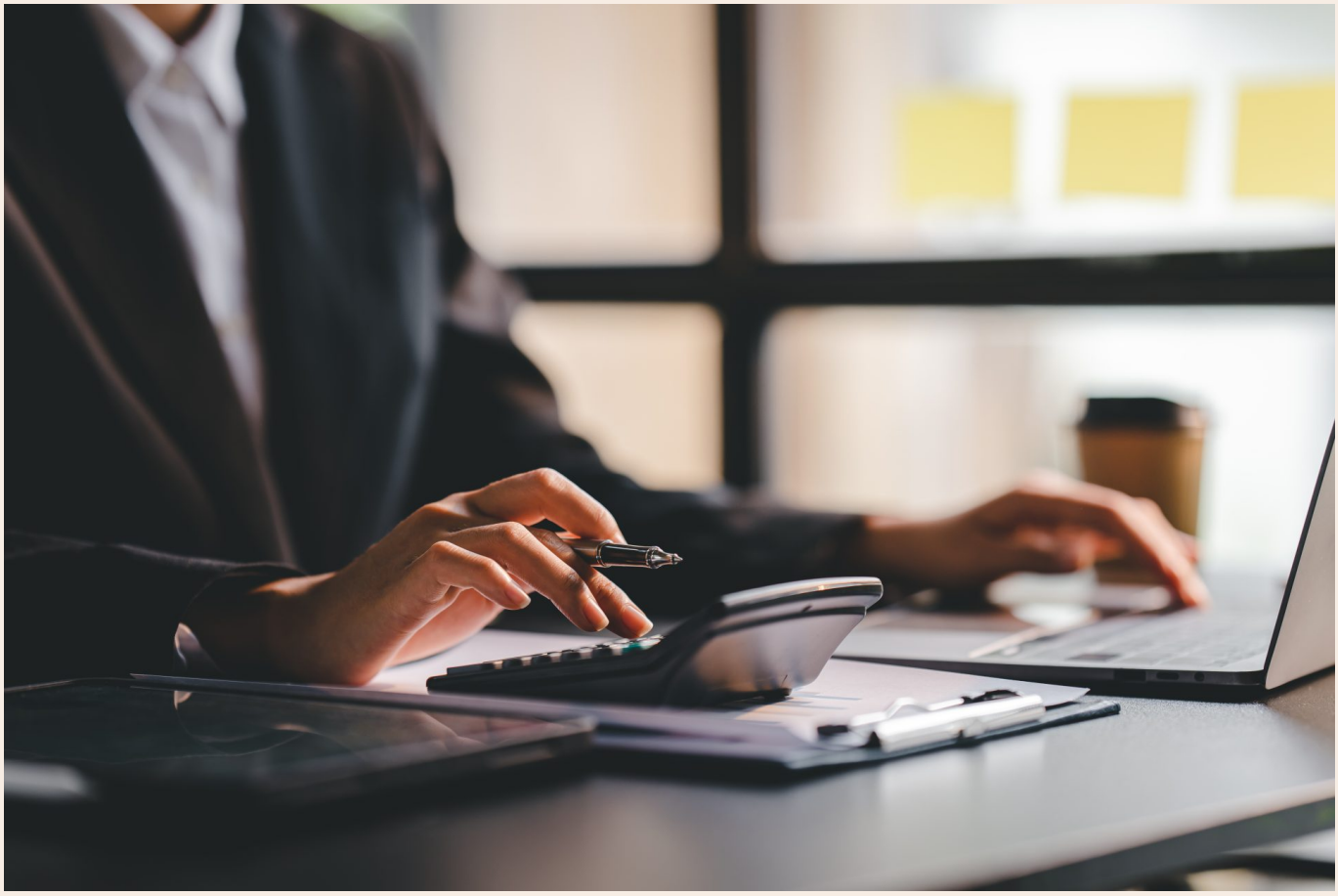


Recovery of Business Debts

One of the most frustrating aspects of running a business is chasing debts. Unpaid debts impact cash-flow and can be difficult and time-consuming to collect. And crucially, it is disappointing when you have put hard work into providing goods or services to someone, only for them to refuse or fail to pay you.

