

# How to recover a debt



**Legal Services**  
Commission South Australia

How to Recover a Debt  
Produced by the Legal Services Commission

This information is a general guide to the law.  
It is not a substitute for legal advice. Contact  
the Legal Services Commission, a community  
legal centre or a private lawyer for legal advice.

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# List of terms

Minor civil action	Includes a claim up to \$12,000 in the Magistrates Court.
General claim	Includes a claim over \$12,000 and up to \$100,000 in the Magistrates Court.
Personal injury	Bodily injury, usually as a result of a car collision or other accident.
Applicant	Person making a claim.
Respondent	Person defending a claim (or against whom a claim is made), the debtor.
Default judgment	Court judgment that is given in the applicant's favour because the respondent did not file a defence or comply with an order.
List of documents	Documents that may prove or disprove a claim.
Debtor	Person who owes money to someone else.
Investigation summons	An order for a debtor to attend the Magistrates Court to answer questions about paying a judgment debt.
Examination summons	An order for a debtor to attend the Magistrates Court to explain why they have not complied with a payment order.
Warrant of sale	A Court order to sell a person's property – either real estate or goods (only certain types of goods can be sold). The Sheriff's Office arranges the sale.

<b>Warrant of arrest</b>	A debtor can be arrested and brought to Court to explain how the judgment debt is to be paid.
<b>Enforceable Payment Agreement</b>	A record of an agreement for payment by instalments entered into prior to taking court action, using Magistrates Court Form P2.
<b>Final Notice</b>	A notice to the respondent of a possible claim using Magistrates Court Form P1. Issued by the Court after payment of a fee.
<b>Letter of demand</b>	A letter demanding payment of a debt.
<b>Garnishee order</b>	A court order allowing a person's wages or other money to be garnisheed (taken) for payment.
<b>Directions hearing</b>	A hearing at which the Court makes orders regarding the conduct of the case before a trial. This type of hearing may also be used to help parties resolve the case informally.
<b>Trial</b>	A hearing before a Magistrate who listens to all evidence and makes a decision regarding an applicant's claim.
<b>Judgment debtor</b>	Person who owes money after judgment, the respondent in legal proceedings.
<b>Judgment creditor</b>	Person to whom money is owed after judgment, the applicant in legal proceedings.



# When to use this booklet

This booklet may be used if you are owed a debt of **\$12,000 or less**. A claim of this size in the Magistrates Court is known as a “small claim” or a “minor civil action”.

If you are owed more than \$12,000, you should seek legal advice.

A **debt** is a fixed (or known) amount of money, for example:

- money you have lent someone
- money owed to you for work you have done
- money owed for goods.

If you are owed money for

- work done for you that is faulty, or
- goods that are faulty or are not fit for purpose,

your claim may be a consumer claim, and you should seek legal advice.

If you are unsure whether your debt is fixed, get legal advice.

For assistance recovering a child support debt, telephone the Child Support Unit at the Legal Services Commission SA on 8111 5576.

## **Do not use this booklet if:**

- The amount owed is more than \$12,000 or you are unsure how much money you are owed.
- You want compensation for a personal injury as a result of a car accident, workplace incident or other incident.
- You are claiming money for repairs following a car accident. For information about claims arising from car accidents, see our [Motor Vehicle Accident Kit](#).

# First steps to recover a debt

## Proving the debt

Keep copies of any contracts, invoices, emails, letters, text messages, bank records or other documents that show how much money the debtor owes, and the time, date or circumstances of the debt.

If your agreement with the debtor is only verbal, you will need to rely on your own story if you need to go to court to prove the debt. Write down as much as you can remember as soon as possible.

## Time limits

Legal action to recover a debt must be commenced within **6 years** from the date when the debt first came about or was due for payment. If the debtor acknowledges or confirms the debt during the 6 year period by

- making a signed promise to pay the debt, or
  - making a payment towards the debt,
- the 6 year period begins again from that date.

If your debt is more than 6 years old or if you are unsure if your debt is within time, seek legal advice. You may not be able to take the debtor to court.

## Negotiation with the debtor

Most debts can be settled if both parties remain courteous and reasonable. Keep in regular contact with the debtor by mail, email or telephone so the debt does not fall to the back of their mind. Keep copies of correspondence and take notes of phone calls including the date and time of the call.

