendix A of the Supreme Court Rules.



## ***7. How to commence proceedings in the civil jurisdiction of the County Court?***


### **Civil Procedure Act obligations/requirements**

The *Civil Procedure Act 2010* requires you to comply with a set of obligations throughout the conduct of your claim. These are known as the overarching obligations.

The overarching obligations are as follows:

- to act honestly at all times;
- not to make a claim or defence without a proper basis;
- only to take steps which are necessary to facilitate the resolution or determination of the dispute;
- to cooperate with the other party and the Court in the conduct of the proceedings;
- not to mislead or lie;
- to try to resolve the dispute;
- to narrow the issues in dispute;
- to ensure costs are reasonable and proportionate;
- to minimise delay; and
- to let the other party know about documents critical to the dispute.

If you do not comply with the obligations listed above you may be penalised which may result in costs ordered against you or having your claim struck out. The other parties involved in the dispute are also required to comply with these obligations.



## The Registry at County Court Melbourne



The Registry at County Court Melbourne.

A Client Services staff member assists a litigant.



Litigants can use computers in the registry area to search court documents and legal websites such as Victoria Legal Aid, Law Institute of Victoria and The Victorian Bar.





## Issuing proceedings

The party/s seeking damages, compensation or other remedy or relief from the Court is/are known as the 'Plaintiff/s'.

The party/s from whom any damages, compensation or other remedy or relief is/are being sought is/are known as the 'Defendant/s'.

## Commencing a proceeding at court

A civil proceeding is commenced by the plaintiff filing either a writ or originating motion ('originating process'), a request to enter a list which will determine which List ('Commercial' or 'Damages and Compensation') and which List Division will govern the further steps in the case together with the two certifications. [Refer to the certification section in this booklet.](#)

The **r 4.04** sets out when a writ is required to initiate process and **r 4.05** sets out when an originating motion is required. Put simply, an originating motion is required to be filed in the following instances:

- where there is no defendant to the proceeding;
- where, by or under an Act, an application is authorised to be made by the Court.



Example of Form 5A Writ

Party names inserted here

RULE 5.02 (1) FORM 5A

IN THE COUNTY COURT OF VICTORIA AT MELBOURNE

No: CI- \_\_\_\_\_

and

*Plaintiff*

*Defendant*

**WRIT**

Date of document:  
Filed on behalf of:  
Prepared by:

Solicitors Code:  
DX  
Tel. No.:  
Fax. no:  
Ref:

**TO THE DEFENDANT**

TAKE NOTICE that this proceeding has been brought against you by the plaintiff for the claim set out in this writ. IF YOU INTEND TO DEFEND the proceeding, or if you have a claim against the plaintiff which you wish to have taken into account at the trial, YOU MUST GIVE NOTICE of your intention by filing an appearance within the proper time for appearance stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by-

- (a) filing a "Notice of Appearance" in the Registrar's office in the County Court Registry, 250 William Street, Melbourne, or, where the writ has been filed in the office of a Registrar out of Melbourne, in the office of that Registrar; and
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this writ.

IF YOU FAIL to file an appearance within the proper time, the plaintiff may OBTAIN JUDGMENT AGAINST YOU on the claim without further notice.

\*THE PROPER TIME TO FILE AN APPEARANCE is as follows-

- (a) where you are served with the writ in Victoria, within 10 days after service;
- (b) where you are served with the writ out of Victoria and in another part of Australia, within 21 days after service;
- (c) where you are served in the writ in New Zealand or in Papua New Guinea, within 28 days after service;
- (d) where you are served with the writ in any other place, within 42 days after service.

IF the plaintiff claims a debt only and you pay that debt, namely, \$ \_\_\_\_\_ and \$ \_\_\_\_\_ for legal costs to the plaintiff or his solicitor within the proper time for appearance, this proceeding will come to an end. Notwithstanding the payment you may have the costs taxed by the Court.

FILED Registrar

THIS WRIT is to be served within one year from the date it is filed or within such further period as the Court orders.

*\* Strike out this paragraph where order made fixing time for appearance and substitute THE PROPER TIME TO FILE AN APPEARANCE is within . . . days after service on you of this writ.\**

Details of the person filing the document ie plaintiff or plaintiff's solicitor.



### Statement of claim

A statement of claim provides paragraphs containing facts which the plaintiff seeks to rely upon in support of their claim. At the end of the statement of claim, the plaintiff must set out the orders which they are seeking and request the Court to make ('relief'), which they believe is appropriate for the claim in dispute. If the statement of claim is not valid or clear, the Court may strike it out, which may mean that the proceeding comes to an end - **r 23.02(a)**.

Copies of the writ with the statement of claim or originating motion are filed at the Court. Upon filing a writ or originating motion you must pay a fee.

**Fees are listed in the Costs, Fees, Charges schedule available on the County Court website.**

The originating process is then issued (sealed), and given a Court number. One copy is kept on the Court file and the other copies are returned to you. It must then be served on the Defendant/s. [Refer to the service of documents section in this booklet.](#)



## Certifications

In addition to filing the originating process and request to enter a list, certifications (overarching and proper basis certifications) in accordance with the Act must be filed:

1. Overarching Obligations, that you have read and understood the overarching obligations and the paramount duty set out in the Act, **(s41) - Form 4A**; and

**This certification must be signed by you, not your solicitor.**

2. Proper Basis, that each allegation in your claim has a proper basis **(s42) Form 4B**.

**This certification must be signed your solicitor or by you if you do not have a solicitor.**

Failure to certify may result in the claim being struck out and costs awarded against the you.

