

A guide to **representing yourself** when

Defending a civil proceeding

in the Trial Division of the Supreme Court

Contact details

Supreme Court staff can answer questions about court process. They cannot give legal advice, or help you prepare or present your case.

Website

supremecourt.vic.gov.au

Self-represented Litigant Coordinator

Phone: 03 8600 2031

Email: unrepresented@supcourt.vic.gov.au

Appointments with the Self-represented Litigant Coordinator are held at the Principal Registry

Principal Registry

Level 2, 436 Lonsdale Street
Melbourne VIC 3000

Phone: 03 8600 2004

Mon-Fri 9.30am-4pm, closed public holidays

Court locations

Visit the Supreme Court website for court locations throughout Victoria. Check your Court documents to make sure you attend the correct location for your hearing. Also check the Daily Hearing List on our website.

Security

You must go through security screening before entering a Supreme Court building. Items not allowed include anything explosive, sharp or a potential weapon, including cans and glass bottles. Alcohol is also not allowed.

This guide contains general information only and is not intended to be legal advice.

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About civil proceedings

Types of civil proceedings we hear

The Supreme Court hears many different types of civil proceedings. Usually, the matters heard are complex or involve large amounts of money. Sometimes the matter is heard in the Supreme Court because the law requires it.

The Supreme Court frequently hears civil proceedings such as:

- commercial disputes over contracts
- mortgage default claims
- property disputes
- negligence claims (for example, involving personal injury or property damage)
- defamation claims
- claims in relation to deceased estates
- employment disputes
- insolvency disputes.

In addition, the Court hears appeals against decisions made by the County Court, Magistrates' Court, Children's Court, Coroners Court, Victorian Civil and Administrative Tribunal (VCAT), and government bodies in Victoria.

It also hears:

- judicial reviews, and
- appeals against a decision made by a judge, associate judge or judicial registrar in the Supreme Court of Victoria.

Which part of the Court hears civil proceedings?

The Supreme Court of Victoria has two main parts: Court of Appeal and Trial Division. The Trial Division has four parts: Commercial Court, Common Law Division, Criminal Division and Costs Court. Most civil proceedings are heard in the Commercial Court and Common Law Division. Each type of civil proceeding is managed differently depending on the law that applies and the division and list that manages that type of case.

This guide gives information that applies to almost all civil proceedings.

See our website for guides that give specific information on common types of civil proceedings. The guides are for applicants, however the information on how these proceedings are managed may be helpful.

This guide does not cover proceedings started under the Corporations Act, as the process varies greatly depending on a number of factors. Contact the Self-Represented Litigant Coordinator to discuss your situation.

ABOUT THIS GUIDE

This guide is for people who want to defend a civil proceeding in the Supreme Court and may not have a lawyer.

Read this guide to find out:

- what types of civil proceedings the Supreme Court hears
- what it means to represent yourself
- court fees that apply
- stages in the process and what you need to do at each stage
- documents you need to provide
- forms you need to complete.

The Appendix has links to the forms and resources you may find helpful.

Forms are also available in hard copy from the Principal Registry.

This guide contains general information only and is not intended to be legal advice.

The content in this guide is based on the *Supreme Court (General Civil Procedure) Rules 2015* and *Supreme Court (Miscellaneous Civil Proceedings) Rules 2018*. The Rules set out the process you must follow.

Legal word

Division – a part of the Supreme Court. The Court has two main parts: Court of Appeal and Trial Division. The Trial Division has four parts: Commercial Court, Common Law Division, Criminal Division and Costs Court.

List – an area of the Supreme Court that deals with cases that rely on similar laws, managed by judges with particular knowledge in these areas, for example the Judicial Review and Appeals List. See our website for descriptions of the different lists.

If you are reading a print version of this guide, note that the online version has links to forms and other resources you may need. Visit supremecourt.vic.gov.au/representingyourself for the online version. References to links in the appendix are only relevant if you are reading the online guide.

Civil proceedings started by writ or originating motion

There are two main ways that start a civil proceeding (unless the proceeding is an appeal or a judicial review).