If a debtor is slow in paying, ask why. Perhaps they can afford to pay you part of the debt each month. The court cannot impose unreasonable obligations on a person to pay a debt, so there is no point asking for more than the debtor can reasonably afford.

If the debtor has a dispute about the amount of the debt or something else, you should try to resolve the issue as soon as possible.

If goods or services are faulty, there is a legal obligation under the Australian Consumer Law to fix the problem quickly. Seek legal advice if you are unsure of your rights and obligations.

If you agree on a **payment plan** with the debtor, record the agreement in writing so that both of you are clear on the number of payments and when they are due. For more information about enforceable payment agreements, see page 17.

It is always best to be polite and not make unreasonable demands.



## Behaviour when pursuing a debt

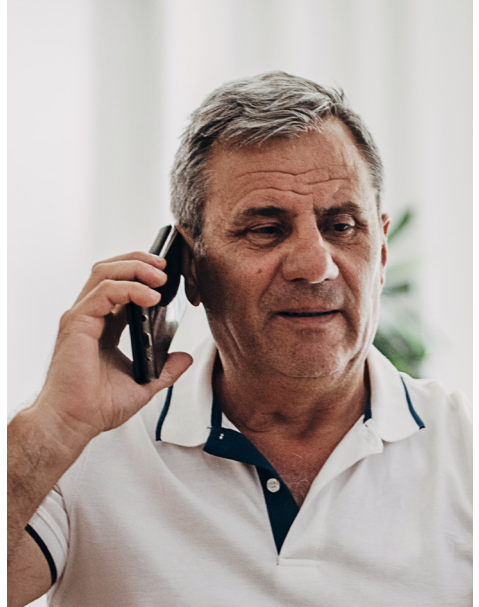
There are strict rules that apply to your behaviour when pursuing a debt.

### Do not:

- demand money without saying who you are and how much money is owed
- demand more money than is actually owed
- continue to demand money from someone who denies they owe the money without making further inquiries as to whether your demands for the money are valid
- contact people who know the debtor, for example a debtor's employer, friends, relatives or neighbours, unless you are doing so to get the debtor's contact details
- threaten, or make reference to, possible criminal proceedings if the debt is not paid
- say that court action has started when it has not, or threaten to take court action when you do not intend to involve the court
- pretend to be authorised in some official capacity to claim or enforce payment of a debt.

If you are unsure which costs you can claim, get legal advice.

If talking to the debtor does not resolve the problem, put your request for payment in writing. A sample **letter of request** can be found on the next page.



### Can you prove the other person owes you money, and how much is owed?

Gather documents that show how much money is owed, and the time, date or circumstances of the debt, including:

- agreements
- invoices
- emails
- letters
- bank records
- text messages.

## Letter of request

Jo Smith  
Assistant Manager  
Paper and Printing Co  
1 My Street  
Adelaide SA 5000

Sam Johns  
2 Your Street  
Adelaide SA 5000  
1 September 2023

Dear Mr Johns

Reminder Notice - Account invoice No. 12345

This is a friendly reminder that your account for printing brochures on 1 July 2023 for the sum of \$1,635 is now overdue.

This amount was due to be paid on 1 August 2023.

A copy of the invoice No. 12345 is enclosed.

We look forward to receiving your payment within 7 days.

Yours faithfully

Jo Smith  
Assistant Manager  
encl.

## Mediation

Mediation can help parties work out their differences and reach a solution together.

A mediator is a neutral third party who will assist you and the other person to reach a resolution by identifying key issues. A mediator does not decide the outcome but can suggest solutions to the dispute and act as a go-between if required.

To use mediation, everyone must agree beforehand, although sometimes the court will order mediation.

Mediation can be better than going to trial because:

- the process is informal
- the parties decide the outcome, rather than the court
- it may be faster because the parties do not have to wait for a decision from the court.

You may use the Magistrates Court's mediation service. Contact the Registry on (08) 8204 2444 or email [mediation@courts.sa.gov.au](mailto:mediation@courts.sa.gov.au) for more information.

The cost of mediation is usually shared equally between both parties. Check the cost with the mediation service you decide to use. Some mediation services are pro bono (free), depending on the circumstances.

If you reach agreement as to the repayment of the debt, put it in writing. You can use the Enforceable Payment Agreement (Form P2), or the mediator can help you prepare a written agreement as part of the service.