## Service of documents

Once issued, the writ or originating motion is valid for twelve months within which time it must be served - **r 5.12(1)**. Refer to the [extension of writs section in this booklet](#).

Service on an individual is effected by personally handing the document to the person named in the originating process.



Service on a company, however, may be by post to their registered address.

**A business - name search is required to obtain the registered business address.**

It is recommended that you engage a process server to serve the documents personally on the defendant. Process Servers may be found in the telephone directories.

An affidavit of service should be prepared and filed as soon as possible after service. It is completed by the person who served the documents. The affidavit must state the date, time, address and, where and when the defendant was served.

**If the defendant was served personally, the affidavit must state that the defendant admitted their identity.**



If you are serving the documents on a defendant who resides interstate you must also attach a **Form I** with the document to be served. This form provides extra advice for the defendant and must be served pursuant to the *Service and Execution of Process Act 1992 (Commonwealth)*.

Example of Affidavit of Service

IN THE COUNTY COURT  
OF VICTORIA  
AT MELBOURNE

NO: CI-\_\_ - \_\_\_\_

B E T W E E N

*Plaintiff*

*and*

*Defendant*

**AFFIDAVIT OF SERVICE**

Date of Document:	Solicitors Code:
Filed on behalf of:	DX:
Prepared by:	Tel. No:
	Ref:

I, .....

.....  
*(name, address & occupation)*

"make oath and state that I served a sealed copy of the Writ in the above matter on the above named  
.....defendant"  
*(name)*

at .....

.....  
*(place of service, date & time)*

At the time of service I said to him/her "Are you the person named as the defendant in this Writ?" to which he/she replied "Yes" (or) in the affirmative.

Attached is a sealed copy of the writ referred to (Exhibit "A")

I necessarily travelled .....kilometres from the nearest County Court at ..... and made  
.....attempts to effect service.

.....  
*(signed)*

Taken and sworn before me at ..... in the State of Victoria  
on this ..... day of ..... 2006

before me



## 8. How to respond to civil proceedings?

### Notice of appearance

If the originating process is served within Victoria, the defendant must file and serve a Notice of Appearance within 10 days of being served - **r 8.04(a)**. The Rules provide for extended time frames if the defendant was served interstate or outside of Australia.

The plaintiff may apply for judgment if an appearance is not filed within the time limit. [Refer to the default judgment section in this booklet.](#)

The Notice of Appearance lets the plaintiff/s and the Court know that you intend to defend the action.



Rule 8.05(2) FORM BA

IN THE COUNTY COURT  
OF VICTORIA  
AT MELBOURNE

NO: CI- \_\_\_\_\_

BETWEEN

and

Plaintiff  
Defendant

**NOTICE OF APPEARANCE**

Date of Document:	Solicitors Code:
Filed on behalf of:	DX:
Prepared by:	Tel No:
	Ref:

FILE an appearance for  
the above named defendant.

Dated:

Signed

The address of the defendant is:

and the address of the defendant within Victoria for service is:

The name or firm and the business address within Victoria of the solicitor for the defendant is:

[http://www.courtsonline.vic.gov.au/CA257646X23952/lookup/Client\\_Fee/Site/Form\\_BA\\_Notice\\_of\\_Appearence.rtf](http://www.courtsonline.vic.gov.au/CA257646X23952/lookup/Client_Fee/Site/Form_BA_Notice_of_Appearence.rtf)

Example of *Notice of Appearance*



A defendant may file an appearance and defend a proceeding in person rather than by a solicitor.

An authorised person such as a Director of a corporation may file an appearance, however, this is the only step that a corporation may take without legal representation - **r 1.17 and r 8.03.(1)**.

### **Communicating with the Court**

Any communication directly with the Judge about your case should only take place in the courtroom. Correspondence should not be addressed directly to the Judge but to either the Registrar of the County Court, 250 William Street Melbourne, Victoria, 3000 or to the Registrar of the relevant country court (circuit court) if the matter is listed outside of Melbourne. All correspondence received by the Court is placed on the Court file, which may be viewed by other parties or the public.

Therefore, careful consideration should be given to what is written in any correspondence.





## Notice of defence

After filing an appearance, the defendant must, within 30 days (after filing the appearance), file with the Court and the plaintiff, a Notice of Defence together with the two certifications - **r 4.04(a)**. The Plaintiff may apply for judgment if the defence is not filed within the time limit. [Refer to the Default Judgment section in this booklet.](#)

The purpose of the defence is for the defendant to respond to each of the numbered paragraphs of the plaintiff's statement of claim.

IN THE COUNTY COURT  
OF VICTORIA  
AT MELBOURNE

NO. CI: \_\_\_\_\_

BETWEEN

and Plaintiff  
Defendant

**NOTICE OF DEFENCE**

Date of Document: \_\_\_\_\_ Telephone: \_\_\_\_\_  
Prepared by: \_\_\_\_\_  
Address: \_\_\_\_\_ DX: \_\_\_\_\_

In answer to the plaintiff's statement of claim the defendant says as follows:

1.