This article provides an overview of the common processes involved in recovering a debt where the debt is not genuinely disputable.

Step 1: Contact the Debtor

Communication is often key to staying on top of debts. Even before an invoice is rendered, it is important to ensure customers are aware of your fees, so they don't suffer bill-shock when they receive your invoice.

If an invoice is not paid by the due date, a friendly follow up is often useful in reminding debtors of their invoice. Ensure you follow up on or as soon as possible after the due date, so the invoice and your work is still front of mind for the customer.

Ensure all communications with the customer are documented. Written communication is useful in proving a customer has received your invoice and follow ups. If you discuss an unpaid invoice with a customer by telephone, ensure you keep accurate file notes of your discussions.

Step 2: Final Notice

The first step in formally recovering a debt is to issue a Final Notice under rule 332.2 of the Uniform Civil Rules 2020 (SA) ('Court Rules').

In South Australia, the Court Rules require you to give a debtor 21 days' notice before issuing court proceedings to recover the debt.

This is generally done by way of a Form P1 Final Notice (available at courtsa.gov.au) which is filed with the court and then served on the debtor. This Final Notice puts the debtor on formal notice of the debt and requires payment within 21 days. Alternatively, you can send a letter of demand, but it is important to ensure that the contents of that letter complies with rule 332.2 of the Court Rules.

If legal proceedings are instigated later, it is important to show that the Final Notice was properly served on the debtor, and that you have attempted to resolve the dispute before filing a claim.

If the debtor does not respond to your Final Notice (despite receiving it), or provides a response that is unacceptable to you, you may commence court proceedings 21 days after issuing your Final Notice.

If the debtor agrees to make periodic payments (i.e. a payment plan), it is best to record this agreement in writing and have the debtor sign it. Include details such as the total amount the debtor owes you and the payment instalments.

Step 3: Commencing Court Proceedings

If the debtor hasn't paid within 21 days of receiving your Final Notice, you will need to decide whether to issue court proceedings to attempt to recover the debt. It is important to consider:

- The amount of the debt;
- Whether the debtor actually has an ability to make payment;
- The fees you may incur in recovering the debt; and
- The fees you may recover from the debtor if successful (in our experience, this is generally limited).

Claims of up to $12,000 are dealt with by the Minor Civil division of the Magistrates Court. This jurisdiction is a self-represented jurisdiction, meaning parties are not generally represented by lawyers (but can be assisted in the preparation of documents or general advice).

Claims of between $12,001 and $100,000 are dealt with by the Magistrates Court (general division), and claims of greater than $100,000 must be made in the District Court.

If the debtor is a company owing more than $4,000 and the debt cannot be disputed, you may be able to issue a Statutory Demand under the Corporations Act 2001 (Cth). This is a process which is separate to issuing a Claim in the South Australian court jurisdiction and can lead to orders to wind up the company. We recommend obtaining legal advice before issuing a Statutory Demand.

Step 4: Progressing your Claim OR Default Judgment

If the debtor files a defence to contest the proceedings, your claim will need to progress through the usual court process, including hearings, exchange of documents, mediation and potentially a trial.

If the debtor does not file a defence to your claim within 28 days, and you can prove that the claim was validly served on the debtor under the Court Rules, you may apply to the Court for a judgment in default. If granted, the court will issue a judgment in your favour for the value of your Claim.

Step 5: Enforcement of Judgment

If you are successful in obtaining a judgment against a debtor, the next step is to enforce that judgment in order to actually get paid.

There are a number of enforcement options, including Investigations Summons, Examination Summons, Warrant of Sale, Charging Orders and Garnishee Orders. We recommend obtaining legal advice before commencing enforcement proceedings.

How can Andersons' help?

Andersons' commercial litigation team is highly experienced in matters relating to debt collection. If you would like more information about this article of require assistance in recovering a debt, please reach out to **Kira Millikan** or any one of our commercial lawyers by calling 8238 6666 or email enquiry@andersons.com.au.