

# Judgment Debts and Investigation Summons Hearings

Managing Court Ordered Payments



University of  
South Australia

Legal Advice  
Clinic



## Welcome to the University of South Australia Legal Advice Clinic

The Legal Advice Clinic at the University of South Australia provides confidential, free legal advice.

The Clinic is staffed by law students who offer legal advice to clients under the supervision of solicitors. Students are trained in professional conduct and all enquiries are treated as confidential.

The Clinic is based on the University of South Australia City West campus, offering an appointment service from Tuesday to Thursday. On Tuesdays the Clinic also operates an outreach at the Elizabeth Magistrates Court during the Investigation and Summons Hearings. On Wednesdays the Clinic also offers a drop-in service at the Port Adelaide Magistrates Court.

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## Judgment Debts

### *Managing Court Ordered Payments*

*This booklet explains what to do if you receive an Investigation Summons.*



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# The Court has formally acknowledged that you owe money to someone (a debt).....

## I have received an Investigation Summons.

### What does this mean?

An Investigation Summons is issued after someone has obtained a **judgment debt** against you. A judgment debt is a sum of money that the Court has decided you owe to someone. The Summons is a document notifying you that you need to attend a Court hearing. At the hearing, your ability to repay the debt will be assessed.

### I did not know I owed a debt. What can I do?

Before receiving an Investigations Summons, you should have first received a **Claim** from the Court. A Claim is a document that would have notified you of someone's intention to recover a debt that they think you owe them. A Claim requires the recipient to accept the debt and resolve the matter or dispute the claim and file a defence and/or counterclaim.

If you did not resolve the matter or file a defence on time, this may be the reason why there is a judgment debt against you.

## Do I have to attend the Hearing?

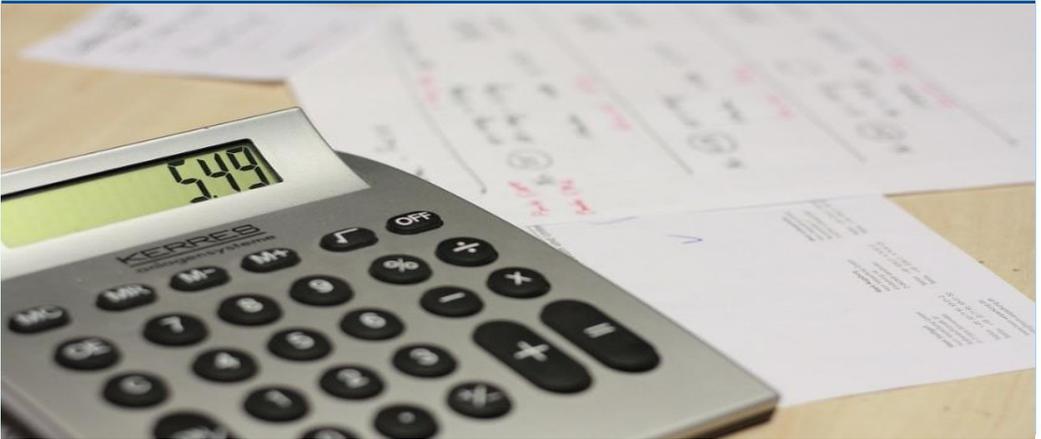
Yes.

It is important that you attend the Investigation hearing on time. At the hearing, the Court will decide if the person you owe money to can start **enforcement proceedings**. These proceedings will determine how you will have to pay the sum of money you owe.

If you do not attend your hearing and do not notify the Court, a Warrant may be issued for your arrest.

### What if I cannot attend the Hearing?

If you cannot attend, you must inform the Court before your hearing. You can contact the Court via email at: [enquiries@courts.sa.gov.au](mailto:enquiries@courts.sa.gov.au) or by telephone on (08) 8204 2444.



## Frequently Asked Questions

### What should I do before the Hearing?

Before attending your hearing you must complete an income and expenditure statement. This form is usually attached to your Investigation Summons. This is important because the Court will look at this to determine your ability to pay the debt.

