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Setting Aside a Default Judgment in Queensland

COMPLETE GUIDE

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<https://stonegatelegal.com.au/how-to-set-aside-a-default-judgment/>

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If a default judgment has been entered against you, then you must act quickly and seek an order from the Court that the default judgment be set aside.

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Further, if they meet the minimum requirements, the plaintiff or creditor can seek to issue a bankruptcy notice, thereby starting the bankruptcy process, or issue a creditor's statutory demand, thereby beginning the winding-up process.

The *Uniform Civil Procedure Rules 1999* (UCPR) are a set of guidelines that govern civil proceedings in Queensland. Rule 290, in particular, allows the Court to set aside or amend a default judgment under specific circumstances."

If you are thinking about setting aside a default judgment, then you must persuade the Court of several things.

In this article, our [Queensland litigation lawyers](#) will explain how to set aside a default judgment in Queensland.

Setting Aside a Default Judgment in 3 Steps

If a default judgment has been entered against you, the most important thing is to act quickly and correctly.

Here's a simple step-by-step breakdown of what you need to do:

Step 1: Complete the Required Court Forms

You'll need to prepare and file the following:

- [Form 9 – Application](#) – clearly state the orders you want (e.g., that the default judgment be set aside).
- [Form 46 – Affidavit](#) – explain why you didn't respond in time and outline your defence.

Step 2: File the Documents in Court

Take the original and two copies of each form to the court where the default judgment was made. The court will keep the originals and return sealed copies to you.

Step 3: Serve the Other Party and Attend the Hearing

Serve the sealed application and affidavit on the plaintiff (enforcement creditor).

Both parties must attend the hearing on the allocated date. Bring an affidavit of service to prove you've done this.

What Is a Default Judgment?

A Queensland Court registrar will enter judgment in default (default judgment) if the defendant has not filed a notice of intention to defend and a defence.

Once served with a claim and statement of claim, a defendant has 28 days to file the notice of intention to defend and defence.

If they do not, then the plaintiff can apply to the Court registrar for judgment for the full amount of the claim, interest, and legal costs.

Setting Aside a Default Judgment

When a court decides a case, it issues a judgment. In the context of default judgments, where a decision is made because one party doesn't respond or appear in court, it's crucial to understand the difference between an "Irregularly Entered Judgment" and a "Regularly Entered Judgment."

Irregularly Entered Judgment

An "Irregularly Entered Judgment" essentially means that there has been a mistake or oversight in how the judgment was entered into the court records.

Imagine you're playing a game, and a point is scored while not adhering to the rules - it shouldn't technically count. Similarly, if a judgment is entered without following the correct legal procedures or rules, it's termed as 'irregular.'

For example, if the initial court documents were not served correctly or if the court lacked proper jurisdiction to make a judgment, it might be considered irregular. In such cases, the defendant has a right to have the judgment set aside, meaning it is nullified or voided, to ensure fair play in the legal arena.

In [*Anlaby v Praetorius \[1888\] UKLawRpKQB 55*](#) in which Fry LJ, referring to a default judgment entered prematurely and irregularly, said:

In such a case the right of the defendant to have the judgment set aside is plain and clear. The Court acts upon an obligation; the order to set aside the judgment is made ex debito justitiae, and there are good grounds why that should be so, because the entry of judgment is a serious matter, leading to the issue of execution.

An irregularly entered judgment most commonly results from anomalies with the service of the claim and statement of claim.

This is likely the reason why the majority of defendants do not file a defence, because they have not been served with the process.

A default judgment can also be irregular because of a failure to comply with the *Uniform Civil Procedure Rules 1999* (Qld) (“**UCPR**”).

In [*Cusack v De Angelis \[2007\] QCA 313*](#), Muir JA said:

It has been long accepted that a defendant is entitled to have an irregularly entered judgment set aside as of right, subject to the exercise of a power of amendment and the futility of interfering with the judgment. Such judgments are the product of the exercise of administrative acts performed without legal authority. Irregularity, as that term is used in relation to default judgments, normally results from a failure to comply with the rules of court relating to the entering of default judgments.

