

Form 2.9 Defence and counterclaim

Court Procedures Rules 2006

(see r 100 (No step without notice of intention to respond or defence), r 101 (Notice of intention to respond or defence—details to be included), r 152 (Proceeding for possession of land—filing defence etc), r 461 (Counterclaim—against plaintiff) and r 462 (Counterclaim—against additional party))

In the *[Supreme/Magistrates] Court of the Australian Capital Territory

No *[SC/MC] of (*year*) (Court to complete)

(*name*)

Plaintiff

(*name*)

Defendant

The defendant relies on the following facts in defence of the claim:
(*set out particulars of defence in numbered paragraphs*)

***Counterclaim**

(set out particulars of counterclaim in numbered paragraphs)

Filed for the defendant by:

(*the defendant's address for service and telephone number (if any) or, if the defendant is represented by a solicitor and the solicitor is the agent of another solicitor, the name and place of business of the other solicitor*)

***Particulars in an action for possession of land**

(complete if the defendant chooses not to file a notice of intention to respond)

On *(date)* *(name of Judge/Associate Judge/Registrar)* gave the defendant leave to file this defence.

*The defendant *(name)* responds to the *[claim/application] as lessor.

*The defence is limited to the following part of the land:

(set out the part of the land to which the defence is limited)

***Corrected particulars of defendant**

(complete if the defendant's particulars set out in the originating claim or originating application are incorrect and the defendant chooses not to file a notice of intention to respond)

The defendant's correct particulars are as follows:

**(if the defendant is an individual)*

Full name:

*[Home/Business] address:

**(if the defendant is a corporation)*

Name:

(if the corporation is a company or a registered body within the meaning of the Corporations Act 2001 (Cwlth))

*[Australian Company Number/Australian Registered Body Number]:

Type of body:

Address of *[registered office/public officer]:

*Representative capacity in which defendant is sued:

*The defendant agrees to the defendant's name being amended accordingly on the *[originating claim/originating application].

***Particulars of defendant's solicitor**

(complete if defendant is represented by a solicitor)

Solicitor's full name:

(if the solicitor practises in a firm of solicitors)

*Solicitor's firm:

Solicitor's full business address:

Solicitor's telephone no:

*Name, address and telephone no of solicitor's agent:

Defendant's address for service of documents

(set out defendant's address for service)

(if represented by a solicitor the following information may be provided)

*Document exchange box no:

(if postal address different from address for service)

*Postal address:

*Fax:

*Email address:

Date:

(signature of defendant or defendant's solicitor)

(name of defendant or defendant's solicitor)

Notice about reply

You have 14 days to file and serve a reply to the defence. If you do not do so, you may be prevented from presenting evidence in relation to allegations of fact made in the defence.

***Notice to defendant to counterclaim**

(include if defendant to the counterclaim is the plaintiff)

You must file an answer to the counterclaim in the Court within 14 days after the day the counterclaim is served on you (see rule 466 (Counterclaim—answer to)). If you do not file an answer to the counterclaim, the facts stated in the counterclaim are taken to have been admitted (see rule 468 (Counterclaim—effect of no answer)).

If you file a reply to the defence, you must include in the reply any answer to the counterclaim.

***Notice to defendant to counterclaim**

(include if defendant to the counterclaim is a person other than the plaintiff)

You must file an answer to the counterclaim, or a notice of intention to respond and an answer to the counterclaim, in the Court within 28 days after the day the counterclaim is served on you (see rule 102 (Notice of intention to respond or defence—filing and service), rule 462 (Counterclaim—against additional party) and rule 466 (Counterclaim—answer to)).

If you do not file an answer to the counterclaim, or a notice of intention to respond and an answer to the counterclaim, within this time—

- the proceeding may be heard in your absence; or
- default judgment may be entered, or an order made, against you.

***Acknowledgement that defendant has filed a copy of mandatory final offer**

(complete this section if the claim is a motor accident claim, unless the Court has given leave to commence proceedings under the Road Transport (Third-Party Insurance) Act 2008, section 150)

A sealed envelope containing a copy of the respondent's mandatory final offer under the *Road Transport (Third-Party Insurance) Act 2008*, section 141 *[has been filed/is filed with this defence].

***Certificate that defence has reasonable prospects of success**

(complete this section if Civil Law (Wrongs) Act 2002, section 188 applies to the proceeding)

I, *(solicitor's full name)* certify that I believe, on the basis of provable facts and a reasonably arguable view of the law, that this defence has reasonable prospects of success.

***Certificate that counterclaim has reasonable prospects of success**

(complete this section if Civil Law (Wrongs) Act 2002, section 188 applies to the counterclaim)

I, *(solicitor's full name)* certify that I believe, on the basis of provable facts and a reasonably arguable view of the law, that this counterclaim has reasonable prospects of success.

Date:

(signature of defendant's solicitor)

(name of defendant's solicitor)

**omit if, or whichever is, inapplicable*