

Defending a civil case in the Magistrates Court of WA

If you have received a general procedure or minor case claim about a debt, this information explains what options you have, and the first steps you could take. It is important to get legal advice before responding. It does not cover responding to a consumer/trader claim.

Please note there are differences in the process and forms used depending on whether your case is a general procedure, a minor case or a consumer/trader claim.

This infosheet cannot replace legal advice. Getting legal advice as soon as possible about your individual situation is important.

I have received a claim. What are my options?

Read it carefully.

It will state the time limit for completing and lodging a response to the claim.

You have several choices depending on whether you agree you owe some, all or none of what is claimed. You can:

- Defend the claim. This means you do not agree with the claim (see heading below What if I disagree with all of the claim?).
- Agree you owe the full amount of the claim and costs.
- Agree you owe part of the claim and costs.
- Admit liability but dispute the amount in a claim for an unliquidated (unspecified) amount.
- Ignore the claim (Legal Aid WA does not advise this option). In this case the claimant may make an application for default judgment (judgment given in a party's favour without a trial) to be given against you for the claim, costs and interest.

There are different "response" forms depending on the type of claim.

Should I get legal advice?

You should get legal advice about:

- whether you have a defence to the claim, including whether it is within time
- your chances of success at trial.

In some cases you may need legal advice on whether you have a counterclaim or need to add a third party.

In a minor case claim a lawyer cannot represent you or the claimant unless all the parties and the court agree. You can and should still get advice from a lawyer.

It is not a defence that you cannot afford to pay. For what to do in this situation see below under the heading *What if I agree I owe all the amount claimed?*

You should get legal advice about:

- Whether you have a defence to the claim, including whether it is within time
- Your chances of success at trial.

What if I disagree with all of the claim?

You should get legal advice.

The time to lodge a response to the claim is usually within 14 days of service of the claim on you.

If you don't lodge the response within the time limit, judgment can be entered against you.

You may defend the matter. Alternatively, you may "defend and counterclaim" if you believe:

- the claimant owes you money or damages, or
- the claimant's claim should be reduced by an amount they owe you.

It is important to seek legal advice before applying to make (in a minor case claim) or making a counterclaim in a general procedure claim.

You may also want to make a third party claim. Get legal advice before doing this.

There are rules about making these claims.

The rules about making a counterclaim or a third party claim are different in minor case and general procedure claims.

If there is no time to get legal advice before the time limit runs out, and you believe the claim is wrong, you should:

- fill in the "Intention to Defend" sections for a minor case claim or for a general procedure claim as applicable and lodge the response form with the court, and
- get legal advice as soon as possible.

Lodging your documents

Your response and other documents lodged during your case must be lodged on the eCourtsPortal at: <https://ecourts.justice.wa.gov.au/eCourtsPortal/> together with any fee required. You must register to lodge any documents.

If you cannot lodge electronically you can ask for an exemption for one document or all documents in your case. You must apply on the approved form (Form 69) giving your reasons for needing the

exemption. A registrar may grant your application. The court can also for any good reason, and without you formally applying or asking, exempt you from lodging a document or documents electronically.

If you are exempted from lodging a document electronically, the court or a registrar may give directions to you about how to lodge the document. This could include over the counter at the court, by post, by email or by fax.

Minor Case claims

If you do not agree with the claim against you and want to defend it, you should:

- fill in the "Intention to Defend" on the *Form 15A Response to Minor Case Claim* form, Part H *Response to Claim* (which is an affidavit) and Part I if you want to request to make a counterclaim or third party claim, and
- lodge it with the court within the time limit.

Keep a photocopy of the claim and the response if you can't lodge electronically.

General Procedure claims

If you do not agree with the claim against you and want to defend it, you should:

- fill in the "Intention to Defend" Part F on the "Response" form, and
- lodge it with the court within the time limit.

What if I agree I owe all of the amount claimed?

If you agree the claim is owed you can:

- pay the claim in full immediately, or
- if you can't pay immediately, make an offer of repayment.

If you can pay the claim including costs in full, payment should be made to the claimant or their lawyer before the date your response is due. Make sure you get a receipt. Otherwise you can fill in a *Response to Minor Case Claim Form 15A* or *Form 15 Response to General Procedure Claim* as

applicable within the 14 days and state the date by which you will pay in full.

If you cannot pay in full immediately and want to arrange a payment plan you should contact the claimant. If you cannot arrange a payment you may need to lodge a *Form 15A Response to Minor Case Claim* or *Form 15 Response* putting forward an offer of repayment. In this case you should:

- fill out the first part and then Part F “Admission of Minor Case Claim” or Part F “Admission of General Procedure Claim” form and sign the form
- lodge the response with the court within the time period, and
- keep a copy.

