

Tips for serving a defendant

Sometimes it can be hard to serve a defendant. This infosheet may help you serve a defendant in a civil case, including if you are having trouble finding the defendant or they are avoiding service.

Serving a court document

If you have filed a claim in the Magistrates Court of WA, the next step is to give the defendant a copy of the claim against them. This is called 'serving the claim'.

Serving a claim is very important, as you cannot do anything else to progress your case until the defendant has been served with the court documents. There are special rules about how you can serve your claim on the defendant.

The Magistrates Court of WA has a [fact sheet](#) on serving a court document, including the most common ways of serving an individual, a corporation, a strata title company and an incorporated association.

Ways to find a defendant's address

If you don't know the address of a defendant for a civil claim, you can try some of the following ways to find the address:

- You can use the Australian Securities and Investments Commission's website to find out valid names and addresses for business and companies:
<https://asic.gov.au/online-services/search-asics-registers/>
You may have to pay to access more detailed information if needed.
- If you have the name of a business or company you can do a search on <https://abr.business.gov.au/> to find out the correct Australian Business Number (ABN) or

Australian Company Number (ACN). This should be provided in your claim.

- You can do a [Consumer Protection licence and registration search](#). The online licence search can help you find a licensed car repairer, real estate agent, settlement agent, land valuer, car dealer, employment agent, debt collector or charity. However, the specific addresses are not provided.
- The State Electoral Roll, containing names and addresses, is available for public inspection at the [Commission's office](#) and offices of the [Australian Electoral Commission](#). You will not be able to find an address if the defendant is not registered to vote or is a silent voter.
- You can pay for a private investigator.
- You may be able to find the address through close friends or family of the defendant.
- You can search online through social media platforms, such as LinkedIn and Facebook.

Can a bailiff help?

A bailiff is a court officer who you can pay to serve court documents on your behalf. The bailiff has a responsibility to ensure that documents are served correctly.

What a bailiff can and can't assist with

If the bailiff attends at a residential or business address, being the last known address of the defendant, and the person there indicates that the defendant is no longer there, the bailiff may be unable to effect service.

The bailiff is likely to try to establish whether the person who is now there knows the defendant and

whether the document can be left there, so that person will bring it to the attention of the defendant. As the defendant generally must lodge a notice of intention to defend within 14 days, the bailiff needs to be sure that the claim will come to the attention of the defendant.

If the bailiff establishes that the claim is not likely to come to the attention of the defendant within the time to lodge a response the bailiff will err on the side of caution and lodge a certificate of non-service.

A bailiff cannot insist that a person accept service for the defendant if the person over the age of 18 objects and does not demonstrate a willingness to pass the claim on. In that situation, there would not be effective service.

What if I can't serve the defendant in person?

If you can't find a defendant to serve in person, you can apply for substituted service.

If a defendant deliberately avoids service, or it is impractical or ineffective to serve the document as required, you can apply for an order for substituted service. This may allow for getting the court documents to someone else who will see the defendant.

In both minor case claims and general procedure claims in the Magistrates Court of WA, an application for substituted service must be lodged with a supporting affidavit. You must complete a Form 23 Application, which sets out the orders being sought, and a Form 2 Affidavit.

If you can't find a defendant to serve in person you can apply for substituted service.

The application should seek an order that the matter be heard without the parties being present, and whichever of the following orders, or whatever other orders to achieve service, are applicable:

- that postal service (or by email or text message) be good and sufficient service,
- that personal service on a nominated party be good and sufficient service,
- that an advertisement in the nominated newspapers (a copy of the proposed advertisement should be attached) be good and sufficient service.

The affidavit should contain:

- Details of your attempts at service. You must show that you have made considerable efforts to serve that have been unsuccessful.
- The relationship of the person on whom substituted service is proposed, to the defendant.
- How you know the defendant is living at that address.
- That the defendant is known to be within the jurisdiction of the court, for example, that they are in the State.
- What knowledge you have that the nominated person is in contact with the defendant.

The application does not need to be served on any other party and can be dealt with in the absence of the parties.


The magistrate may then order that the claim be served as requested or ask you to keep trying to serve the claim in person.


You can also make an application, if it is appropriate in the circumstances, that you do not have to serve the defendant.

Where can I get more information?

You may be able to get legal advice from our Civil Law Division or through a Virtual Office appointment. To access our service, [call our Infoline](#) or [Legal Yarn](#) (for First Nations callers).

LEGAL AID WA CONTACTS

 **Infoline:** 1300 650 579

 **Legal Yarn:** 1800 319 803 (for First Nations callers)

 **Website/InfoChat:** www.legalaid.wa.gov.au

Interpreting and relay services to help you contact us:



Translating & Interpreting Service: 131 450

National Relay Service: 133 677

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32 St Georges Terrace,
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1300 650 579
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Goldfields Office

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KALGOORLIE WA 6530
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Midwest & Gascoyne Office

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273 Foreshore Drive,
GERALDTON WA 6530
(08) 9921 0200

East Kimberley Office

98 Konkerberry Drive,
KUNUNURRA WA 6743
(08) 9166 5800

West Kimberley Office

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15 – 17 Dampier Terrace,
BROOME WA 6725
(08) 9195 5888

Southwest Office

7th Floor, Bunbury Tower,
61 Victoria Street,
BUNBURY WA 6230
(08) 9721 2277

Great Southern Office

Unit 3, 43 – 47 Duke Street,
ALBANY WA 6330
(08) 9892 9700

Pilbara Office

28 Throssell Road
SOUTH HEDLAND WA 6722
(08) 9172 3733

Indian Ocean Office

Administration Building,
20 Jalan Pantai,
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