Dated: \_\_\_\_\_  
Defendant

Example of Notice of Defence form



When you are defending a claim in the Court you are required to comply with a set of obligations throughout the conduct of your defence. These are known as the overarching obligations, and they are set out in the *Civil Procedure Act 2010*.

The overarching obligations are as follows:

- to act honestly at all times;
- not to make a claim or defence without proper basis;
- only to take steps which are necessary to facilitate the resolution or determination of the dispute;
- to cooperate with other party and the court in the conduct of the proceedings;
- not to mislead or lie;
- to try to resolve the dispute;
- to narrow the issues in dispute;
- to ensure costs are reasonable and proportionate;
- to minimise delay; and to let the other party know about documents critical to the dispute.

If you do not comply with the obligations listed above you may be penalised which may result in costs ordered against you or having your defence struck out.

The other parties involved in the dispute are also required to comply with these obligations.



## Certifications

The two (2) certification forms below must be filed with the Notice of Defence:

- Overarching obligations, that you have read and understood the overarching obligations and the paramount duty set out in the Act, **(s41) - Form 4A**; and
- Proper basis, that each denial in your defence has a proper basis, **(s42) - Form 4B**.

Certification forms are available on the County Court website ([www.countycourt.vic.gov.au](http://www.countycourt.vic.gov.au)).

Failure to certify may result in the defence being struck out or costs awarded against you.

## Counterclaim

A defendant in a proceeding may make a claim against the plaintiff and seek damages, (relief), this is a counterclaim. The process that the defendant must follow for the issuing and service is the same as required for a writ or originating motion. The filing fee is also the same. A proper basis certification should also be filed with the counterclaim. The document is referred to as the defence and counterclaim - **(r 10.02(3))**.



## Default judgments

In a proceeding commenced by writ, judgment in default of appearance or defence may be entered by the plaintiff against the defendant/s if the defendant/s have not filed either the appearance or the defence respectively with the Court within the required time limit - **r 21.01 & r 21.02**.

**A default judgment cannot be entered unless certifications have been filed.**

In essence, a default judgment is an order made against the defendant/s as a consequence of either not filing an appearance or a defence.

The plaintiff can make this application to the Registrar at any time after the time limits for filing the above documents have passed. The plaintiff can only claim the amount set out in the statement of claim along with interest and costs. If the statement of claim seeks relief other than a specific amount (liquidated amount), the Registrar cannot enter a judgment for what it sought, but rather, the application will be listed before a judge for those specified damages to be determined (assessed).



## Default appearance

To apply for judgment in default of appearance, the plaintiff is required to file the following documents with the Court :

- search for an appearance (this is a document requesting the Registrar to search the Court records for an appearance);
- either **Form 60G**, **Form 60H** or **Form 60J** order in triplicate;
- affidavit of service with an original sealed copy of the writ attached as an exhibit to the affidavit; and
- filing fee.

## Default defence

To apply for judgment in default of defence, the plaintiff is required to file the following documents with the Court:

- an affidavit proving the defendant's failure to serve a defence within the time limit;
- either **Form 60G**, **Form 60H** or **Form 60J** order in triplicate; and
- filing fee.

In circumstances where you have a valid reason why a default judgment should not have been made against you. [Refer to the setting aside a judgment section in this booklet.](#)



## *9. What is a chamber application?*

A chamber application is an application made to a Judge which does not require an appearance by you at court (order made on the papers). The following are examples of the applications that are made this way.

### **Extension of writs**

An application may be made to extend the time of the validity of a writ. Where a writ or an originating motion has not been served on a defendant within the 12 month period, the Court may extend the period of validity for such period, from the day of the order as the Court directs, being not more than one year from that day. An order may be made before or within three months after expiry. The Court must be satisfied that there is a good reason why the originating process was not served within the 12 month period - **(r 5.12)**.

To make this application you must file the following documents:

- General Form of Order, **Form 60C**, in triplicate (included as a court order the date and the validity of the writ is to be extended to);
- all copies of the original sealed writs;
- affidavit in support; and
- filing fee.



## Substituted service

An application may also be made to the Court for an *Order for Substituted Service*. Substituted service may be required when personal service of a writ or originating motion has been unsuccessful or is impracticable and you wish to have an order dispensing with the requirement for personal service. For example, by leaving the documents at the defendant's address or sending them to the address by registered mail.

To make this application you must file the following documents:

- General Form of Order, **Form 60C** in triplicate (include as a Court order how the originating process will be served);
- affidavit in support and affidavit of attempted service (alternatively the affidavit of attempts may be exhibited to the affidavit in support); and
- filing fee.



## Extension of Warrants

A warrant is valid for one year after the day it is issued - **r 68.05(1)**.

An application may be made in writing for an extension of that time.

An order extending the period of validity of a warrant must be made before that period has expired.

To make this application you must file the following documents:

- General Form of Order, **Form 60C** in triplicate (included as a Court order that you require the warrant to be extended); and
- affidavit in support;
- filing fee.

Please refer to the Enforcement Section for details about warrants generally.





## *10. The Administrative Mention process*

After the defendant has filed a notice of appearance the Administrative Mention procedure will commence. This process is designed to manage the proceeding prior to trial. A notice will be sent from the Court to all parties requiring them to submit consent orders by the date assigned (Administrative Mention).

Parties are **not** required to attend at Court on this day.

Consent orders generally set out the trial date and the time tabling of important milestones. The order also includes when documents are to be filed, served and when other interlocutory steps are to be taken, such as mediation.