A civil proceeding usually starts by:

- writ
- or
- originating motion.

These are legal words to describe the type of document used to start the process.

The writ or originating motion will state the division and list that is managing your matter.

Stages in a civil proceeding

A civil proceeding usually goes through these stages:

STAGE 1	The proceeding starts
STAGE 2	Documents are served on the defendant
STAGE 3	The defendant may respond to the documents
STAGE 4	Attend the directions hearing, if needed
STAGE 5	Get your case ready for the judge
STAGE 6	The hearing
STAGE 7	The decision

Sometimes the Court orders parties to attend a mediation — a confidential discussion held between parties with the help of a skilled independent mediator.

The mediator cannot force anyone to resolve a dispute, but can help parties explore options, negotiate and reach a settlement agreement. The Court may order parties to go to mediation at any stage of the process.

Time limits

Almost all civil proceedings must be started within a certain time limit. The time limit varies depending on the type of case.

The *Limitation of Actions Act 1958* gives the time limits for most civil proceedings started by writ.

Also check the relevant Supreme Court Rules and the particular law (Act) that gives the power to start a civil proceeding in the Supreme Court.

IMPORTANT INFORMATION

Legal word

Writ – a type of document that starts a civil proceeding. A writ is used unless an originating motion is required.

Originating motion – a type of document that starts a civil proceeding. It is required when:

- there is no defendant, or
- the application is being made to the Court under a particular Act, or
- the *Supreme Court (General Civil Procedure) Rules 2015* require that an originating motion is used.

What it means to represent yourself

Representing yourself in court means you take responsibility for the tasks that a lawyer would otherwise do for you.

People who represent themselves in court are known as self-represented litigants.

In the Trial Division of the Supreme Court, individuals are allowed to represent themselves. Companies must be represented by a lawyer. If you are the sole director of a company and you wish to represent your company, you must get the Court's permission. Contact the Self-represented Litigant Coordinator if you need to discuss your situation.

Some things you may need to do yourself include:

- become familiar with legal language and legal concepts
- read and understand relevant legislation, rules of procedure and case law
- prepare your case
- prepare a written statement that explains your arguments in a logical way
- gather relevant documents that support your case
- present your case to the judge, explaining each of your arguments and answering questions about them from the judge, the other party or their lawyer
- understand and follow the correct court procedures.

The Court prefers any documents you prepare to be typed, not handwritten. You rely on these documents during your proceeding. If they read well and look professional it may help everyone involved get a better understanding of the case you are making.

IMPORTANT INFORMATION

Who can help me?

Principal Registry

Registry staff can provide information on how the civil proceeding process works.

Self-represented Litigant Coordinator

The Supreme Court has a Self-represented Litigant Coordinator who specialises in helping people who do not have a lawyer. They can give information and guidance on Court procedures, but are not allowed to give legal advice. You can make an appointment with the Coordinator to discuss the court process and to check you have the right documents. See page 2 for contact details.

Free and low-cost legal help

See the Appendix for a link to organisations that provide free or low-cost legal services and information.

Court fees and costs

Legal proceedings in the Supreme Court can be very expensive. You may need to pay court fees at different stages unless you have a fee waiver (see below). If you lose your case, you may need to pay some or all of the other party's costs. This includes what they spent on lawyers and any other expenses, such as the cost of expert reports.

*** Be aware – these costs can be substantial.**

Consider paying for some legal advice even if it is only to help you with a particular part of the process. For example, it is highly recommended that a lawyer help you prepare your:

- defence, if the proceeding started by writ.

See the Appendix for a link to organisations that provide legal information and free or low-cost legal services.

Court fees

You may need to pay court fees at various stages of your proceeding, using PayPal, a credit card or debit card. **See the fees table on our website called Prothonotary's Office Fees**, under the Fees tab. You may need to pay court fees for:

- Filing an interlocutory application (e.g. stay application)

Your fees will depend on the type of proceeding and the division that hears your matter. If you have questions about what fees apply, contact the Self-represented Litigant Coordinator.

