

munity Legal Centre or the Public Solicitor's Office. If you need help completing these documents, the USP Community Legal Centre or the Public Solicitor's Office may be able to help you.

The court may set aside the default judgement if the defendant can show that there was reasonable cause for not defending the claim **and** he or she has an arguable defence.

If the defendant does not apply to have the default judgement set aside within 28 days of service of the judgement, the claimant may file a sworn statement that the judgement was served on the defendant and apply to the court for an enforcement order.

Although the application to set aside default judgement can be made at any time, it is a good idea to make the application as soon as possible. If you delay in making the application, you may prejudice your case and/or the claimant may commence enforcement proceedings.

At the hearing of an application to set aside default judgement, the court must:

- give directions about the filing of the defence and other statements of the case; and
- make an order about the payment of the costs incurred to date; and
- consider whether an order for security

- for costs should be made; and
- make any other order necessary for the proper progress of the proceeding.

**For further information, contact:**

**The Public Solicitor's Office**

PO Box 794  
Port Vila  
Phone: 23450  
Fax: 23451

**USP Community Legal Centre**

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The information contained in this brochure is only intended as a guide to the law and is not a substitute for obtaining legal advice. If you have any further questions we strongly suggest you seek legal advice.

Note: This information applies to people who live in, or are affected by, the law as it applies in Vanuatu. The information in this brochure is current as at 30 June 2006.

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# Default Judgements



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This brochure outlines the procedure for:

1. applying for a default judgement; and
2. applying to set aside a default judgement in the Magistrates Court of Vanuatu.

## 1. Applying for default judgement

A default judgment is an order by the Court given in favour of a claimant if the defendant fails to defend the claim made against him or her. In particular, a claimant can apply for a default judgement where:

- the defendant fails to file and serve a response or a defence within 14 days of service of the claim; or
- the defendant files a response but fails to file a defence within 28 days of service of the claim; or
- the defendant fails to comply with an order of the court; or
- the defendant does not attend when the trial starts.

If the defendant has failed to file a defence, the claimant must file a sworn statement that the claim and response was personally served on the defendant (a proof of service) before applying for default judgement.

In the Magistrates Court, the claimant can apply for default judgement orally without the need for a written application. However, the claimant may make a written application for default judgement.

If the claimant makes a written application for default judgement and:

- if the claim against the defendant was for damages of a fixed amount, the written request for judgement against the defendant should be in Form 12; or
- if the claim against the defendant was for an amount of damages to be decided by the court, the written request for judgement against the defendant should be in Form 13.

Forms 12 and 13 may be found in Schedule 3 to the *Civil Procedure Rules 2002*. You may also obtain a copy of the form from the USP Community Legal Centre or the Public Solicitor's Office. If you need help completing these documents, the USP Community Legal Centre or the Public Solicitor's Office may be able to help you.

Default judgement cannot be given in the Magistrates Court before the first hearing date.

The court may give judgement for the claimant for the amount claimed or determined by the court together with interest from the date of filing the claim at a rate fixed by the court and costs.

The claimant must serve a copy of the judgement on the defendant. If a conference is to be held to determine the amount of damages

to be paid by the defendant, a copy of the notice stating the date for the conference is also to be served on the defendant.

If the claimant thinks that it is dangerous to serve the default judgment personally, the claimant may arrange for another person to serve the order or apply to the Court for an order that the default judgment be served by an enforcement officer.

## 2. Applying to set aside a default judgement

If you have a default judgement made against you, it means that there is a court order against you. If you fail to comply with that order, then the claimant can take enforcement proceedings. If you do not agree with the claim made against you, or any part of it, you should apply to the court to have the default judgement set aside.

The application to set aside default judgement can be made at any time and must:

- be in Form 14;
- have with it a sworn statement in support of the application;
- set out the reasons why the defendant did not defend the claim; and
- give details of the defendant's defence to the claim.

Form 14 may be found in Schedule 3 to the *Civil Procedure Rules 2002*. You may also obtain a copy of the form from the USP Com-