### **Standard Orders**

Parties are expected to make contact with each other before the Administrative Mention to try to agree on consent orders. If consent is reached, standard consent orders are drafted and signed by all parties.

The standard order templates are available on the Court website. The standard order templates are completed and signed by all parties which then forms the consent orders. The consent orders are then sent to Court, on or before the Administrative Mention date, by fax, post or email.

Directions Group email: [directions.group@countycourt.vic.gov.au](mailto:directions.group@countycourt.vic.gov.au).



The appropriate List Division Judge will then consider the consent orders provided by the parties and if appropriate, will make the orders sought by the parties.

If agreement has not been reached before the Administrative Mention and the parties require more time, a request for a further Administrative Mention may be sought by the parties. This request may be made by either party by contacting the Directions Group in writing, by either letter or email with an explanation as to why consent has not been reached.

If consent will not be achieved with extra time, you should request the matter be listed for a Directions Hearing.

The letter should set out the issues in dispute, the steps taken to negotiate consent orders, and request the listing of a Directions Hearing. The correspondence which was sent to the other parties should be clearly visible on the front of the document. If deemed appropriate, the Judge will order a Directions Hearing be listed.



## *11. What is a Directions Hearing?*

A directions hearing is a preliminary hearing which involves the establishment of time frames in which things need to be done. It is also used as a hearing where direction may be sought from the Judge.

Before attending a Directions Hearing you should clarify:

- the documents that you are seeking from the other side to assist you with your case, (make a list to assist you);
- the witnesses **you** will be calling and their availability for the following six months;
- whether there is any other person who you wish to join as a party to the proceedings; and
- whether you will have a solicitor representing you at trial.

**It is important to note that any postponement of a hearing may result in costs being awarded against the party who wishes to have the hearing adjourned.**



## *12. What orders may be made at a Directions Hearing?*

After the Judge hears from all parties, orders may be made addressing any of the following:

- the date the trial will start and how long it might take;
- times for the parties to complete pleadings (statement of claim, defence, counterclaim, defence to counterclaim and any further and better particulars of these documents);
- that written and sworn lists of documents be provided to the other parties (discovery);
- that the parties attend mediation;
- when fees for trial are to be paid and by whom; and
- any other orders necessary to be made to ensure that the trial runs smoothly and it is ready to proceed on the allocated date.

Failure to comply with a directions order may result in judgment being entered against the defaulting party or the Court may strike out the action.

Once the trial date is scheduled, the parties must be ready to proceed on that date; an adjournment will only be granted if good reason is shown.



## *13. Can the dispute be settled before the trial?*

Whilst the court process may be expensive and lengthy, dispute resolution mechanisms are available which may assist to resolve your dispute in a cheaper and quicker way.

A dispute may settle at any time up to and including during a trial.

Parties should use whatever mechanisms to try to resolve a dispute at the earliest possible opportunity. Therefore, a dispute may settle at any time from when a case is commenced at court, up to, and including, during the trial.

### **Settlement**

If your case settles at any stage prior to the trial date, you must provide the court with consent orders stating that the case has been resolved.

The consent orders must be signed by both parties.

The Registrar will 'seal' the order and it becomes an order of the Court.

The trial is then vacated pursuant to - **r 59.06**.



## *14. Pre-trial applications*

### **Interlocutory**

At any stage prior to the trial, a party may make an application to the Court for an order seeking clarification of an issue. This application can be made by summons or by way of letter to the Directions Group. Upon receiving the letter, the Directions Group will either list the matter for a Directions Hearing and notify the parties of the date and time of the application via a hearing notice or advise that a summons should be filed with the Court.

A summons is a **Form 46A**, to be filed with the fee and an affidavit. The summons will be given the next available date before the Judge in charge of the relevant division. If the matter is urgent, you will be required to fill out an **Urgent Application Form**.

The content of the affidavit should further support your application and be confined to facts which the person swearing the affidavit is able to state of his/her own knowledge. Unsuccessful applications may result in costs being awarded against that party.



## Subpoenas

A subpoena is a document which is used by a party to require an addressee to produce documents, to give evidence or to do both.

In accordance with the Rules there are two types of subpoenas which are issued at the County Court. The two subpoenas are:

- **Form 42A (Order 42)**, or
- **Form 42AA (Order 42A)**.

### Form 42A

This subpoena is directed to a person who has knowledge of the facts of your case and whom you would like to give evidence on your behalf or produce documents to the court.

Only one of the three sections is to be completed, requiring the addressee to either:

- a. attend to give evidence at a hearing;
- b. produce documents; or
- c. attend to give evidence and produce documents.

The documents produced by this subpoena are only released by order of the Judge.

**A Form 42B (Advice to Addressee declaration) must be attached to the subpoena and served on the addressee.**



## Form 42AA

This type of subpoena is aimed at facilitating an early resolution of the proceeding and **can only be filed by a party who is represented by a solicitor**. The subpoena requires the addressee to produce documents at the court for parties to inspect and photocopy if they wish to do so. However, parties or an 'interested person' may object to the production or release of the documents requested in a subpoena. If an objection is filed, the matter is listed for hearing and a Judge will decide whether parties should have access to the documents.

If no objection is filed the parties are able to view and copy the documents. However, before viewing any documents, the issuing party must file an affidavit of service - proof that all other parties and solicitors have been given a copy of the subpoena.