## Business disputes

The office of the Small Business Commissioner South Australia (SBCSA) offers a mediation service if the dispute is between two businesses or between a business and the government (including local government). The SBCSA may require each party to contribute to the cost of conducting a formal mediation.

For more information, contact the SBCSA on 1800 072 722 or visit [www.sasbc.sa.gov.au](http://www.sasbc.sa.gov.au).

## What steps should be taken after sending a letter of request?

If the debt is not paid, follow up with a polite phone call about a week later. If you are still not satisfied, you will need to decide whether to take legal action.

# Deciding to take legal action

## **The debt is still not paid. Now what?**

Consider the following factors if you are thinking of taking legal action:

### **Fees**

Fees are payable to the court to commence legal action and enforce the debt. These are added to the amount owed by the debtor.

The fees in minor civil actions are relatively small but they add up and can make it impractical to continue pursuing the debt.

For more information about fees, see page 14.

### **The debtor's ability to pay**

Does the debtor have the money to pay the debt? If you are owed money by a business, are other people having trouble getting paid by the business too?

Ask the debtor to provide information about their income and expenses and any assets which may help you to decide if it is worth continuing to pursue the debtor for payment.

For more information about the debtor's ability to pay, see page 13.

### **Any dispute about the debt**

Has the debtor raised an issue with the goods or services that are the subject of the debt?

You should try to resolve the issue quickly, and if you cannot agree, you should try mediation. For information about mediation, see page 9.

If your legal action is unsuccessful, the court may order you to cover the legal costs of the debtor according to the minor civil cost scale.

### **Time**

Taking a debtor to court can be very time-consuming. Even if you get judgment in your favour, you will need to attend court more than once.

If an order for payment in instalments is made, you may wait some time before the debt is paid in full, and you will need to keep track of payments.

### **Other factors**

Are you sure you know who to sue? If it is a company that runs a business, and you have been dealing with staff or a director, the debt is with the company and generally not the people you have been dealing with. If you are not sure, seek legal advice.

If you run a business, consider whether you need to preserve the relationship with the debtor, for example, if the debtor has been a good customer in the past.

Listen to any concerns the debtor might have, but also take into account your own interests such as cashflow.

If the debt is owed by a friend or family member, consider whether taking legal action might have unintended consequences.

Remember, you can agree to accept a payment arrangement or a smaller lump sum payment at any time. If you reach agreement with the debtor to pay, record the agreement in writing and confirm it with the debtor.



# Preliminary steps to taking legal action

## Sue the right person

Before you start, you need the correct name and address for the debtor.

If the debt is not business-related, you need the debtor's residential or email address. If you don't have the right address, you won't be able to serve the documents. It is possible to get the court's permission to serve documents in other ways, but get legal advice first.

For more information about **service**, see page 16.

If the debt is business-related, check the name on any agreement or correspondence, including emails. Check the Australian Business Number (ABN). Some initial searches can be done for free, but you may need to pay for more detailed information.

A sole trader who has a business name should be registered on the Business Names Register (visit [www.asic.gov.au](http://www.asic.gov.au)). The register has free information regarding the address for service.

If you are suing a company, you must send your documents to the registered office, which may be different to the principal place of business. You can find the address of the registered office by paying a small fee to ASIC for a company search.

Looking at the company search will also tell you if the company is still in business. If your search states that the company is in external administration then it cannot be sued, and you should contact the administrator or liquidator instead.

Unless you are relying on a personal guarantee, you should not name the directors of the company as respondents on your court forms. If you are unsure, get legal advice.

For partnerships and trusts that run a business, you need to search the Business Names Register to find the right address.

If you have trouble finding this information, contact ASIC on 1300 300 630.



## Proving the debt

Gather your paperwork together and check all dates and calculations of the amount owed. If you do not have documents, is there a witness who can help to prove your case? A witness can be anyone who is able to give relevant information to the court.