Non-compliance with the UCPR, an [abuse of process](#), the incorrect claimed amount, and substantial defects in the pleading can all make a judgment irregular.

In [*Green v Tri-Barfen Pty Ltd \[2006\] QDC 160*](#), Alan Wilson SC, DCJ said:

Default judgments, regular or irregular, may be set aside under r 290 but different tests apply. When, as here, the judgment is irregular, even a technical breach of the rules may lead to it being set aside.

So, first try to establish if the default judgment was entered irregularly, or ex debito justitiae (of or by reason of an obligation of justice: as a matter of right).

Common Examples of Irregular Default Judgments

If a default judgment was entered without following the proper legal rules, it may be considered *irregular*, meaning the court must set it aside as of right (ex debito justitiae).

Here are some of the most common reasons why a default judgment might be found to be irregular:

Examples of Irregular Judgments:

- The statement of claim was not properly served on the defendant.
- The default judgment was entered too soon, before the 28-day response period had expired.
- The amount claimed was incorrect (e.g., due to a clerical error or excessive interest).
- The claim was for a non-liquidated sum, but judgment was entered as if it were liquidated.
- The plaintiff applied for judgment without a valid originating process.

- The court rules were otherwise breached, such as failing to give notice or serve all necessary documents.
- The judgment was entered against the wrong party, or a party who was not validly joined.
- There was a material defect in the pleadings or process (e.g., missing essential details).

In these cases, the court does not need to consider whether you have a defence — the judgment can be set aside purely because it was entered in breach of the rules.

It is still common for a regularly entered judgment to be set aside.

Regularly Entered Judgment

On the other hand, a "Regularly Entered Judgment" means that all the legal procedures and rules were followed when the judgment was entered. Going back to the game analogy, think of this as a point scored while adhering to all the game rules.

However, just because a judgment is entered regularly doesn't mean it is immune to being set aside. If the defendant can present a good reason, such as having a valid defence against the claim or showing that they did not receive the court documents, the court may decide to set aside the judgment.

It's like a referee reconsidering a decision if new evidence, such as a video replay, is presented.

Case Study

We had a case where there were 2 defendants, we served one, but the other was bravely hiding in his house. We got an order for substituted service and got default judgment. Once served with bankruptcy notices, they decided to do something. They applied to have the judgment set aside. They were successful, but we obtained a costs order against them on the indemnity basis, and got all of our client's costs thrown away up to that point, because the Judge ruled it was a regularly entered judgment and the defendants were actively avoiding service.

You could also try to make an [application for informal service](#).

Setting Aside a Default Judgment in Queensland

[Rule 290 of the UCPR](#) allows the Court to [exercise its discretion](#) to set aside a regularly entered default judgment.

[Rule 290](#) says:

The court may set aside or amend a judgment by default under this division, and any enforcement of it, on terms, including terms about costs and the giving of security, the court considers appropriate.

Understanding these concepts is vital because it directly impacts how one might approach having a default judgment set aside.

Knowing the difference ensures that the proper legal strategies are employed to navigate through the process effectively.

It's not just about knowing the rules, but also about understanding how to apply them in the game of legal battles, ensuring that justice is served and every player gets a fair chance.

There are several factors that the Court considers when exercising this discretion.

In [*Unique Product Marketing Pty Ltd v Bortek Sales Pty Ltd \[2000\] QDC 314*](#), Shanahan DCJ set down some principles in relation to setting aside a regularly entered default judgment.

They include:

1. Whether there is a good reason why the defendant failed to file a defence.
2. Whether there has been any delay by the defendant in bringing the application.
3. The defendant's [conduct in the action](#) before and after judgment.
4. The defendant's good faith.
5. Whether the defendant has raised a prima facie defence on the merits; and
6. Whether the plaintiff would be irreparably prejudiced if the judgment is set aside, which cannot be adequately compensated by a suitable award of costs.

This article will look at some of these points in relation to getting a regularly entered default judgment set aside.

