

Collecting Debt is a Serious Business

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Managing debts and debtors is an integral part of doing business, and farming is no exception.

While there are many methods of debt recovery, a common method used by creditors to recover a debt from a company is a statutory demand.

Upon a creditor issuing a statutory demand to a debtor company, the debtor company has twenty-one (21) days to pay the amount demanded, which must be greater than \$2,000.00. If the debtor company fails to pay the amount demanded or apply to the Court for the statutory demand to be set aside within twenty-one (21) days, under the *Corporations Act 2001* (Cth) the debtor company is deemed to be insolvent and the creditor may apply to the Court for the debtor company to be wound up.

A statutory demand must be issued strictly in accordance with the *Corporations Act 2001* (Cth). A defective statutory demand may be set aside by the Court and a costs order may be made against the creditor.

A statutory demand may also be set aside if there is a "genuine dispute" about the existence or amount of the debt. If a creditor issues a statutory demand knowing the amount demanded is genuinely disputed, the Court may order the creditor to pay the debtor company's costs.

The rules relating to issuing a statutory demand are technical and complex. Responding to an application to set aside a statutory demand can be costly and time-consuming, the risk of which can be minimised by issuing a valid statutory demand.

From the perspective of a company served with a statutory demand, the strict timeframes to pay an amount demanded or to apply for the statutory demand to be set aside must be complied with. Failure to do so will cause the company to be deemed to be insolvent under the provisions of the *Corporations Act 2001* (Cth). Generally, a statutory demand is an effective and efficient tool that must not be ignored.

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