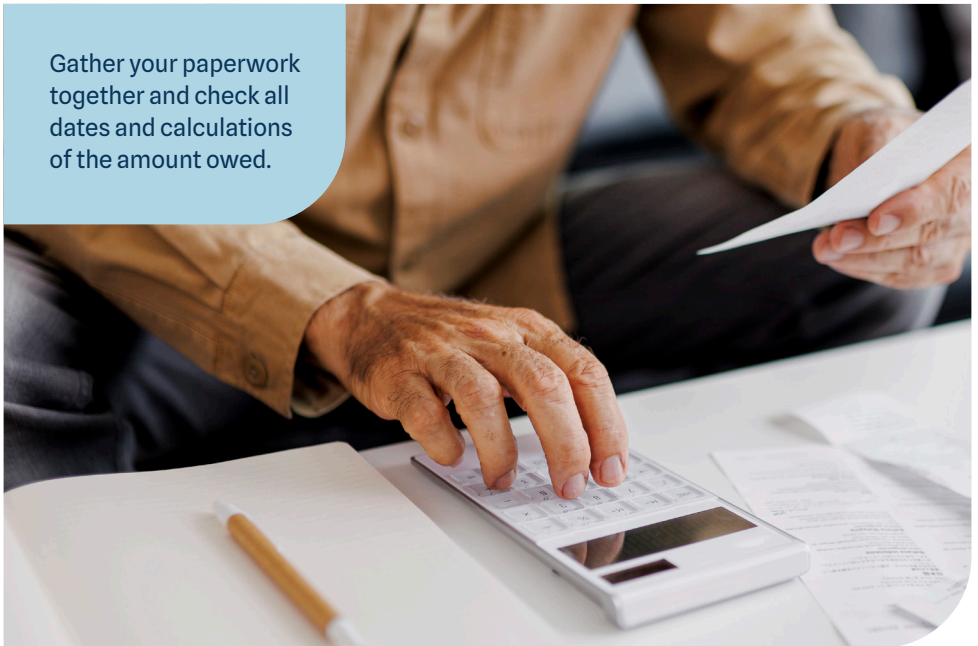
If a dispute is raised about the debt, there is a risk that a court will prefer the debtor's version of events. Be prepared to address the debtor's objections.

## The debtor's ability to pay

Do a property search through Land Services SA to check if the debtor owns real estate which may be sold to pay the debt. Ask the debtor if they own a car or other assets, and ask for proof of their income and expenses.

If a company is in financial difficulty, it may go into liquidation while you are taking it to court. If that happens, your legal action must stop.

Gather your paperwork together and check all dates and calculations of the amount owed.



# Final Notice (Form P1) or letter of demand

This is the final step before commencing legal action. It puts a debtor on notice that you are prepared to go to court.

If you do not take this step, you may not be able to claim the filing fee and the cost of preparing your claim from the respondent.

A **Final Notice** (Form P1) is issued by the Magistrates Court for a small fee but you must serve it yourself (see **Service** on page 16). You will need to set up an account with the court to prepare and lodge your form at [courtsa.courts.sa.gov.au](https://courtsa.courts.sa.gov.au) or you may be able to lodge the form in person at the Court Registry.

Your form will briefly state the basis of the claim and the amount of the debt. Include other costs you have incurred such as company searches and the cost of the form.

Form P1 is not the commencement of legal action but a debtor may be more likely to respond to a notice from a court. Do not mislead the debtor about the existence of legal proceedings.

You should also include a Form P2 with your notice. The Form P2 is an Enforceable Payment Agreement that can be lodged at court if you agree a payment arrangement with the debtor.

If the debtor is willing to negotiate, consider using a mediation service (see page 9 for more information).

Another option is to serve a **letter of demand** on the debtor notifying them that you intend to commence legal action. You need to include your full name and address and enough detail about your claim, such as the amount owing and what it is for, as well as any relevant expert reports. The letter should inform the debtor that they have 21 days to respond. A sample letter of demand is on page 15.

Once you have served your Form P1 or letter of demand, you must wait at least 21 days from service. If you have not heard from the debtor in that time, you can take the next step.

## Court Fees

Fees need to be paid for:

- giving a Final Notice using Form P1
- filing a Claim using Form 1
- enforcing the judgment

These fees are added to the amount owing to you if you obtain judgment.

To find the exact fee for each step, visit the Court's website at [courts.sa.gov.au](https://courts.sa.gov.au).

You can also ask at the Registry.



## Letter of demand

Jo Smith  
Assistant Manager  
Paper and Printing Co  
1 My Street  
Adelaide SA 5000

Sam Johns  
2 Your Street  
Adelaide SA 5000

21 September 2023

Dear Mr Johns

Overdue account for printing 1 July 2023  
Invoice No. 12345

I refer to our reminder letters dated 1 September 2023 and 14 September 2023 regarding your outstanding account for the sum of \$1,635 for printing brochures.