However, these points should be considered together, and although they are given cumulative weight, some points are given more weight than others.

Prima Facie Defence on the Merits

The most important item on the list is that the defendant has a prima facie defence on the merits.

What does Prima Facie Mean?

Prima facie, a [Latin term meaning](#) “at first look” or “on the face of it,” refers to evidence that is strong enough to validate a case unless it is disproven.

In simpler terms, it means the evidence is strong enough to be considered valid at first glance, unless it is contested.

In the Queensland Court of Appeal in [Cook v D A Manufacturing Co P/L & Anor \[2004\] QCA 52](#), the Court said:

In order to succeed on this application, the first defendant must satisfy the Court first that it has given a satisfactory explanation for its failure to appear in the proceeding; secondly, that there has been no unreasonable delay by it in making this application; and thirdly, that it has a prima facie defence on the merits of the claim on which the judgment is founded.

They then went on to say:

The Courts, however, have laid down for themselves rules to guide them in the normal exercise of their discretion. One is that where the judgment was obtained regularly there must be an affidavit of merits, meaning that the applicant must produce to the Court evidence that he has a prima facie defence.

McPherson J in [National Mutual Life Association of Australasia Limited v. Oasis Developments Pty Ltd \[1983\] 2 Qd R 441](#) noted at 449:

It is not often that a defendant who has an apparently good ground of defence would be refused the opportunity of defending ... the issue whether the applicant defendant had a prima facie case on the merits "is the most cogent".

In [ATS P/L v Roberts \[2007\] QMC 4](#), the Court said:

To have judgement set aside, the defendant must establish that it has a prima facie defence on the merits to the claim on which the judgment was founded.

The Court in [Byron v Southern Star Group Pty Ltd t/as KGC Magnetic Tapes \(1995\) 123 FLR 352](#) said:

Frequently, persons have been let in to defend who have had little or no explanation for their delay but who have shown reasonable grounds of defence ... a person who has an arguable defence and wishes to have it determined on the merits, will be heard by the court before judgment.

The cases seem to suggest that, in the interest of justice, a Court may set aside a default judgment if the applicant can provide a reasonable defence.

Some defences are easier to argue than others. For example, more [complex business disputes](#) can be easier than simple [debt recovery proceedings](#).

Whether there has been any Delay by the Defendant in bringing the Application

The application to set aside the default judgment must be brought as soon as practicable by the defendant.

A defendant cannot be aware of the judgment and not take steps to set it aside. However, it may not be fatal to the application.

There could be any number of reasons for the delay. In [Rochfort & Anor v Habashy & Anor \[2005\] QCA 197](#), an explanation for delay was:

Mr Habashy did provide an explanation for that six months delay in his oral submission, which was that it had resulted from a combination of his ignorance of the law and of time provisions, his chronic ill health, his financial problems which resulted in an inability to pay for lawyers, and the fact of his brother's death which had left him unable to focus on his and his wife's immediate affairs. He described having suffered from a hip condition for a number of years, and having been on a sickness benefit since 1992.

The Court did not agree that this was sufficient.

In [Aboyne Pty Ltd v Dixon Homes Pty Ltd \[1980\] Qd R 142](#), Kelly J said:

Whilst there has certainly been some delay in bringing this application I do not consider that in the circumstances it is such as to preclude the defendant from obtaining the relief which it seeks if it is otherwise entitled to that relief.

The important factor to consider when thinking about whether there has been any delay is whether the plaintiff would have suffered any prejudice as a result of the delay.

In [Atwood v Chichester \[1878\] UKLawRpKQB 4](#), the Court said:

[a]s the plaintiff has suffered no substantial wrong by the delay, the defendant ought to be at liberty to appear and defend.

This is where we rely on the next factor of *Unique Product Marketing*.

Whether the Plaintiff would be Irreparably Prejudiced if the Judgment is Set Aside

In [National Australia Bank v Singh \[1995\] 1 Qd R 377](#), the Court said:

The court will not often refuse the opportunity of defending to a defendant who has an apparently good ground of defence when no irreparable prejudice would be done to the plaintiff ...