Fee waivers and concession rates

You may be eligible for a fee waiver if you can prove that paying the fees would cause you financial hardship. In some circumstances, you may be automatically entitled to a fee waiver. However, you must still apply for it. This includes if you are:

- represented by Legal Aid, a community legal centre or under a pro bono scheme administered by or on behalf of the Victorian Bar, the Law Institute of Victoria or Justice Connect
- serving a prison sentence or are in a detention facility
- under 18 years of age.

If you have a Commonwealth Health Care Card, you can apply to pay the concession rate. This is the only type of concession card the Court accepts. If you do not have this card, and do not have a fee waiver, you pay the standard fee.

Read the *RedCrest Electronic Filing User Guide* for instructions on how to apply for a fee waiver or pay the concession rate. If you have questions about using RedCrest, contact the Principal Registry.

IMPORTANT INFORMATION

! Note

You pay fees online in RedCrest, using:

- PayPal
- credit card, or
- debit card.

Fees normally change on 1 July each year.

💡 Tip

The Law Institute of Victoria has a free referral service that helps you find a private lawyer. See the Appendix for a link to 'organisations that may be able to help you'.

💡 Tip

If you have a current Commonwealth Health Care Card you can apply to pay the concession rate shown in the fees table. If you do not have this card, and do not have a fee waiver, you pay the standard fee.

📖 Legal word

Costs – fees for lawyers' professional services and disbursements (out-of-pocket expenses), such as court fees, fees for expert reports, medical reports and photocopying. If you are representing yourself and you win, you can claim your out-of-pocket expenses but you cannot claim the time you spent working on your case as a cost.

Fee waiver – permission from the Court to not pay the court fees.

Financial hardship – decided after taking into account your day-to-day living expenses, liabilities and assets.

Preparing to defend your civil proceeding

Get to know legal terms

See the Important Information box for common legal words and terms.

Get to know Court procedures

Read the following documents carefully, as they provide important information and guidance:

- *Civil Procedure Act 2010*, especially sections 7-26 and sections 41-42
- *Supreme Court (General Civil Procedure) Rules 2015*, especially orders 4-6.
- The Court's practice note for the list that relates to your matter – for example, Practice Note SC CL6 Trusts, Equity and Probate List
- Practice Note SC Gen 7 – Transcript in Civil Proceedings.

Get to know your obligations

As a party in a civil proceeding, you need to understand what is known as overarching obligations, which are in sections 16-26 of the *Civil Procedure Act 2010*.

Do your legal research

Make sure you understand the law that applies to your case by doing some legal research. Read about cases similar to yours, and note any cases where the law you are relying on has been applied in a way that you think proves your arguments.

Create a RedCrest account for filing documents

You file documents with the Court using the online system RedCrest (redcrest.com.au). You need an email address to create a RedCrest account. If you do not have an email address and cannot get one, contact the Self-represented Litigant Coordinator to discuss your situation.

You are notified in RedCrest when any documents you file are ready for you to serve with the Court's seal (official stamp) on them. The notification has a link to where you can download and print copies.

Read the *RedCrest Electronic Filing User Guide* for information and instructions. If you have questions about using RedCrest, contact the Principal Registry (redcrest.com.au).

Check if you need to order a transcript

A transcript must be arranged by the parties and paid for in advance for all final hearings and sometimes for other hearings. Read Practice Note SC Gen 7 (Transcript in Civil Proceedings) for details of when and how to get the transcript. Contact the Self-represented Litigant Coordinator if you want to discuss your situation.

IMPORTANT INFORMATION

Legal word

Plaintiff – a person or company who brings a civil case against another in a court.

Defendant – the person or company against whom a civil case has been brought.

Party – a participant in a legal proceeding. In civil proceedings the parties are usually the plaintiff(s) or defendant(s).

Practice note – a document that details Supreme Court procedures, instructions, rules, processes and information. As well as general practice notes that apply to all Supreme Court proceedings, some lists have their own practice notes with specific information for their list.

List – an area of the Supreme Court that deals with cases that rely on similar laws, managed by judges with particular knowledge in these areas, for example the Judicial Review and Appeals List. See our website for descriptions of the different lists.

