



Can a default judgment be set aside in South Australia?

A default judgment can be set aside in South Australia, but only in limited circumstances. If the Court has entered a default judgment against you, you can apply to the Court to set the judgment aside under the Uniform Civil Rules 2020 (SA), either because the judgment resulted from an irregularity, or because you have both a reasonable excuse for not filing a defence and an arguable defence to the claim. You must act promptly, as delay can permanently close off your options.

What is a default judgment?

A default judgment is a judgment entered against a party because they failed to take a required step in court proceedings, most commonly failing to file a defence in time. In South Australia, a defence must be filed within 28 days of being served with a claim. If no defence is filed within that period, the party who filed the claim can apply for and obtain default judgment without a trial.

Default judgment is not limited to claims. It can also be granted in relation to a cross claim (sometimes called a counter claim). The same 28 day time limit applies, so it is just as important to respond to a cross claim as it is to respond to an original claim.

Once entered, a default judgment is enforceable like any other judgment. The successful party can take steps to recover the judgment amount, including enforcing the judgment over your property.

Can a default judgment be set aside for irregularity?

Yes. Under rule 142.11 of the Uniform Civil Rules 2020 (SA), the Court can set aside a default judgment that was obtained as the result of an irregularity. To succeed, you must prove one or more of the following:

- The claim was not served on you in accordance with the court rules, and the claim did not come to your attention at least 28 days before the default judgment was entered
- The claim was served on you by email or by post at an address you were no longer using, or was not received at that address, and did not come to your attention at least 28 days before the default judgment was entered
- The party obtaining the default judgment was not entitled to default judgment
- The judgment was obtained as a result of misrepresentation or misconduct by the party obtaining it
- The judgment was otherwise obtained or granted as the result of an irregularity

If the application is successful, the Court may set aside the judgment on whatever conditions the Court thinks fit. For example, the Court might require you to file your defence within a short timeframe.

There are two situations where the Court can amend a judgment rather than set it aside. If the only irregularity is that the judgment is for a greater sum than the party was entitled to, the Court may amend the judgment to the correct amount. If the only irregularity is that the judgment is for a fixed amount when it should have been for relief to be assessed, the Court can amend the judgment to an amount to be assessed.

Can a default judgment be set aside if there was no irregularity?

Yes, but it is harder. Under rule 142.12 of the Uniform Civil Rules 2020 (SA), the Court can set aside a regularly entered default judgment on other grounds, but you must prove both of the following:

1. The claim did not come to your attention, or you have another reasonable excuse for not having filed a defence; and
2. You have a reasonable basis for defending the claim, meaning you have an arguable defence

Both grounds must be satisfied. A strong defence will not help you if you have no reasonable excuse for missing the deadline, and a good excuse will not help you if you have no arguable defence to the claim.

In South Australia, the Courts take a narrow view of what counts as a reasonable excuse. Needing time to seek legal advice, needing more time to consider the claim, or wanting to negotiate with the other party are not reasonable excuses for failing to file a defence within 28 days.

Can I get more time to file a defence?

The 28 day time limit for filing a defence cannot be extended except with the agreement of the party who filed the claim or cross claim. If you need more time, the correct approach is to ask the other party (or their lawyers) for an extension before the deadline expires, and to get any agreement in writing.

You should not bank on the Court granting any indulgence after the deadline has passed. Unless there are strong grounds supporting an application to set aside a default judgment, the judgment will stand.

What should I do if I have been served with court documents?

Follow these steps as soon as you are served:

1. **Note the date of service.** Your 28 day deadline for filing a defence runs from this date. Diarise it immediately.
2. **Read the claim carefully.** Identify who is suing you, what they are claiming, and in which court.
3. **Seek legal advice straight away.** Do not wait until the deadline is close. Seeking advice takes time and is not a reasonable excuse for missing the deadline.
4. **If you dispute the claim, file a defence within 28 days.**
5. **If you need more time, ask the other party for an extension before the deadline.** If they agree, confirm the agreement in writing. If they refuse, you must still file within 28 days of being served with the claim.
6. **If a default judgment has already been entered, act immediately.** Determine whether there is an irregularity (rule 142.11) or whether you can satisfy both grounds under rule 142.12, and make your application without delay.
7. **If the judgment is for an amount to be assessed, attend every hearing.** Failing to participate in the assessment of damages means that you will not be heard and the Court may award the applicant the sum they are seeking.

Common risks and mistakes

These are the errors we see most often:

1. **Assuming you can get more time as a matter of course.** Many people assume the Court will extend the time for filing a defence if they simply need more time to consider the claim or obtain legal advice. This is incorrect.
2. **Ignoring the claim and hoping it goes away.** Court proceedings do not lapse if you ignore them. Silence leads directly to default judgment.
3. **Treating a cross claim less seriously than a claim.** Default judgment can be entered on a cross claim too, with the same 28 day deadline.
4. **Delaying an application to set aside the judgment.** The longer you wait, the harder it becomes. Eventually it will be too late altogether, including for any appeal.
5. **Failing to attend the assessment of damages.** Even where judgment has been entered for an amount to be assessed, you can still participate in the assessment. Not turning up means the amount is decided without you.