In [Deputy Commissioner Of Taxation - Elizabeth Street v Statham \[2015\] QDC 129](#) the Court said:

[i]t was claimed by the plaintiff that money was owing, in fact, she [defendant] had paid more than what was claimed by the plaintiff during the relevant period, therefore the debt is in its entirety validly and clearly disputed ... There will be no prejudice to the plaintiff by my setting aside the judgment.

In this case, the Court determined, on the evidence, in relation to setting aside default judgment, that there was a dispute as to the quantum of the [debt](#), and as such, money had been paid to the Plaintiff.

There was no prejudice to the Plaintiff to hear the defence on the merits. So, the Court made an order setting aside the default judgment and ordering the respondent to pay the applicant's costs on the standard basis.

In [Darling Downs Aviation Pty Ltd & Anor v Shaw & Ors \[2013\] QDC 300](#), the Court said:

The plaintiffs have not alleged any prejudice, other than the cost of prosecuting their claim on liability, if the judgment is set aside. The claim is for damages which will need to be assessed. The costs thrown away by setting aside judgment would be minimal and can be compensated in part by a costs order.

In this case, the judge assessed that there would be no prejudice that could not be compensated with an award of costs. Therefore, in this case, the application was granted, and the judgment obtained by default was set aside.

Examples of Irreparable Prejudice

Examples where the Courts have decided that the Plaintiff would be prejudiced include a matter where the Plaintiff was very sick, legislative requirements would be impossible to comply with; availability of witnesses might prove a difficulty so long after an event; the statutory limitation period is close to expiring; and the potential respondent corporation is no longer registered.

Costs in Applications Setting Aside a Default Judgment

The general rule in litigation is that costs follow the event. The successful party to an application pays the unsuccessful party's costs.

Several discretionary factors can persuade the Court to depart from that general rule.

In [Oshlack v Richmond River Council \[1998\] HCA 11](#), the High Court said:

No doubt, the ordinary rule is that, where a plaintiff has been successful, he ought not to be deprived of his costs, or, at any rate, made to pay the costs of the other side, unless he has been guilty of some sort of misconduct.

In [Arian v Nguyen \[2001\] NSWCA 5](#), Ip J said:

It is rare for a successful party who is guilty of misconduct in the litigation to be ordered to pay the unsuccessful opponent's costs where the misconduct does not lengthen the proceedings unnecessarily, cause unnecessary issues to be canvassed or otherwise cause the costs of the litigation to be increased. Indeed, the court's entitlement to depart from the usual order that costs follow the event

has sometimes been said, in effect, to be subject to the qualification that the misconduct in question occasioned unnecessary litigation and expense.

Unless the above applies, in general, if the judgment was irregularly entered, then the plaintiff will be ordered to pay the defendant's costs of the application if the judgment is set aside.

If the judgment was regularly entered, then the defendant may be ordered to pay the plaintiff's costs of the application if the judgment is set aside.

If the judgment was regularly entered, then the defendant may still pay the plaintiff's costs of the application if the application is dismissed.

Furthermore, if regularly entered, the Court will usually order the defendant to pay the plaintiff's incurred costs. Costs thrown away are defined in Law of Costs, fourth edition, by G E Dal Pont as:

Those costs incurred by a party that are wasted as a result of the other party's actions (such as not filing a defence). Any work performed that can ultimately be used or forms part of the greater substantive proceedings commenced by claim, is not wasted.

This can include damages, hearings and the costs of any enforcement action.

Likely Cost Outcomes When Setting Aside a Default Judgment

In most court applications, the general rule is that costs follow the event, meaning the successful party gets their costs. But in default judgment applications, the court may take a different view, especially where the defendant is asking for an indulgence.