**Form 42AB (Notice to Addressee and declaration) must be attached to the subpoena and served on the addressee.**





## Issuing a Subpoena

A filing fee is required for each subpoena issued in a civil case. The Registrar, if satisfied that all sections of the subpoena are completed correctly, will seal the subpoena for service.

It is important that the following sections are completed:

- the last date for service of the subpoena - five working days prior to the production/hearing date - (**r 42.03(8)(a)** and **r 3.01(4)**); and
- the production date - which is the date that the documents are to be produced or the date for giving evidence.
  - **42A subpoena**, the date of the hearing / trial; or
  - **42AA subpoena**, at least 21 days from the date of issue.

The subpoena must be served personally on the addressee on or before, the last date for service. Conduct money must be provided, sufficient to meet their reasonable expenses of attending or producing documents to the Court.



## *15. The Trial*

It may be useful for you to view similar proceedings in the Court prior to your own court case. This will enable you to become familiar with the courtroom and court procedure. A schedule of cases for each day is published on the Court's website and is also available on an iPhone app. At Melbourne, case lists are displayed on monitors located on the Ground floor, and levels one and two.

If attending a circuit court, you should contact the relevant circuit court for hearing date and time. A list of circuit courts is available on the Court's website and on the back cover of this booklet.

### **Who will be in the courtroom?**

The Judge will sit at the bench; barrister/s for the other party/s will be seated at the bar table. You will be told where to sit by the tipstaff or the Judge's associate. The Judge, Judge's associate and the barristers wear robes. The tipstaff wears a green uniform.

The witness box is located near the bar table. Some courtrooms also have a jury box and dock.

Security personnel, may also be in the courtroom or within the vicinity of the courtroom.



## Courtroom layout (County Court Melbourne)



- |                                     |  |
|-------------------------------------|--|
| 1 Judge's bench                     | 6 Instructing solicitor (Defendant)            |
| 2 Judge's Associate                 | 7 and 8 Barristers for Plaintiff and Defendant |
| 3 Judge's Tipstaff                  | 9 Public Gallery                               |
| 4 Jury box                          | 10 Witness box                                 |
| 5 Instructing solicitor (Plaintiff) |  |





### **What do I need to bring to Court?**

- all documents on which you seek to rely- originals, if they exist; and
- a pen and paper for taking notes.

### **Public Access**

Members of the public have access to all courtrooms unless a Judge has ordered otherwise. School groups and the media also regularly attend Court. If there is a good reason why your case should not be viewed by the general public you should bring this to the attention of the Judge before the trial begins.

### **Court Etiquette**

When entering and exiting a Courtroom, it is customary to stand and bow your head to 'The Crown'. Respectful behaviour is expected from all parties inside the courtroom. There is to be no eating in Court, including chewing gum. Talking in court is only permitted where it is necessary for a party to speak to their legal representative. Parties should not talk or move about the courtroom when witnesses are in the witness box. Mobile phones and other electronic devices must be turned off - unless you have been given permission by the Judge to use such devices in court.



The Judge is addressed as 'Your Honour', the barristers by their name e.g. Mr Brown. All parties will be given an opportunity to have their say. You must stand when speaking with the Judge or witnesses.

### Court Process

The Judge may give directions as to the conduct of the trial, however, as a general rule the following applies:

- you should advise the associate or tipstaff who you are and that you are representing yourself;
- you may be allowed to have someone to assist and support you in court;
- you should sit in the body of the Court in the front row nearest the bar table;
- the tipstaff will ask everyone to stand when the Judge enters the courtroom;
- the name of the case will be announced;
- the barrister/s representing the other party/s will tell the Judge their name and who they represent;
- the Judge will ask your name and confirm you are representing yourself. You may be allowed to sit at the bar table with the other representatives, however, you should not sit there until the Judge has said that you may;



### *Court Process cont'd.*

- the plaintiff or their representative will outline their case to the Judge or advise if there are any preliminary matters to be decided by the Judge before the trial begins;
- the defendant will be given the opportunity to speak on the preliminary issues;
- if there are preliminary issues the Judge may make a ruling on these matters; and
- the Judge may order that witnesses wait outside the court room until they are called to give evidence.



## *16. What assistance may I have in the Courtroom?*

### **Court Network**

Court Network is a volunteer organisation that provides a support for anyone attending Court. The Court Network office is located in the Melbourne County Court on the Ground Floor near the Registry. For more information visit [www.courtnetwork.com.au](http://www.courtnetwork.com.au).

Court Network office at the County Court:  
Telephone: (03) 8636 6470

### **Family / Friends**

You may have a friend or a family member sit with you in the courtroom unless they are a witness in your case and witnesses have been ordered to leave the courtroom. If they are not a witness, this person may also be able to sit with you at the bar table, however, you will need to ask the Judge first.

### **Children**

It is preferable that childcare arrangements are made for children rather than having them attend Court. There are no child minding facilities available at the County Court. If you are unable to make alternative arrangements, you should have someone to assist you with the children whilst you are at the Court.



## *17. What happens if I don't come to Court?*

If you are a defendant and do not attend the court hearing, the Judge may make an order for the amount claimed in the plaintiff's statement of claim and also award costs against you. If you are unable to attend Court due to an emergency, for example illness or injury, please contact the Court as soon as possible. If the plaintiff does not appear, the Judge may dismiss the case and order the plaintiff to pay the defendant's costs.