### Can someone help me complete the income and expenditure statement?

It may be helpful to ask a financial counsellor to help you complete your financial statement so that it can be done accurately. If you decide to use a financial counsellor, be sure to take all relevant evidence of your income and expenses to your meeting. This may include:

- Rent or mortgage documents
- Phone and internet bills
- Electricity, gas and water bills
- Current loans and credit cards
- Your latest payslips and tax returns
- Letters from Centrelink, or other support payments.

### I don't think that I should have to pay the debt.

There may be a good reason why you should not have to pay all or some of the debt. There are specific circumstances where you may be able to dispute the debt. You may dispute the debt if:

- You acknowledge that you owe a debt but do not agree with the amount
- It is someone else's debt
- You have proof you already paid the debt
- The 6 year time limit for lawfully initiating debt recovery has passed.

### I agreed to the contract but there are other circumstances which I think the Court should take into account. What can I do?

In some circumstances the Court may decide on Application that you do not have to pay the debt even if you entered into a contract, for example:

- If you were told something that was not true, or
- You were taken advantage of, or
- You did not receive the goods or services you were charged for, or
- If you are not happy with the goods or services provided.

## Frequently Asked Questions continued ...

### I owe the debt but don't want to go to Court.

Before the matter goes to Court you can try and negotiate repayment with the person you owe the money to (the **judgment creditor**). If there is an amount you can start to repay, you can ask the Court to make a 'consent order'. Be sure the amount you offer is affordable. However, they may not wish to negotiate with you outside of Court. This may be because they want to recover the costs involved in issuing the Investigation Summons.

### What can I say in Court?

If you do not think you owe the debt you should tell the Registrar at the beginning of the hearing. You will not be allowed to argue why you do not owe the money, but it is possible that the hearing may be adjourned to allow you to file an application to set aside the judgment, and present a defence stating why you do not owe the money.

You may ask for an adjournment to seek legal or financial advice. An adjournment may only be for a short time and further costs can be added as a consequence of the adjournment.

Alternatively, if you acknowledge that you owe the debt, you may wish to make an offer to pay it. This could be a lump sum payment or you could offer to make scheduled repayments. Do not agree to make payments you cannot afford.

### Court Ordered Payments

If the Court evaluates your financial position and decides you are able to pay the debt, the Court will order a payment arrangement. The Court may order you to pay the debt in one lump sum or to pay the debt in instalments.

Once a Court order is made, **you must make the payments regularly until the debt is paid off**. Missing any two payments (including two non-consecutive payments) breaches the Court order. If you breach the order, the person you owe money to may ask the Court to issue you with a Summons to appear at an Examination Hearing. At an Examination hearing, you will be required to explain the reasons why you have breached the payment order. You will need to provide the Court with new evidence of your financial position. There are serious consequences for failing to make payments which include imprisonment of up to 40 days in accordance with the Examination Hearing order. You may also have to pay interest on missed payments.

### What if the person I owe money demands larger repayments?

The Court will only make an order that you can afford. The person you owe money to is not entitled to ask for larger instalments once the Court has made an order.

### What if I can no longer meet repayments?

If your circumstances change and you can no longer make the Court ordered payments, you must immediately contact the Court registry on (08) 8204 2444. You will need to apply to the Court to have the payment order changed. You will have to fill out a special form. This application will prevent the judgment creditor from taking further action against you.

You also have to prepare an Affidavit explaining how your circumstances have changed. See pages 7 and 8 for an example. You will need to have this witnessed by a Justice of the Peace or a Solicitor. The Court will then re-evaluate your financial position to make sure that your request to stop or change the order is reasonable.

### What if I can no longer pay the debt?

You have the option to file for **bankruptcy** (refer to Definitions). However, you should seek legal and financial advice and consider this option **very carefully** because there are many consequences of becoming bankrupt.