The table below sets out the most common outcomes based on whether the judgment was entered regularly or irregularly:

Outcome	Reason	Who Pays Costs
Judgment set aside due to irregularity	The plaintiff breached court rules	The plaintiff usually pays
Judgment set aside using discretion	Defendant seeking indulgence	The defendant usually pays
Application dismissed	The defendant failed to justify the application	The defendant pays the plaintiff's costs
Judgment set aside, but delay caused costs	The defendant delayed without good reason	Defendant pays "costs thrown away"

Note: “Costs thrown away” refers to legal costs incurred by the plaintiff in obtaining the default judgment, which may be recoverable even if the judgment is set aside.

Possible Terms of a Set-Aside Order Under Rule 290

If the Court agrees to set aside a default judgment, it may do so on certain terms. These terms can include a variety of conditions that the defendant must meet, particularly where the judgment was regularly entered and the defendant is essentially asking the Court for a second chance.

Costs Thrown Away

One common term is that the defendant is ordered to pay the plaintiff’s costs, specifically, the costs incurred in getting the judgment in the first place.

These are often called “costs thrown away”.

This might include:

1. Costs of preparing and filing the claim and statement of claim.
2. Legal fees are involved in obtaining the default judgment.
3. Possibly, the cost of any enforcement steps taken before the set-aside application.

Even if the Court agrees to set aside the judgment, the defendant may be required to reimburse the plaintiff for these expenses.

However, where the plaintiff knew the defendant had legal representation but didn’t notify the solicitor before entering a default judgment, the Court may refuse to award the plaintiff their costs.

Security for the Plaintiff’s Claim or Costs

Another possible term is that the defendant may be ordered to provide security, either:

1. Security for the plaintiff’s claim, or
2. Security for costs.

This is more likely where the defendant has a weak or uncertain defence, or where the Court is concerned about delays or bad faith.

The idea is to protect the plaintiff in case the defendant ultimately loses the case after the judgment is set aside.

See our complete guide to [Security for Costs here](#).

Other Conditions the Court May Impose

Some other practical terms might include:

1. Requiring the defendant to file their notice of intention to defend within a short timeframe.
2. Preventing the defendant from raising certain technical defences that would unnecessarily prolong the case.
3. Requiring a third party also to file a notice of intention to defend (in cases involving real property).

These terms are often imposed to ensure that the matter proceeds efficiently and that the delay doesn't unfairly disadvantage the plaintiff.

What if the Judgment Was Irregular?

It's important to note that if the default judgment was entered irregularly—for example, if service was defective or the plaintiff didn't follow procedure—then the Court usually won't impose any terms at all.

What if the Judgment Is Being Enforced?

If the plaintiff obtains a default judgment, they can initiate enforcement proceedings to recover the money from the defendant.

This can include:

1. Various enforcement warrants, redirection of earnings, or seizure and sale of property
2. Taking steps to bankrupt the defendant or wind up a defendant company.

If this is the case, then the application to set aside the default judgment should also include an order that the enforcement of that judgment be stayed.

Setting Aside a Default Judgment in Qld

Following how the Courts have determined this issue, it appears that they will allow a defence to be brought, even if there is no satisfactory reason for the delay, provided that the defence is a reasonable prima facie defence.

On balance, a court will weigh up the factors mentioned above, amongst others, and make a decision.

Is there a reasonable reason for the delay? If not, is there a prima facie defence on the merits? If so, will the setting aside of the default judgment cause irreparable prejudice to the Plaintiff?

It is clear, applying the principles in *Cook v D A Manufacturing Co*, that a Court has a broad discretion in deciding whether to uphold an application and set aside a default judgment.

To make the application to the Court, you will need:

- The original + two copies of [Form 9 - Application](#)
- The original + two copies of [Form 46 - Affidavit](#)

Visit the [Courts website](#) for more information.

The Form 9 Application

The application is the document that clearly states the orders that the applicant wants the Court to make in the application.

The application can be something like the following:

1. Pursuant to Rule 290 of the *Uniform Civil Procedure Rules 1999*, the default judgment awarded on [DATE] is to be set aside.
2. The Respondent pays the costs of the Applicant of the application on the standard basis.

The Form 46 Affidavit

The affidavit should include all the evidence that you intend to rely on in the application.