Filing a document – giving it to the Registry, where it officially becomes part of the Court file. You do this using the online system RedCrest.

Serving a document – formally delivering it to a person or company. There are rules about which documents need to be served in person and which can also be served by email or post. See order 6 of the *Supreme Court (General Civil Procedure) Rules 2015*.

Directions hearing – a short hearing to decide matters related to the timing of when things happen during the proceeding. This includes what has to happen, who does it and when it needs to be done.

Tip

Each case has a unique proceeding number, allocated when the Court accepts the plaintiff's documents in Stage 1. It looks something like this:
S ECI 2018 54321.

Civil proceedings are usually started by writ or originating motion. These are legal words to describe the type of document used to start a civil proceeding.

See Important Information box for when each type of document is used.

In Stage 1, the plaintiff files the documents they need to start a proceeding. These include the:

- writ (including Statement of Claim or Indorsement of Claim, which tell you what the case is about),

or

- originating motion.

If the proceeding is started by writ, the plaintiff usually completes a Statement of Claim if they have enough information. It must include:

- the legal basis for the claim and essential facts of the case (the plaintiff does not need to provide evidence at this stage – evidence is presented at the trial)
- enough detail for you, the defendant, to understand what the case is about and what you are defending
- the relief or remedy the plaintiff is seeking (what they want the Court to order).

If the plaintiff does not yet know the legal basis for their claim and essential facts, they file a page with the information they know, and call it 'Indorsement of Claim'. This is a temporary substitute for the Statement of Claim, which they must file as soon as they have enough information. The Indorsement of Claim includes the:

- nature of the case
- reason why they are starting this proceeding, and
- order they want the Court to make.

More details on what should be included in a Statement of Claim or Indorsement of Claim are in Orders 5 and 13 of the *Supreme Court (General Civil Procedure) Rules 2015*.

IMPORTANT INFORMATION

Writ – the most common type of document that starts a civil proceeding. A writ is used unless an originating motion is required.

Originating motion – a type of document that starts a civil proceeding. It is required when:

- there is no defendant, or
- the application is made to the Court under a particular Act, or
- the *Supreme Court (General Civil Procedure) Rules 2015* or the *Supreme Court (Miscellaneous Civil Proceedings) Rules 2018* require that an originating motion is used.

Watch the video

Watch the video on our website:

- *Preparing a Statement of Claim*

Checklist - STAGE 1

The plaintiff files a writ or originating motion to start the civil proceeding

In Stage 2, the plaintiff serves a writ or originating motion on you and any other defendants.

Documents served on you

The plaintiff, or someone acting on their behalf, serves you with the documents the plaintiff prepared in Stage 1. These documents have been filed and accepted by the Court and have the Supreme Court seal (official stamp) on them.

When the documents are served

There are time limits for when documents must be served. These vary depending on the type of case or location of service. You can read about time limits in the law that applies and the Supreme Court Rules.

How documents are served

If serving an individual the plaintiff, or someone acting on their behalf must serve the writ or originating motion in person. This means they must –

- leave a copy of the document with the person to be served
- or**
- if the person does not accept the copy, put it down near them and tell them the nature of the document.

If serving a company, the plaintiff can post the documents to the registered office of the company.

If you have any questions about service of documents contact the Self-represented Litigant Coordinator.

IMPORTANT INFORMATION

Tip

Although some documents need to be served in person, the plaintiff does not need to do this themselves. They can ask a friend, family member or a professional to serve the documents for them.

Legal word

Serving a document – formally delivering it to a person or company. There are rules about which documents need to be served in person and which can also be served by email or post. See order 6 of *the Supreme Court (General Civil Procedure) Rules 2015*.

Checklist - STAGE 2

The plaintiff serves a writ or originating motion on you and any other defendants

You may respond to the documents served on you in a number of ways. You may do nothing, or you may:

- file a Notice of Appearance and serve it on the plaintiff.

The writ or originating motion will generally include information about when to file a Notice of Appearance.

If you do not file a Notice of Appearance, this can have serious consequences (see Important Information box).