### How do I make the repayments?

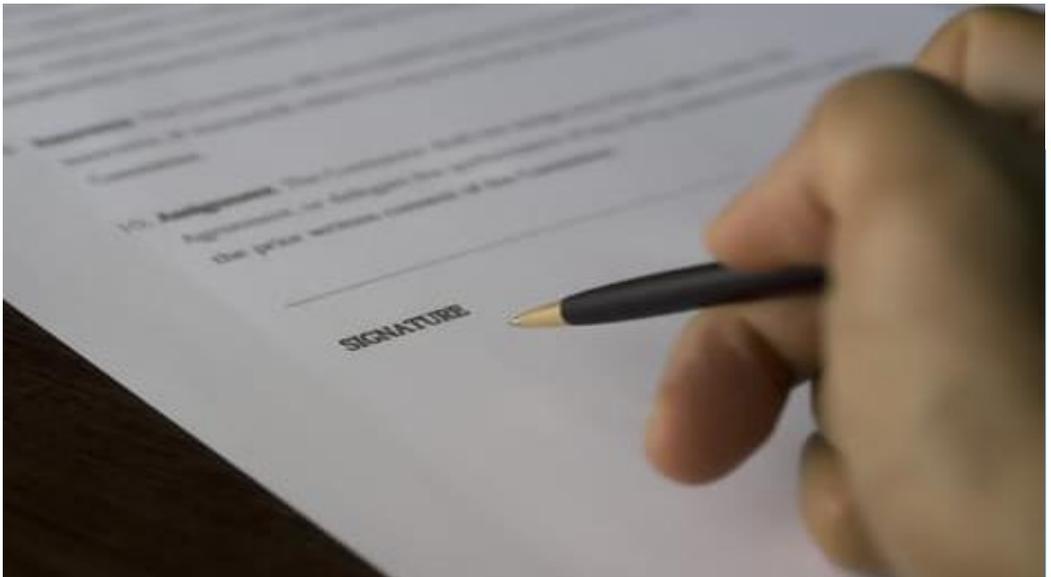
It is your responsibility to contact the Creditor or their legal representative (if they have one) to find out how you can make payments..

You must make payments directly into that account. If you are setting up a direct debit, it is your responsibility to check your account regularly to ensure that the payments are being made.

Alternatively, the Court may arrange to have the repayments taken directly out of your Centrelink income. The Court will confirm the date of your first payment should this be the case.

### Do I need to have contact with the judgment creditor outside of Court?

No, you are not required to have any contact with the judgment creditor outside of Court. You do not need to exchange phone numbers or any other personal information other than the necessary account details. If you miss a payment, you should contact the Creditor's legal representative (if they have one), otherwise you may contact the Court.



How to complete an Application

FORM 22

# APPLICATION

## Magistrates Court of South Australia (Civil Division)

www.courts.sa.gov.au

Court Use

Date Filed:

Trial Court	<i>The Court you are in e.g. Elizabeth Magistrates Court</i>			Action No	<i>Found at the top of your summons or ask the Court registry</i>		
Address	<i>This section is for the Court's address and phone number e.g. 15 Frobisher Road Street</i>			<i>e.g. 8204 2444 Telephone</i>	<i>e.g. 8207 9231 Facsimile</i>	DX	
	<i>e.g. Elizabeth City/Town/Suburb</i>	<i>e.g. SA State</i>	<i>e.g. 5112 Postcode</i>	Email Address			
<b>Plaintiff</b>							
Full Name	<i>The name of the person claiming money from you. This can be found on the summons.</i>						
Address <small>(Registered Office, if Body Corporate)</small>	Street			Telephone		Facsimile	DX
	City/Town/Suburb	State	Postcode	Email Address			
<b>Defendant</b>							
Full Name	<i>Write your full name, address and contact details in this section</i>						
Address <small>(Registered Office, if Body Corporate)</small>	Street			Telephone		Facsimile	DX
	City/Town/Suburb	State	Postcode	Email Address			
Have you made a previous application for this order? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>← Mark NO if this is the first time you are making this application Mark YES if you have made an application previously</i>							
An APPLICATION by the: <input type="checkbox"/> Registrar <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <i>← Mark Defendant, as you are the Defendant in this application</i>							
Will be heard on the _____ day of _____ 20____ at _____ am/pm at the Trial Court for an order as follows: <i>(specify order sought)</i> <i>This is where you write the orders that you would like the Court to make.</i> e.g. 1. The payment order against the defendant be set aside 2. This Honourable Court makes a new order that the defendant will pay [insert the amount and frequency you can afford- e.g \$50 per fortnight].							
If you fail to attend within 15 minutes of the appointed time the action may be determined in your absence. All parties have the right to attend and be heard. You <b>MUST</b> attend Court at the time you were given. If you don't, the likely result is that you will lose your application. If you cannot make the time given to you, you <b>MUST</b> tell the Court as soon as possible. YOU MUST FILE AND SERVE AN AFFIDAVIT EXPLAINING WHY YOU ARE SEEKING THESE ORDERS. You <b>MUST</b> fill out a Form 35 which is the affidavit explaining why you want the judgment against you to be set aside							
-You <b>MUST</b> date here at the time of signing.. DATE				-----You <b>MUST</b> sign here----- APPLICANT			

## How to complete an Affidavit

Form 35

# AFFIDAVIT

## Magistrates Court of South Australia (Civil Division)

www.courts.sa.gov.au

**Court Use**

Date Filed:

Trial Court	<i>The Court you are in e.g. Elizabeth Magistrates Court</i>			Action No	<i>Found at the top of your summons or ask the Court registry</i>		
Address	<i>This section is for the Court's address and phone number e.g. 15 Frobisher Road</i> Street			<i>e.g. 8204 2444</i> Telephone		<i>e.g. 8207 9231</i> Facsimile	DX
	<i>e.g. Elizabeth</i> City/Town/Suburb		<i>e.g. SA</i> State	<i>e.g. 5112</i> Postcode	Email Address		
<b>Plaintiff/Applicant</b>							
Full Name	<i>The name of the person claiming money from you. This can be found on the summons.</i>						
Address <small>(Registered Office, if Body Corporate)</small>	Street			Telephone		Facsimile	DX
	City/Town/Suburb		State	Postcode	Email Address		
<b>Defendant/person Swearing Affidavit</b>							
Full Name	<i>Write your full name, address and contact details in this section</i>						
Address <small>(Registered Office, if Body Corporate)</small>	Street			Telephone		Facsimile	DX
	City/Town/Suburb		State	Postcode	Email Address		
<p>I, the abovenamed deponent MAKE AN OATH AND SAY:</p> <ol style="list-style-type: none"> <li>1. <i>I am the defendant in these proceedings and refer to my application to amend the payment order made by the Court on [insert date of order].</i></li> <li>2. <i>I have been paying the sum of [\$insert amount] per [insert frequency] as required by the payment order</i></li> <li>3. <i>Due to a change in my financial circumstance I am unable to continue with the current payment plan</i></li> <li>4. <i>[Outline circumstances which have led to a change in financial position, e.g loss of job, reduction in time working, additional expenses]</i></li> <li>5. <i>Due to the circumstances outlined in this affidavit, I am now only able to pay [insert amount] per [insert frequency].</i></li> </ol> <p>I, the above named deponent, swear/affirm that the contents of this affidavit are true and correct to the best of my knowledge and belief.</p>							
SWORN before me at on the _____ day of _____ 20____ Signature <i>Signature, name and title of person who is a witness to this affidavit</i> (Person authorised to take Affidavits) (e.g. Justice of the Peace)				_____ <i>Your Signature</i>  <b>DEPONENT</b>			

## Free Legal Services

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The following is a list of free legal services available in South Australia:

### ***University of South Australia***

#### ***Legal Advice Clinic***

t +61 8 8302 7436

f +61 8 8302 7110

lawclinic@unisa.edu.au

unisa.edu.au/law/clinic

facebook.com/UniSALegalAdviceClinic

### ***South Australian Council of Community***

#### ***Legal Centres***

t +61 8 8342 1800

f +61 8 8342 0899

www.saccls.org.au

### ***Legal Services Commission of South Australia***

Telephone Advice:

Monday to Friday 9.00am-4.30pm

t +61 8 8463 3555

www.lsc.sa.gov.au

### ***Child Support Help Line:***

t +61 8 8463 3576

### ***Legal Help Line (Country callers):***

t +1300 366 424

### ***Duty Solicitor***

Duty solicitors can be found at each of the metropolitan Magistrates Courts in South Australia and offer a drop-in service.

**To speak to a financial counsellor contact:**

### ***The South Australia Financial Counsellors Association***

t +1800 007 007

financialcounselling@safca.info

### ***Financial Counselling and Advocacy Service***

Elizabeth

t +61 8 8305 9459

tias@anglicare-sa.org.au

www.anglicare-sa.org.au

### ***UnitingCare Wesley Bowden***

Elizabeth Centrelink / Munno Para Library

+61 8 8245 7100

ucwb@ucwb.org.au

www.ucwb.org.au

### ***UCare Gawler***

Gawler

+61 8 8522 4522

ucare@internode.on.net

## Definitions:

**Bankruptcy:** Bankruptcy is a last resort. You can apply to go bankrupt or in some circumstances a creditor can apply to make you bankrupt. Bankruptcy will release you from most debts and stop creditors from taking action. However, you will lose most of your assets including your home and you may be forced to pay some of your income to the bankruptcy trustee. Some debts will not be wiped off such as child support, tax debts, Centrelink debts or Court fines. You may also find it harder to get credit in the future, even after your finances have recovered.

**Charging Order:** A charging order works like a mortgage and restricts you from dealing with your property. It does not mean that a creditor will obtain their money immediately, but they will retain a legal "charge" over your assets. This gives the creditor a legal claim over some or all of the proceeds of the sale of those assets when you sell them.

**Claim:** This will notify you of an intention to recover a debt that the creditor thinks you owe them.

**Costs:** Extra money you may be required to pay which can be ordered by the Court in addition to the original debt.

**Creditor:** Person who says you owe them money. It may be a Bank, school, council, utility company etc.

**Debtor:** The person who owes the money.

**Default Judgment:** If you don't file a defence within 21 days of getting a claim, if you don't go to Court for any hearing or if you don't do anything else you are required to do, the Court can decide you owe the money without it being proved.

**Defendant:** The person who is being sued for the money.

**Enforcement Proceedings:** How the debtor is made to pay the debt after a decision is made by the Court.

**Garnishee Order:** A creditor can ask to take money from your wages to pay the debt. You cannot be forced into this but you may agree to it.

**Judgment:** A final Court decision that means you owe the money and the creditor can take action to make you pay.

**Judgment Debt:** The money you owe after the Court decision and includes the costs of enforcing the judgment.

**Judgment Creditor:** The person to whom money is owed after the Court has made an order in their favour.

**Particulars:** This is what the creditor has said about the debt and how it came about.

**Plaintiff:** Person who is suing in Court for the money. This person is also the creditor / judgment creditor.

**Sherriff's Officer:** Officer of the Court with legal authority to enforce Court Orders.

**Warrant of Sale:** The Court can authorise the seizure and sale of your property (real estate and personal property). This means a sheriff can come to your house and take things to sell to pay for your debt. However, they cannot take essential furniture, personal items, your car (if valued under \$6,850) or tools of your trade (value to \$3,400).

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### **Disclaimer**

This material contains general information only. It does not contain legal advice and you should not rely on the general information for advice about any specific legal problem. You should see a lawyer for specific advice about your legal problem.

Care has been taken to ensure that the information contained in this material is correct at the time of publication, but no responsibility will be accepted for any errors or omissions.

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