A copy of the invoice is enclosed.

Unless the outstanding sum of \$1,635 is paid within 21 days of receipt of this letter, we intend to issue legal proceedings without further notice to you. Court costs will be added to the claim.

If we get a court judgment against you, this will be recorded on your credit history. Please contact us urgently to discuss payment options.

Yours faithfully

Jo Smith  
Assistant Manager  
encl.

## Service

**Service** is a formal term for delivering documents to the debtor so that they know you are taking legal action against them. Be sure to use the right address for the debtor.

Service is proved by completing an affidavit of proof of service (Form 42). If you cannot prove service of your documents, you may not be able to take further steps in your legal action.

The Court Rules require enforcement documents (discussed from page 22) to be served by the Sheriff.

There are a number of ways to serve court documents.

- 1. Post:** The Court Rules require documents to be posted using Express Post. You must keep a photocopy of the envelope and your lodgement receipt and proof of delivery via Australia Post's online tracking facility to exhibit (attach) to your affidavit of service.
- 2. Email:** If you have previously communicated with the debtor by email, and you are sure that the debtor uses the email address regularly, you can serve the documents by email. You may also use a business email address if the debtor has one specifically for the service of documents.

**3. Personal delivery:** The documents can be served by handing them to the debtor (or director) as long as you can identify the debtor. You may also use an agent or process server for a fee.

**4. Court Sheriff:** For a fee, you can ask the court to serve documents. This ensures that the documents are served properly as long as the address is correct and the Sheriff can find the debtor. The Sheriff will also complete the affidavit of service.

The date of service by post or email is generally either the date of delivery according to the Australia Post tracking facility or the sender's email service, or the date the recipient replies or acknowledges receipt (which may be later).

## Possible responses to your Final Notice or letter of demand

### 1. The debtor pays the debt in full.

Congratulations! No further steps are required.

### 2. The debtor does not respond.

After waiting 21 days from the date of service, you can start proceedings in the Magistrates Court by filing a claim.

### 3. The debtor offers to pay in instalments.

If you served a Form P1, it will include a Form P2 Enforceable Payment Agreement. You should write the terms of the agreement on the Form P2 and both parties must sign it. More information about the Enforceable Payment Agreement is below.

### 4. The debtor asks for more time to pay the debt.

When considering the debtor's offer, take into account how long court action may take, and consider whether a Form P2 Enforceable Payment Agreement may be a preferable option.

### 5. The debtor disputes some or all of the claim.

In this case, you can issue proceedings to let the court decide. Mediation is an option if the debtor agrees. For more information about mediation, see page 9.

## Enforceable Payment Agreement

If you agree with the debtor that the debt will be paid in instalments or a deferred lump sum, you can record your agreement on a Form P2.

If you use the Form P2, you cannot take legal action (unless you have already) or make an adverse credit report against the debtor's business while payments are being maintained. If the debtor misses 2 or more payments, the agreement can be relied on to obtain immediate judgment against the debtor when you issue proceedings.

# Commencing a minor civil action in court

A minor civil action is for a debt of \$12,000 or less. If the debt is more than \$12,000, seek legal advice.

Once you are ready to start your claim, you can register for the online CourtSA portal at [courtsa.courts.sa.gov.au](https://courtsa.courts.sa.gov.au). (You may have already done so for your Form P1.)

By now, you should have all of the information you need to lodge your claim. You will need to enter all of the details for both you and the respondent, including contact details and a physical or post office box address.

If you do not believe the claim will be contested, you can enter the basic details of your claim directly into the Form 1 as long as it is less than 100 words (see example below). If your claim is more detailed, you can lodge a **Statement of Claim** (Form 1S) which must be completed before uploading to the portal.

You can also lodge paper forms at the Registry. You need all of the same details to complete your forms including contact details and the address for the respondent.

A fee applies to lodging the form online or in person. You also need to decide how you are going to serve the claim. With the exception of personal service by the Sheriff for a fee, the court will not serve your documents for you. More information about the various methods of service is on page 16.

You must also include a Form 31 with the claim. This is a multilingual notice that explains the importance of the claim and what the respondent needs to do.

Remember to file an affidavit of proof of service and supporting documents to show that the claim was properly served.