If the proceeding started by writ and includes an Indorsement of Claim, the plaintiff must file a Statement of Claim and serve it on you. After you have been served the Statement of Claim, you have 30 days to file and serve your defence (see below).

If the proceeding started by writ and includes a Statement of Claim, you must file with the Court and serve on the plaintiff a 'defence', within 30 days of filing your Notice of Appearance with the Court.

Your defence is a document you create. It outlines your response to the legal and factual matters raised by the plaintiff and anything else you want to include. It is best to respond to each numbered paragraph in the plaintiff's Statement of Claim.

If you do not file and serve a defence, this can have serious consequences (see Important Information box).

Once you have filed your defence, registry will email you a date for the directions hearing, if one is needed.

If the proceeding started by originating motion, the plaintiff must now 'summons' you to attend Court.

If you served a Notice of Appearance on the plaintiff, you have given them and the Court notice that you want to be involved in the proceeding. The plaintiff must now 'summons' you to attend Court (serve you with an official document that requests you to attend Court and says why you are being summoned).

Unlike proceedings started by writ, if your proceeding started by originating motion you are not required to complete a defence.

Checklist - STAGE 3

File a Notice of Appearance if you want to be involved in the proceeding; know the consequences if you do not file one

Serve the Notice of Appearance on the plaintiff

If the proceeding started by writ:

- you may file with the Court and serve on the plaintiff your 'defence'; know the consequences if you do not file one
- the Court will email you the date for the hearing.

If the proceeding started by originating motion:

- the plaintiff will serve on you a summons that advises the date for the hearing.

IMPORTANT INFORMATION

! Note

A Notice of Appearance is how you officially let the plaintiff and the Court know you want to be involved in the proceeding. There are time limits for when you must do this. Check the writ or originating motion for the time limit that applies.

! Note

Be aware that there are serious consequences if you do not file a Notice of Appearance (and defence, if your proceeding started by writ).

The plaintiff can ask for an administrative process known as 'judgment in default'. A judgment may be issued against you without a hearing. Seek legal advice if you need to discuss how you should respond when documents are served on you. Be sure to consider the time limits that apply.

! Note

The summons will include the time, date and location for the hearing. Often, the first hearing in a civil proceeding will be a directions hearing (see Stage 4). This will be noted on the summons.

▶ Watch the video

Watch the video on our website:

- *Preparing a Statement of Claim*

A directions hearing is a short hearing to decide matters related to the timing of when things happen during the proceeding. This includes what has to happen, who does it and when it needs to be done.

It is only held if there is a defendant and the defendant has lodged a defence. Usually, a directions hearing is only held in proceedings started by writ.

If a directions hearing is scheduled, the Court expects the plaintiff and defendant to attend. If you cannot attend for any substantial reason, for example if you have a medical emergency, contact the Court immediately.

Following the directions hearing, the Court will send you a formal copy of the Court's orders detailing what you and the other parties need to do to prepare for the trial.

Depending on the complexity of the case, there may be more than one directions hearing.

IMPORTANT INFORMATION

! Note

The directions hearing is not when you present your arguments to the Court. This happens at the final hearing (trial).

💡 Tip

You only need to bring to the directions hearing the documents served on you in Stage 2, something to make notes on such as a notepad, tablet or laptop and your diary (so you can check if dates proposed are suitable).

Checklist - STAGE 4

Attend any directions hearings the Court may schedule

If a directions hearing was held, the Court will send you orders that tell you what you have to do to get your case ready for the judge. This includes which documents to prepare and when you need to file them with the Court.

What you need to prepare depends on the case. Some things that often need to be prepared include:

- Affidavit
- List of authorities
- Outline of submissions
- List of witnesses.

Affidavit

An affidavit is a formal written statement, which sets out facts known to you. It must be signed under oath or affirmation, verifying that the information provided is true.

An exhibit is an attachment to your affidavit. You need to complete an exhibit cover sheet for each exhibit. See the Appendix for a link to a template cover sheet called Certificate Identifying Exhibit (Form 43A).