### **Judgment**

The Judge may make a decision on the last day of the trial or may adjourn and provide a decision at a later date. The Judge may provide a written decision which outlines the reason for the decision. However, you should make your own notes of the result.

Judgments are published on the County Court website shortly after the trial has concluded.

Once a Judgment has been made the names of the parties will change.

- The party(s) who was successful in obtaining judgment is called the '*Judgment Creditor*'.
- The party(s) whom the judgment was made against is known as the '*Judgment Debtor*'.





## ***18. What happens if Judgment is entered against me?***

Where a Judgment has been entered against you, it becomes a Debt. Interest continues to accumulate on that debt pursuant to the Penalty Interest Rate; therefore, any arrangements for payment should be made as soon as possible.

### **Setting aside a Judgment:**

If you have a valid reason for not attending the hearing, and have a valid defence and believe the Court should not have made an order against you, an application may be made to set aside the order and have the matter reheard. An application of this type is made by summons together with the appropriate fee and an affidavit in support. A date will then be allocated for the hearing of the application before the appropriate judge in charge of the List or Division.

You must immediately serve the other party with the issued summons. The summons should be mailed to the other party care of their solicitor. Once the Summons has been served, you should file an affidavit of service with the Court.

At the hearing of your application, the Judge will read the affidavit material, hear submissions from the parties and then make a decision. If the judgment is set aside, the Judge will give directions for the future conduct of the action.

If a monetary order has been made, you may contact the solicitors for the plaintiff and arrange with them to pay the debt.

**RULE 46.04(1)**

**FORM 46A**

**IN THE COUNTY COURT  
OF VICTORIA AT  
MELBOURNE**

No: CI-11-

**Plaintiff**

and

**Defendant**

**SUMMONS**

---

Date of document:	Solicitors Code:
Filed on behalf of:	DX
Prepared by:	Tel. No.
	Fax no.
	Ref.

---

To: [Identify each party or other person to whom summons is addressed and state address of each person not a party].

You are summoned to attend before the County Court on the hearing of an application by the Plaintiff/Defendant for the following Order(s):

- 1.
- 2.

The application will be heard before the Judge in the County Court, at Melbourne on [date] at a.m. or so soon afterwards as the business of the Court allows.

**FILED**

.....  
**REGISTRAR**

Example of  
a *Summons*



## *19. Enforcement*

If the payment of money, land or goods remains outstanding, the creditor is entitled to apply to the court to enforce the judgment or order against the debtor, (**Order 66**).

### **Enforcement options:**

#### **I. A Warrant under Order 68**

There are three types of warrants that may be issued and forwarded to the Sheriff for execution:

- Warrant of Seizure and Sale– to seize and sell property (**Order 69**);
- Warrant of Possession– to enforce the judgment by taking possession of the land subject to the order (**Order 70**); or
- Warrant of Delivery- possession of the goods (or their value) (**Order 66**).

**There is no County Court filing fee to issue a warrant, however the Sheriff will charge a fee for execution.**



## 2. An Attachment of Earnings (**Order 72**)

This is an application to the Court to order the judgment debtor's employer to deduct installments from the salary each pay day and have them paid to the creditor.

## 3. An Attachment of Debt 'Garnishee order' (**Order 71**)

This is an application by the creditor for an order where the debtor is owed money (not wages) by another person, (garnishee), for that debt owed to be paid directly to the creditor. For example, a debtor's bank account may be attached under a garnishee order.

## 4. A Charging Order (**Order 73**)

This is an enforcement application by the creditor for the purpose of securing the payment of a judgment debt through securities held by the debtor.

Securities mean:

- any stock, including shares, bond, note or other security; or
- any dividend or interest payable on stock.

Before issuing a Charging Summons a judgment creditor must make an application to the court to issue, file and serve the summons - (**r 73.03**).



### *Enforcement Options cont'd.*

An application for a charging summons must be supported by an affidavit pursuant to - **r 73.04**.

**Enforcement forms, affidavits and associated fees are published and available on the Court's website.**

### **Order for Oral Examination**

If you are unsure of the debtors financial situation and which enforcement option to choose, you may consider an application for an Order for Oral Examination that the debtor be orally examined on material 'financial questions' and to produce any document in the possession of the debtor relating to the questions - (**r 67.02**).

This is not an enforcement process, however, it allows the Judgment Creditor, or their solicitor/barrister, to ask questions in the presence of a court registrar about the debtor's financial situation so as to determine the best way of enforcing the debt.



## Application to pay debt by instalments

If you cannot afford to pay the amount you owe and agreement cannot be reached with the creditor, you may apply to the Court to pay the debt and interest by instalments.

The following documentation must be provided before the court can accept your application:

- an application (**Form 61A**) which must contain the following information:
  - the total sum outstanding
  - the amount to be paid by instalments
  - when the instalments are to begin
  - the grounds for the application;
- the address for both the judgment creditor and judgment debtor;
- a sworn affidavit of financial circumstances (**Form 72C**); and
- a sworn affidavit of service as the other party must be served with a copy of the application to pay by instalments before the Court can accept the application.

There is no fee for the debtor to apply for an instalment order.

The Registrar will set a date for the application to be heard. The parties do not need to attend as the Registrar will consider the papers submitted by the debtor and make a decision regarding the application and notify the parties accordingly.