## Example of a short form claim

In July 2023, the applicant provided the respondent with printing services. On 25 July 2023, invoice no 12345 for \$1,635 was issued and due for payment within 7 days. Despite repeated requests for payment, the respondent has not paid invoice no 12345. On 21 September 2023, the applicant served a Final Notice but the respondent did not reply. The applicant claims \$1,635 plus costs and interest.

## Possible responses from debtor

### 1. The debtor does not respond.

The respondent has 28 days from the date of service to file a Defence (Form 52). If no Defence is filed, you can ask the court to sign judgment in default of the respondent filing any defence. (See **Default judgment** on page 20 for more information).

### 2. The debtor admits the money is owed.

If the respondent admits the claim and agrees to pay, make sure that you record a final date for payment. If possible, get the respondent to sign an **Enforceable Payment Agreement** (Form P2). If payment is not received as agreed, you can then follow the steps for immediate judgment.

### 3. The debtor denies the money is owed.

The respondent can file a **Defence** (Form 52). The respondent must serve the Defence on you.

The court will send you a Notice of Directions Hearing by email or post. You must attend the directions hearing or the claim will be dismissed in your absence. (See **Directions hearing** on page 20 for more information.)

### 4. The debtor files a cross-claim.

In addition to the Defence, the respondent may file a cross-claim (a claim of their own). A **Cross-Claim** (Form 61) may be for losses suffered by the respondent arising out of the same situation – for example, the respondent may be refusing to pay an invoice because the goods supplied or the quality of work is below standard.

The court assumes that you will defend the cross-claim so there is no need to file a Defence. If the circumstances of the cross-claim have not been raised with you before, seek legal advice as soon as possible.

If a cross-claim is filed with a Defence, the court will notify you by email or post. The respondent must also serve the Defence and Cross-Claim on you.

## Default judgment

If the respondent does not respond to your claim by filing a Defence within 28 days of the date of service, you can ask the court to sign judgment. You must prove that the claim was served by filing an affidavit of service. You don't need to file an affidavit of service if the claim was served by the Sheriff.

If you filed your claim online, you can follow the steps online. If you lodged hard copy forms over the counter, you will need to complete an Application to the Registrar to Request Default Judgment (Form 76B).

If the respondent fails to lodge a Defence, they are deemed to have admitted the claim and, as long as you can prove service, the court will enter default judgment. If the respondent later wishes to set aside the judgment, they will need to make an application to the court. They will need to explain why they did not respond within 28 days and show that they have a reasonable basis for defending the claim. If the respondent makes this claim, it is best to get legal advice regarding the next steps.

## Directions hearing

If the respondent files a Defence to your claim, you will both get a Notice of Directions Hearing. This notice includes the date, time and place of the hearing.

A directions hearing is not the trial of your case. It is an opportunity for the court to find out each party's position and to encourage a resolution if possible.

You do not need to bring your witnesses to the directions hearing. You can bring copies of your supporting documents, although it is not essential.

If the matter cannot be resolved and a trial is necessary to decide the dispute, the court may direct you to do any of the following:

- File a list of documents and exchange copies. This process of giving each other a list of relevant documents is called **discovery**. The Court Rules state that you and the respondent have 14 days from the date that the Defence is filed to each lodge your list of documents.
- Make changes to your claim or to the Defence, or to the names of the parties.
- File a list of witnesses.
- Mediation (see page 9).

If you do not understand what you need to do, ask the Magistrate to explain.

Any orders will be recorded by the court. If you filed your claim online, the orders can be downloaded from your case, or you can ask for a copy from the Registry. You may be penalised for not complying with an order.

If a date is set for trial by the Magistrate, you will receive a further notice called a Notice of Hearing.

## The trial

A trial will only happen if the respondent disputes the debt.

Lawyers are not usually permitted at the trial of a minor civil claim except in special circumstances.

Take careful note of the date and time of your trial and be prepared to proceed.

1. Ensure your witnesses are available and attend.
2. Gather all available documents related to your claim and put them in order. If requested by the respondent you should provide copies to them prior to the trial. Ensure there are copies available for the Magistrate.
3. Arrive at court with plenty of time to spare, and check your allocated courtroom on the noticeboard or online.

If you are more than 15 minutes late, your case could be dismissed in your absence. You may need to wait until the court is ready to hear your case. Avoid scheduling other appointments on the day and be prepared for a lengthy wait. An officer of the court will take your name and call you into the courtroom. Witnesses will have to wait outside.