For more information watch the video on our website: *Completing an affidavit.*

List of authorities

This is a document you prepare that lists the cases, legislation and other resources such as textbooks and journal articles you say support your case. These are things you will refer to in your submissions — the arguments you want the judge to consider.

Outline of submissions

This is a document you prepare that summarises your arguments. It includes:

- your facts of the case
- the law that applies (legislation and cases), and
- what you want the Court to order.

Checklist - STAGE 5

Follow the Court's instructions about what to do
Prepare for the hearing by watching the
Court's videos

IMPORTANT INFORMATION

Legal word

Affidavit – a document that presents written evidence in a court case. It must be sworn to be true and correct in front of an authorised person, on oath or by affirmation. It is a serious crime to knowingly make a false statement. Attachments to an affidavit are called **exhibits**.

Watch the video

For information on how to complete an affidavit, watch the video on our website:

- *Completing an affidavit*

Watch the video

To help prepare for your final hearing (trial), watch the videos on our website:

- *Preparing for a hearing*
- *Attending Court – the day of your hearing*

Finding out your trial date

The date for the trial is usually decided at the directions hearing that may have been held in Stage 4. The Court will send you an order that confirms the date.

What to expect at the trial

To help understand what to expect at the trial, including what to bring with you, how to address the judge, where to sit and what you will need to do, see the video on our website: *Attending Court - the day of your hearing*.

IMPORTANT INFORMATION

Watch the video

To help know what to expect on the day of your hearing, watch the video on our website:

- *Attending Court - the day of your hearing*

Checklist - STAGE 6

- Attend the trial
- Know what to expect by watching the Court's video

When to expect the decision

The judge usually 'reserves' their decision (judgment). This means they do not give a judgment on the day of the hearing but at a later date. This gives the judge time to consider both parties' submissions and write reasons for their decision.

You can expect a decision within weeks or months of the trial, depending on the complexity of the case.

Finding out the decision

The Court will email you a date and time when you need to return to Court to get the judge's decision. This is called the 'handing down' of the decision. Plaintiffs and defendants are strongly encouraged to attend. However, if you do not attend the Court will email you the decision.

At the handing down of the decision, if you win the case you can ask the Court to order the plaintiff to pay your costs, if you had any. If you lose, the plaintiff can ask the Court to order you to pay their costs.

If you lose your case

Any party who loses a case may be able to appeal the decision.

If the decision was made by a judge, or an associate judge given the power to act in the role of a judge for your proceeding, you appeal to the Court of Appeal.

The Trial Division and Court of Appeal are the two main parts of the Supreme Court of Victoria.

See the guide on our website for representing yourself in a Court of Appeal civil proceeding.

IMPORTANT INFORMATION

! Note

A case may be dismissed at any stage of the proceeding, including before the final hearing.

Legal word

Costs – fees for lawyers' professional services and disbursements (out-of-pocket expenses), such as court fees, fees for expert reports, wmedical reports and photocopying. If you are representing yourself and you win, you cannot claim the time you spent working on your case as a cost.

Checklist - STAGE 7

- Attend the 'handing down' of the decision
- Know your options if you are not successful and want to appeal

Appendix

If you are reading a print version of this guide, note that the online version has links to forms and other resources you may need. Visit supremecourt.vic.gov.au/representingyourself for the online version. References to links in the appendix are only relevant if you are reading the online guide.

A. Glossary

B. Organisations that may be able to help you

C. Legal reference material

D. Forms

- [Form 4B - Proper Basis Certification](#)
- [Form 4A - Overarching Obligations Certification](#)
- [Defence Template \(if the proceeding was started by writ\)](#)
- [Form 8A - Notice of Appearance](#)

E. Guidance

- [Civil Procedure Act 2010 \(sections 7-26\)](#)
- [Civil Procedure Act 2010 \(sections 41-42\)](#)
- [Supreme Court \(General Civil Procedure\) Rules 2015, Orders 4-6](#)
- [Practice Note SC Gen 7 – Transcript in Civil Proceedings](#)

F. Videos

- [Completing an affidavit](#)
- [Preparing for a hearing](#)
- [Attending Court - the day of your hearing](#)
- [Preparing a Statement of Claim](#)