The Registrar may only:

- grant the application, or
- refuse the application.

Refusal of the application is usually for one or more of the following reasons:

- the instalment amount offer does not cover the penalty interest which is also accruing on the debt;
- the applicant has other assets which could be sold to pay off the debt;  
or
- the offer is unrealistic and the debt will take an unreasonable amount of time to pay off.

### **Objection Hearing**

Either party may lodge an objection to the Registrar's decision within 14 days of receiving notification of the decision. This objection application is heard by a Judge.



## *20. Helpful Resources*

### **Victoria Legal Aid (VLA)**

(Melbourne only)  
350 Queen Street  
Melbourne Vic 3000  
Tel: (03) 9269 0234 or  
Country Callers: 1800 677 402

### **Law Institute of Victoria**

470 Bourke Street  
Melbourne Vic 3000  
Tel: (03) 9607 9311  
[www.liv.asn.au/Getting-Legal-Advice](http://www.liv.asn.au/Getting-Legal-Advice)

### **The Federation of Community Legal Centres**

Suite 11, 1st Floor, 54 Victoria Street  
Carlton South Vic 3053  
Tel: (03) 9652 1500  
[www.communitylaw.org.au](http://www.communitylaw.org.au)

### **Victoria Law Foundation**

Level 5, 43 Hardware Lane  
Melbourne Vic 3000  
Tel: (03) 9604 8100  
[www.victorialawfoundation.org.au](http://www.victorialawfoundation.org.au)

### **Victorian Aboriginal Legal Service**

(Head Office)  
6 Alexandra Parade  
Fitzroy Vic 3065  
Tel: (03) 9419 3888 or 1800 064 865

### **Public Interest Law Clearing House**

Level 1, 550 Lonsdale Street  
Melbourne Vic 3000  
Tel: (03) 9225 6690  
Email: [www.pilch.org.au](http://www.pilch.org.au)





## ***21. COUNTY COURT CONTACTS***

For updates on your civil case you may log onto Court Connect from the County Court website. On Court Connect you may verify whether your correspondence has been received by the court. All orders made on the case can be accessed via Court Connect also.

### **MELBOURNE REGISTRY**

#### **Civil enquiries / Self Represented Litigant enquiries**

For queries in relation to the filing of documents or applications call:

Tel: (03) 8636 6528

Fax: (03) 8636 6051

#### **Civil Listings enquiries**

For queries regarding hearing dates call:

Tel: (03) 8636 6515

Fax: (03) 8636 6051

#### **Directions Group enquiries**

For queries regarding administrative mentions call:

Tel: (03) 8636 6690

Email: [directions.group@countycourt.vic.gov.au](mailto:directions.group@countycourt.vic.gov.au)

Contact details for other courts within regional Victoria are available on the Court's website, or on the back page of this booklet.



## 22. Dictionary

**Action:** A civil proceeding in a Court (*also* referred to as Proceeding, Case or Matter)

**Adjourn:** to close the Court; to be resumed at a later date/time

**Admit:** to acknowledge a fact

**Affidavit:** A written statement made on oath, given in the place of verbal evidence

**Affirmation:** A declaration made instead of taking an oath

**Application:** A request made to a Court for orders to be made on your case, e.g. application for an adjournment

**Assessment:** (civil jurisdiction) the process of estimating or quantifying the monetary value of a plaintiff's loss or damages

**Associate:** the Judge's support staff who records orders made in Court and provides other assistance to the Judge as required

**Authentication:** The validation of an order of the court which is signed and sealed by the Registrar on the prescribed form

**Case Number:** A number assigned to each case or matter for record keeping purposes

**Case Conference:** A dispute resolution process to attempt to bring the parties together to discuss the dispute in the spirit of resolution

**Cause of action:** A brief statement detailing the nature of a civil claim by one party against another

**Compensation order:** An order made by the Court requiring a party to pay compensation to another person for loss or damage suffered as a result of that party's action or omission



**Court Connect:** Free information search facility of the Court's Case and List Management System available to the community and accessible from the County Court Website

**Cross-Examination:** After examination-in-chief of a witness called by one party, the other party has a right to question or cross-examine the witness. Rules of evidence must be applied

**Damages:** A Court assessment (whether by Judge alone or by a jury) of monetary loss suffered as a result of a civil wrong or breach of contract

**Directions Hearing:** A pre-trial hearing where orders are made to assist parties to prepare a case for trial

**Discontinued:** Where the Plaintiff makes the decision not to continue with proceedings against the defendant and files a Notice of Discontinuance with the Court

**Discovery:** A procedure by which documents relevant to the action are disclosed to the other party/s, before the case is heard at trial

**Dismissed:** An order by the Court finalising a proceeding. A case may be dismissed at any part of the process for a number of reasons

**Examination:** Questioning of a person under oath or affirmation in open Court. Rules of evidence apply

**Exhibit:** Any item or document shown to the Court that is to be part of the evidence in a case.

**Ex parte:** An order made in the absence of one of the parties

**File and serve:** Lodge a document with the Court (file) and ensure a copy of the document is received by a party (serve)