You should stand when the Magistrate enters or leaves the court and nod or bow when prompted. You should call the Magistrate “Your Honour” or “Sir” or “Madam”. Remain calm and polite at all times. Allow the Magistrate to control the proceedings and avoid speaking directly to the respondent during the hearing.

The Magistrate will conduct the hearing like an inquiry and ask you to begin with an outline of your case. They will ask each person questions, as well as question the witnesses (if you have them). Debt matters tend to be relatively straightforward, so your hearing may not take much time. The Magistrate may give a decision immediately or reserve their decision, which means you may have to wait to find out later.

If you are unhappy with the decision, seek legal advice promptly about your right to have the decision reviewed. You have limited time in which to ask for a review and fees apply.

If you are successful, the Magistrate may ask the other person to make arrangements to pay. This may be by instalments or in a lump sum and may include a contribution towards your legal costs. The judgment will be recorded on the credit file of the individual or company and will affect their ability to borrow money. The judgment may remain on their credit file for up to 7 years.

# Enforcement

Some debtors will pay after judgment is delivered and the dispute has been resolved. If the debtor does not pay following a request or reminder, you may need to take steps to **enforce the judgment**. Enforcement options vary depending on whether the debt is owed by an individual or a company.

## Investigation notice

As a first step, you may wish to serve an Investigation Notice on the judgment debtor. This notice requires them to answer questions relating to their means to pay the debt and produce for your inspection documents relating to these questions. If there is no agreement about when production and inspection is to occur, the notice should specify a reasonable place, date and time (not less than 28 days later). The court may have regard to an Investigation Notice and whether it has been complied with to determine the costs of further enforcement proceedings, such as an investigation hearing.

If you lodged your case online, you can follow the steps online. If you lodged your forms over the counter, you need to complete an Investigation Notice (Form 140).

## Investigation hearing

If the judgment debtor is an individual, and the debt is \$12,000 or less and is not related to the running of a business, the next, more formal step is to request the issue of an **Investigation Summons**. You can request this at the time of judgment or when seeking default judgment (see page 20). Otherwise, if you lodged your case online, you can follow the steps online. If you lodged your forms over the counter, you need to complete an Application to Enforce Judgment (Form 141). You will also need to pay a fee which is added to the debt.

The court will notify you when it has set a time and date for an investigation hearing. The Sheriff will personally serve the summons on the judgment debtor as long as you have provided the correct address.

The purpose of the investigation hearing is to determine the judgment debtor's ability to pay the judgment debt. It is not a hearing about whether or not the debt is owed.

Prior to the hearing, the judgment debtor must complete a form showing their income and expenses (if they have not already). The court may also question the judgment debtor and, depending on the circumstances, make an order for regular payments by instalments. If the judgment debtor does not have the means to pay, a 'no order' can be made for a period of time to re-assess their circumstances.



If a judgment debtor does not attend the investigation hearing, a warrant of apprehension may be issued which is executed by the Sheriff. This means that the judgment debtor is brought to court for an investigation hearing to be conducted. You will be informed of the outcome.

### **Examination summons**

If the judgment debtor does not keep to the orders made by the court at the investigation hearing and misses 2 or more payments, you can ask that they be brought back before the court to explain why. You can also ask for an order for the arrears to be paid.

You need to request an examination hearing which can be done via the online CourtSA portal in your case, or by lodging another Application to Enforce Judgment (Form 141) with the Registry. This will incur an additional fee which is added to the total owed.

### **Warrant of sale**

If the debt is for \$12,000 or less and a judgment debtor, who is an individual, fails to attend an investigation hearing or fails to make payment (if by instalments missing at least 2 or more payments), you can apply for other enforcement processes such as a warrant of sale. If the debt arises from business, you can apply for other enforcement processes straight away. However, generally a warrant of sale of real estate (land) will not be issued unless a warrant of sale of personal property (goods) has first been issued, and has not satisfied the debt.

A warrant of sale of goods can only be for assets such as a car, a boat or shares which could be taken in bankruptcy proceedings. For information about what cannot be taken in bankruptcy (which is indexed annually), visit the Australian Financial Security Authority website at [www.afsa.gov.au](http://www.afsa.gov.au).

If the debt is for more than \$12,000, and the judgment debtor owns land, you can apply for a warrant of sale of this land at the very beginning of the enforcement process. You must include a copy of the certificate of title to the property with your application.