Real-world insight from Andersons

Situation: Andersons Solicitors acted for a client who obtained a default judgment after the respondent failed to file a defence within 28 days of being served. The respondent did not apply to set the judgment aside. Because the judgment was entered for an amount to be assessed, a trial was held to determine the amount of damages.

What went wrong: The respondent failed to attend the trial on the assessment of damages. Judgment was entered for over \$400,000. Much later, when our client was enforcing the judgment over the respondent's property, the respondent attended a hearing and indicated she intended to apply to set the judgment aside and needed more time to obtain legal advice.

Outcome and lesson: The Judge told the respondent it was too late to make that application. She was also out of time to appeal against the decision on the assessment of damages. Because the respondent failed to act promptly at every stage, the judgment could not be disturbed, and our client was entitled to enforce it over her assets. The lesson is simple: respond to court documents immediately, and if a default judgment is entered against you, act without delay.

Legislation and authorities

- Rule 142.11, Uniform Civil Rules 2020 (SA): application to set aside a default judgment for irregularity
- Rule 142.12, Uniform Civil Rules 2020 (SA): application to set aside a default judgment on other grounds

- Jurisdiction: South Australian courts exercising civil jurisdiction under the Uniform Civil Rules 2020 (SA), including the Magistrates Court, District Court and Supreme Court of South Australia

Setting aside for irregularity vs other grounds: a comparison

	Irregularity (rule 142.11)	Other grounds (rule 142.12)
When it applies	The judgment was obtained as the result of an irregularity, such as defective service, lack of entitlement, misrepresentation or misconduct	The judgment was regularly entered but you failed to file a defence in time
What you must prove	One or more of the listed irregularities	Both a reasonable excuse for not filing a defence and an arguable defence to the claim
Possible outcomes	Judgment set aside on conditions, or amended (e.g. to the correct amount, or to an amount to be assessed)	Judgment set aside on conditions, if both grounds are satisfied
Difficulty	Depends on proving the irregularity	Difficult; both grounds must be satisfied and the bar for a reasonable excuse is high

Frequently asked questions

What should I do when served with court proceedings?

Read the documents carefully, note the date of service, and seek legal advice immediately. In South Australia you have 28 days from service to file a defence, so acting quickly preserves your options. Do not ignore the documents, as this leads directly to default judgment.

How long do I have to file a defence to a claim?

A defence must be filed within 28 days of being served with the claim. The same deadline applies to a defence to a cross claim.

What happens if I don't file a defence to a claim?

The party who filed the claim can apply for and obtain default judgment against you without a trial. Once entered, the judgment is enforceable like any other judgment, including over your property. If the judgment is for an amount to be assessed, the Court will determine the amount, with or without your participation.

How do I get rid of a default judgment?

You must apply to the Court to set the judgment aside. Under the Uniform Civil Rules 2020 (SA), you can apply on the basis of an irregularity (rule 142.11) or on other grounds (rule 142.12), which require both a reasonable excuse and an arguable defence. Prompt action is essential, as delay can make an application impossible.

Can I challenge a default judgment?

Yes, by applying to set it aside under rule 142.11 or rule 142.12 of the Uniform Civil Rules 2020 (SA). Whether the challenge succeeds depends on whether there was an irregularity, or whether you can prove both a reasonable excuse for not filing a defence and an arguable defence to the claim. Legal advice should be obtained as soon as the judgment comes to your attention.

Can I get more time to file a defence?

Only with the agreement of the party who filed the claim or cross claim. The Court does not routinely extend the 28 day deadline, and needing time to consider the claim, seek legal advice or negotiate is not a reasonable excuse for missing it. If you need an extension, ask the other party before the deadline and confirm any agreement in writing.

Can I appeal against a default judgment?

The usual path is an application to set the judgment aside rather than an appeal, although appeal rights may exist in relation to related decisions such as an assessment of damages. Appeals are subject to strict time limits, and being out of time can permanently close off this option. Get advice promptly to identify the right pathway for your circumstances.

Next steps

If you have been served with court documents, do not wait. Contact the [commercial disputes and litigation team](#) at Andersons to arrange an appointment as soon as possible to ensure that deadlines are not missed. You can learn more about our [commercial and business law services](#) or [contact our Adelaide office](#) to get started.

This article is general information only and is not personal legal advice. Your circumstances may affect how the law applies to you. For advice specific to your situation, contact Andersons Solicitors.

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