**Hearing fee:** A fee paid for each day or part thereof that the matter is before a Judge for trial

**His/Her Honour:** The formal form of reference to a Judge

**Infant:** A person under the age of 18 years, who does not have full legal capacity

**Injunction:** A Court order that prevents someone from doing something

**Inspection:** A pre-trial procedure whereby parties to an action are permitted to view the discovered documents of the other party (see *also* Discovery)

**Interlocutory application:** A matter which arises between commencement of an action and final determination of a case

**Interrogatories:** A procedure by which questions relevant to an action are asked of the other party, before the case proceeds to trial (see *also* Discovery)

**Judgment:** The sentence or order of the Court in a proceeding

**Judgment in default:** Judgment by registrar where one party fails to file an appearance or a defence with the Court

**Jurisdiction:** The power of a Court to hear and determine a case. The extent of legal authority of a Court

**Jury:** The panel of people selected from the community to decide on liability and damages

**Legal aid:** Government funded legal assistance provided to a person for representation in Court



**Legal Practitioner:** A person registered as a barrister or lawyers within a Federal, State or Territory Court

**Liability:** A legal responsibility or obligation

**Liberty to apply:** A right granted by the Court, to be heard by the Court without the issue of a summons

**Litigation:** Legal proceedings before a Court

**Litigation guardian:** Person appointed to deal with litigation on behalf of a child or person without legal capacity

**Mediation:** A process whereby parties meet with a mediator to attempt to reach a settlement

**Minutes of consent order:** A draft order, the terms of which are agreed to by all parties, submitted for the approval of the Court

**Oath:** (juror, witness) A solemn promise made by a person before his God that he will say what is the truth, or will do what he promises to do

**Order:** A command or direction issued by a Court or tribunal requiring a person to do or refrain from doing something

**Part-heard:** A hearing not yet completed and adjourned to a new date

**Particulars:** (of damage) the details of the claim (or the defence) in an action which are necessary in order for the other party to know what case has to be met

**Pleadings:** The written documents which are exchanged between the parties in a civil case, which define the issues in dispute and ultimately make up the Court file. They contain the facts and evidence to be relied on by the respective parties to the case



**Practice Note/Practice Direction:** Written notes of practice decisions made by the Court, with which it is expected that practitioners/parties will comply

**Prayer for relief:** Part of a statement of claim indicating the relief or remedy sought from the Court

**Prescribed form:** A form required by legislation

**Pre-trial hearing:** Any hearing in relation to an action which takes place before the final determination of a case

**Pro Bono:** A term used when a lawyer performs legal work for a person without charging a fee

**Registrar:** A court officer responsible for maintaining a register or record of Court proceedings

**Reinstatement:** When a finalised matter is re-listing for hearing

**Request for Further and Better Particulars:** A document filed by a party requesting another party to provide more information about the matter; more specific detail

**Serious Injury application:** An application to the Court to determine whether the plaintiff has suffered a “serious injury” according to the definition in the relevant Act

**Setting down:** (for hearing) the fixing of a date for a hearing to commence

**Settlement:** Agreement between parties in a civil proceeding which leads to the finalisation of the matter



**Summons/Interlocutory Application:** A document issued by the Court requiring a person to attend at the Court for the purposes set out in the document

**Suppression order:** A Court order preventing publication of certain information about a particular case

**Third party notice:** The formal document filed by the Defendant by which a third party proceeding is commenced against another who is not already a party to the original proceeding

**Tipstaff:** A member of the Judge's staff responsible for order in the Courtroom, the swearing or affirming of witnesses, supervision of juries and other assistance to the Judge as required

**Transfer of proceedings:** The re-assigning of a matter from one Court to another or from one jurisdiction to another

**Vacate:** To set aside a hearing or trial date, or an order previously made by a Court

# *COUNTY COURT*

## *CIRCUIT COURT LOCATIONS*

### **Bairnsdale**

Nicholson Street, Bairnsdale 3875  
T: (03) 5152 9222  
F: (03) 5152 9299

### **Ballarat**

100 Grenville Street South, Ballarat 3350  
T: (03) 5336 6200  
F: (03) 5336 6213

### **Bendigo**

17 Pall Mall, Bendigo 3550  
T: (03) 5440 4140  
F: (03) 5440 4162

### **Geelong**

Railway Terrace, Geelong 3220  
T: (03) 5225 3333  
F: (03) 52253392

### **Hamilton**

Martin Street, Hamilton 3300  
T: (03) 5572 2288  
F: (03) 5572 1653

### **Horsham**

20 Roberts Avenue, Horsham 3400  
T: (03) 5362 4444  
F: (03) 5362 4454

### **Mildura**

56 Deakin Avenue, Mildura 3500  
T: (03) 5021 6000  
F: (03) 5021 6010

### **Morwell**

134 Commercial Road, Morwell 3840  
T: (03) 5116 5222  
F: (03) 5116 5200

### **Sale**

Foster Street, Sale 3850  
T: (03) 5144 2888  
F: (03) 5144 7954

### **Shepparton**

16-24 High Street, Shepparton 3630  
T: (03) 5821 4633  
F: (03) 5821 2374

### **Wangaratta**

Faithfull Street, Wangaratta 3677  
T: (03) 5721 0900  
F: (03) 5721 2374

### **Warrnambool**

218 Koroit Street, Warrnambool 3280  
T: (03) 5564 1111  
F: (03) 5564 5483

### **Wodonga**

5 Elgin Street, Wodonga 3690  
T: (02) 6043 7000  
F: (02) 6043 7004