The evidence will need to support the elements above contained in this article, but particularly the following:

1. A satisfactory explanation for the failure to file a defence.
2. A reason for the delay in making the application (if any).
3. A prima facie defence.

Best practice is to draft a defence and add it to the affidavit as an annexure.

How to Draft an Effective Affidavit for a Rule 290 Application

When applying to set aside a default judgment under rule 290, your affidavit is the cornerstone of the application.

It's not enough to say, "*I believe I have a defence.*" The Court expects to see a properly structured affidavit that contains objective evidence, not vague assertions.

What Does Rule 430(2) Say?

[Rule 430\(2\)](#) of the UCPR allows an affidavit to contain statements based on information and belief, but only if:

1. The person making the affidavit clearly states the source of their information, and
2. Explains why they believe it to be true.

So, if you're relying on documents, emails, business records, or advice from someone else (e.g., your accountant or manager), those sources need to be identified and explained.

Example: If a director is swearing the affidavit on behalf of a company, they might say:

"Based on our financial records, which I reviewed on [date], and discussions with our external accountant, I believe that the invoice in dispute was not payable due to..."

The affidavit must state who the accountant is, their involvement, and why their input is relevant.

What the Courts Say About Affidavit Content

The courts have made it very clear: vague or generic affidavits won't cut it.

In [*National Mutual Life Association of Australasia Ltd v Oasis Developments Pty Ltd* \[1983\] 2 Qd R 441](#), McPherson J said that it is not enough to express a belief that there's a defence. The applicant must produce evidence that supports a prima facie defence on the merits (we usually include a draft defence).

What to Include in an Affidavit to Set Aside a Default Judgment

A strong affidavit in a rule 290 application should include the following:

1. Background Facts - How the judgment was obtained - When the defendant became aware of the proceedings and/or the default judgment - Explanation of why no defence was filed (e.g., not appropriately served, illness, administrative error)
2. Explanation for Any Delay - If the application wasn't made immediately, explain the reason for the delay (e.g., illness, lack of legal advice, financial hardship) - Include any supporting documents if relevant.
3. Affidavit of Merits – The Defence - This is the most essential part and should set out the facts that support a defence to the claim. Identify what legal defence(s) you are relying on. Where possible, annex a draft defence as an exhibit to the affidavit – For example:

Annexed hereto and marked 'A' is a draft Defence which I propose to file should the judgment be set aside.

4. Supporting Evidence - Attach any contracts, emails, payment receipts, correspondence, or other documents that support your version of events.

Who Should Swear the Affidavit?

Ideally, the person who has first-hand knowledge of the facts (e.g., the defendant, a director of the defendant company).

Avoid relying on someone who's not closely connected to the case unless necessary.

Common Mistakes to Avoid

Properly preparing the affidavit is not just a technical requirement—it's your chance to convince the Court that your case deserves to be heard on the merits.

1. Simply stating "I have a defence" without giving any facts.
2. Leaving out key documents or exhibits.
3. Failing to explain how or when you learned about the judgment.
4. Using hearsay without identifying the source of information.

A well-drafted affidavit can often make or break the entire application.

Summary of the Relevant Case Law

***Anlaby v Praetorius* [1888]**

Summary: This case is often cited regarding the concept of irregularly entered judgments and the defendant's right to have such a judgment set aside.

Relevance: In the context of the article, this case might be used to underscore the importance and rights of the defendant to have a judgment set aside if it was entered irregularly, emphasising the seriousness of entering a judgment and the subsequent actions that can be taken, such as issuing an execution.

***Cusack v De Angelis* [2007] QCA 313**

Summary: This case discusses the criteria or circumstances under which a judgment can be considered irregular and thus be set aside.

Relevance: It is cited in the article to provide a legal precedent that supports the point about the conditions under which a judgment can be considered irregular, such as non-compliance with the *Uniform Civil Procedure Rules 1999* (Qld).

***Green v Tri-Barfen Pty Ltd* [2006] QDC 160**

Summary: This case discusses the distinctions between regular and irregular judgments, as well as the different tests applied to set them aside.