A warrant of sale is issued by the court and authorises the Sheriff to sell (by public auction in the first instance) property owned by the judgment debtor to pay the judgment debt. The cost of selling property is paid first from the proceeds, then any other debts with priority (such as a mortgage), then the judgment debt is paid and any surplus is returned to the judgment debtor.

## Charging order

If the judgment debtor owns real estate, it is possible to place a charging order on the property. This means the debt will be paid whenever the property is sold or transferred, if there is sufficient surplus after all other costs are paid.

It is best to get legal advice regarding the forms to complete for a charging order. The court will award a fixed sum for preparing the necessary forms for lodgement and registration as well as the discharge of the charging order when the property is sold.

You may also need to use a conveyancer to prepare the documents for registration at Land Services SA.

## Garnishee order

A garnishee order allows money owed to the judgment debtor to be paid directly to the judgment creditor. This might be money in a bank account, or a debt owed by a third party. A debtor's wages may also be garnished, but must not be reduced to less than 90% of the weekly national minimum wage.

This is not a common process and can only be used in limited circumstances. It is best to obtain legal advice if considering this path.

## Bankruptcy

If the judgment debt is more than \$10,000, you can issue a bankruptcy notice which is the first step in making the judgment debtor bankrupt.

If a person is made bankrupt, all of their assets vest in a trustee who sells the assets and shares the proceeds between all of the person's creditors.

Having a person declared bankrupt is an expensive process involving further court proceedings. If the person does not own any property (whether personal property or real estate), it is unlikely that you will recoup your costs or have your debt paid.

A bankruptcy notice is completed online through the AFSA website at [www.afsa.gov.au](http://www.afsa.gov.au). You must pay a fee and have the notice served personally on the debtor. The debtor may respond by paying within 21 days as required by the notice, but if there is no payment, you can issue a creditor's petition to have the debtor declared bankrupt.

Given the cost and complexity of making someone bankrupt, it is best to seek legal advice first.

## **Debts owed by a company**

If the debt is owed by a company, you will need to issue a summons to a director of the company. A company search lists the current directors of the company and their addresses. Again, the summons is served by the Sheriff.

The company director is required to bring information about the company's financial situation to the hearing.

## **Winding up a company**

If the debt is more than \$4,000 and owed by a company, it is possible to have the company wound up, or liquidated. Again, this is a complex process and further costs are involved which may not be recovered.

If you are considering winding up a company, seek legal advice first.

## **Using a debt collector**

It may be tempting to engage a debt collector to recover a debt if you do not have the time to chase the debt yourself. This is usually only economical if you have a number of debts outstanding, as you cannot recoup debt collection costs from the debtor.

# Where to get help

## Legal Services Commission

Free Legal Helpline 1300 366 424  
[www.lsc.sa.gov.au](http://www.lsc.sa.gov.au)

- Adelaide Office  
159 Gawler Place  
Adelaide 5000  
Telephone 8111 5555
- Elizabeth Office  
Suite 2 Windsor Building  
1 Windsor Square (off Playford Boulevard)  
Elizabeth Shopping Centre  
Elizabeth 5112  
Telephone 8111 5400
- Noarlunga Office  
Noarlunga House  
Ramsay Place  
Noarlunga Centre 5168  
Telephone 8111 5340
- Port Adelaide Office  
263 St Vincent Street  
Port Adelaide 5015  
Telephone 8111 5460
- Port Augusta Office  
34 Flinders Terrace  
Port Augusta SA 5700  
Telephone 8686 2200
- Whyalla Office  
17A Forsyth Street  
Whyalla 5600  
Telephone 8620 8500

## Community Legal Centres

For details of community legal centres visit  
[www.clcsa.org.au](http://www.clcsa.org.au)

## Small Business Commissioner

Chesser House  
Level 4, 95 Grenfell Street  
Adelaide 5000  
Telephone 1800 072 722  
[www.sasbc.sa.gov.au](http://www.sasbc.sa.gov.au)

## Magistrates Court of South Australia

Registry staff may be able to assist with forms, but cannot give you legal advice. Forms and up-to-date information about fees are available from the court website.

Telephone 8204 2444  
Free Call 1800 571 191  
[enquiry@courts.sa.gov.au](mailto:enquiry@courts.sa.gov.au)  
[www.courts.sa.gov.au](http://www.courts.sa.gov.au)