Relevance: The case might be relevant in explaining why even a technical breach of the rules may lead to a judgment being set aside if it is irregular, providing a legal basis for this point.

***Unique Product Marketing Pty Ltd v Bortek Sales Pty Ltd* [2000] QDC 314**

Summary: This case outlines principles or factors considered when deciding to set aside a regularly entered default judgment.

Relevance: The case is used in the article to establish the legal principles that guide the court's discretion in setting aside regularly entered default judgments, providing a framework or criteria that need to be considered.

Cook v D A Manufacturing Co P/L & Anor [2004] QCA 52

Summary: This case discusses the criteria that a defendant must satisfy to have a judgment set aside.

Relevance: It is cited to establish the foundational criteria that must be met to successfully set aside a judgment, providing a legal basis for these requirements.

National Mutual Life Association of Australasia Limited v. Oasis Developments Pty Ltd [1983]

Summary: This case discusses the importance of having a prima facie case when seeking to set aside a judgment.

Relevance: It is used to highlight the significance of presenting a prima facie case in applications to set aside a judgment, emphasising its weight in the court's considerations.

ATS P/L v Roberts [2007] QMC 4

Summary: This case might discuss the necessity of establishing a prima facie defence on the merits to have a judgment set aside.

Relevance: It is cited to reinforce the point that a defendant must demonstrate a prima facie defence to successfully set aside a judgment, providing a legal precedent for this requirement.

Byron v Southern Star Group Pty Ltd t/as KGC Magnetic Tapes (1995)

Summary: This case discusses the court's willingness to allow a defence to be brought if there is a reasonable defence, even if there is no satisfactory reason for the delay.

Relevance: It is used to illustrate the court's inclination towards ensuring justice by allowing defences to be heard, even if they are reasonable, despite delays.

Setting Aside a Default Judgment FAQ

We get asked a lot of questions about setting aside judgments. These are a few of the most common.

What is a default judgment?

A default judgment is entered by a plaintiff if, after being served with the claim and statement of claim, the defendant does not file a notice of intention to defend and a defence.

What is the purpose of a default judgment?

A default judgment is an order from the Court that the defendant owes the plaintiff an amount of money. The judgment can then be enforced with an enforcement warrant or through insolvency proceedings.

How is a default judgment enforced?

The defendant can ask the Court for a number of enforcement warrants, such as a warrant for redirection of earnings or a warrant for seizure and sale of property. Default judgments can also be enforced in the event of insolvency.

How long does it take to get a default judgment?

28 days. If the defendant does not serve a notice of intention to defend and a defence within 28 days after being served with the claim and statement of claim, you can ask the Court to give you a default judgment.

How can I set aside a default judgment?

To set aside a default judgment, you will need to prove the following:

1. Whether there is a good reason why the defendant failed to file a defence.
2. Whether there has been any delay by the defendant in bringing the application.
3. Whether the defendant has raised a prima facie defence on the merits.

What are the elements to set aside a default Judgement?

To set aside a default judgment, typically, the following elements are considered essential:

1. Valid Reason: Demonstrating a legitimate reason for not responding to the original claim or for the default judgment being entered.
2. Prima Facie Defence: Presenting a plausible defence to the original claim, even if it's not detailed.
3. Prompt Application: Ensuring that the application to set aside the judgment is made promptly once the default judgment is known.
4. Compliance: Adhering to any procedural requirements, such as filing and serving documents correctly.

What is a prima facie Defence?

A "prima facie" defence refers to a defence that, on its face value, is legitimate and has merit. In simpler terms, it means that the defence presented appears to be valid and can stand in court when initially examined. It doesn't have to be detailed, but it must

show some basis that, if proven true, would constitute a valid defence against the claim.

How long does a Judgement last in Qld?

In Queensland (Qld), a judgment typically lasts for 12 years. This means that the person to whom the money is owed (the judgment creditor) has 12 years from the date of the judgment to enforce it. However, it's crucial to note that the methods of enforcement and the time limits for specific enforcement actions might vary, so it's advisable to seek legal advice or refer to the relevant legislation for detailed information.

How do I set aside a decision in QCAT?

To set aside a decision in the *Queensland Civil and Administrative Tribunal* (QCAT), you typically need to:

- 1. File an Application: Apply to set aside or amend the decision, ensuring it is within the stipulated time frame.
- 2. Grounds for Application: Clearly state the grounds on which you believe the decision should be set aside, such as an error in the judgment or new evidence.
- 3. Supporting Documents: Provide any documents or evidence that support your application.
- 4. Attend a Hearing: Be prepared to attend a hearing where you'll need to present your case for setting aside the decision.
- 5. Legal Assistance: It may be beneficial to seek legal advice to navigate the process effectively and ensure that all legal protocols are followed.

Glossary of Legal Terms (Setting Aside Default Judgment)

Legal proceedings can be full of technical terms that aren't always easy to understand.

To help make the process of setting aside a default judgment clearer, we've created a simple glossary of commonly used legal terms.

Whether you're filing the application yourself or working with a lawyer, this glossary will help you better understand the language used in court documents and judgments.

Term	Definition	Context / Example
Affidavit	A written statement of facts sworn or affirmed to be true and signed before a qualified witness (e.g., a JP or solicitor).	Used to provide evidence in support of a court application.

Term	Definition	Context / Example
Default Judgment	A judgment made by the court because the defendant did not file a defence or appear in the proceedings.	A plaintiff can apply for a default judgment if the defendant fails to respond within 28 days.
Notice of Intention to Defend	A formal document filed by the defendant to notify the court and the plaintiff that they intend to defend the claim.	Must be filed within 28 days of service to avoid default judgment.
Prima Facie Defence	A defence that appears to be valid “at first glance” or on the face of it, unless proven otherwise.	The court must be satisfied that the defendant has a prima facie defence before setting aside the judgment.
Ex Debito Justitiae	Latin for “as of right” or “from a debt of justice.”	Courts must set aside an irregular judgment ex debito justitiae.
Irregular Judgment	A judgment was entered where legal rules or procedures were not followed (e.g., improper service).	These are set aside automatically without the need to prove a defence.
Regular Judgment	A judgment was entered correctly, following all required legal procedures.	Can only be set aside at the court’s discretion under rule 290.
Costs Thrown Away	Legal costs already incurred by one party that become wasted if the proceedings must be recommenced (e.g., due to a judgment being set aside).	A defendant may be ordered to pay the plaintiff’s costs thrown away as a condition of setting judgment aside.
Security for Costs	An order requiring a party (usually the defendant) to pay money into court or provide a financial guarantee before proceeding.	Often imposed when a set-aside is granted and the defence appears weak or there’s a risk of non-payment.

Term	Definition	Context / Example
Service	The process of formally delivering legal documents to another party.	If the service is defective, it may result in an irregular default judgment.
Judicial Discretion	The court's legal authority to make decisions based on fairness and the specific facts of a case.	Rule 290 gives courts discretion to set aside regular default judgments.
Self-Executing Order	A court order that takes effect automatically if a party fails to do something (e.g., file a defence by a specific date).	Default judgments can sometimes follow from self-executing orders.
Draft Defence	A preliminary version of the defendant's legal response to the plaintiff's claim.	Often attached to an affidavit to show the court there is a defence on the merits.
Rule 290	A provision of the <i>Uniform Civil Procedure Rules 1999 (Qld)</i> allowing the court to set aside or amend a default judgment.	The primary rule used in applications to overturn a default judgment.
Ministerial Act	An administrative or procedural task carried out by a court officer (e.g., registrar) rather than a judge.	Entry of default judgment is a ministerial act, not a judicial one.
Judicial Act	A decision or action taken by a judge in the exercise of judicial power.	Discretion to set aside a regular judgment is a judicial act.
Costs Order	A court order directing one party to pay some or all of the other party's legal costs.	The losing party in a set-aside application may be required to pay costs.