You should include any offer to pay in full or by instalments. Think carefully about what you can afford to pay. Any offer to pay by instalments should be realistic.

Judgment will be entered into the court's records against you for the debt and the costs.

The claimant can enforce a judgment made this way in the same way as if it were a decision by a magistrate at trial.

What if the claimant won't agree to me paying by instalments?

The claimant may accept your admission but refuse to accept your proposal for repayment by instalments.

The claimant can go ahead to enforce the total judgment debt. The court will decide if you can pay in full or by instalments or in some other way.

What if I agree I owe part of the amount claimed?

If you believe that you do not owe the claimant the whole amount claimed, you may admit to part of the claim. To do this:

- Complete Part F “Intention to Defend Minor Case Claim” Form 15A or Form 15 Response to General Procedure Claim, ticking the box next

to “I admit liability for part of the claim and intend to defend the balance of this claim”. You can also offer an amount as full satisfaction of your claim in your response. You should briefly outline the basis on which you admit part of the claim so the claimant can better consider your offer.

- Lodge the response with the court within the time period.
- Keep a copy.

Get legal advice if you are unsure which section to complete.

The claimant may accept your offer in full satisfaction.

If the claimant refuses to accept your admission to part of the debt and your offer in full satisfaction, then the case will continue through the court.

At trial the claimant will still have to prove that you owe them the whole amount. For example, they cannot argue that because you agreed to \$1,000 of a \$5,000 claim that they must now only establish that you owe the remaining \$4,000.

If the claimant is prepared to accept the amount you have admitted to as satisfying their claim, judgment will be entered into the court's records for the amount you admitted and costs.

What if I admit liability but dispute the amount claimed?

This can happen when an unliquidated (unspecified) amount is claimed because an exact amount is not known at the time the claim arose, for example, with damage from a motor vehicle accident.

You need to lodge your response indicating you admit liability but that you do not agree to the amount sought and apply to the court to work out the amount that should be awarded for the claim.

With a minor case claim, the court will list the case for a status conference and let you and the claimant know when and where it is in writing. With a general procedure claim, the registrar will

list the case for a pre-trial conference and let you and the claimant know in writing when and where it is.

What if I don't get my response in on time?

If you fail to respond to the claim within time (usually within 14 days of service of the claim on you), the claimant can ask the court to enter judgment against you by lodging an application for default judgment. This means asking the court to decide you owe the money claimed without a hearing.

If you have a default judgment entered against you, you may seek to have that judgment set aside and be allowed to defend the matter. The court will set aside the judgment in certain circumstances. You must apply within 21 days after the judgment was given or such other date as the court allows.

It is important to seek legal advice about whether you are likely to succeed before applying to have a default judgment set aside.

Can I lodge my response late?

Yes, if the claimant has not applied for default judgment you may still lodge the response even if the time limit for filing it has expired. It is rare for the claimant not to apply for a default judgment as soon as the time for entering a defence has expired.

“It is rare for the claimant not to apply for a default judgment as soon as the time for entering a defence has expired.”

What is summary judgment?

In general procedure claims where the claimant considers that the defence has no reasonable

chance of succeeding, they may apply to the court for judgment without a trial. This is called applying for summary judgment.

A defendant may also apply for summary judgment in general procedure claims.

The court may make an order for summary judgment if:

- you don't satisfy the court that your defence has a reasonable prospect of succeeding, or
- the claimant doesn't satisfy the court that the claim has a reasonable prospect of succeeding.

Get legal advice:

- before applying for a summary judgment as there may be costs involved, or
- if you receive notice of a summary judgment hearing, or
- if a summary judgment is made against you.

You can apply to get the summary judgment set aside. The application must be made within 21 days after the date of the judgment. Get legal advice if you are out of time.

When does an assessment of damages happen?

See the fact sheets on the Magistrates Court of WA website for information on when an assessment of damages in court may be needed. The processes are different in minor case and general procedure claims.

What if I think the claim is not listed at the right Magistrates Court?

If you think the claim should have been started at another Magistrates Court, you can apply for a change of venue. Complete the Response form part "Application in Support of Change of Venue".

You must:

- say on the form that you object to the venue, and

- state which Magistrates Court you believe it should be held in.

You will then need to complete the affidavit in support of your application that tells the court why you think the venue should be changed.

An affidavit is a written statement of evidence. You must swear or affirm that the affidavit is true in front of a registrar, justice of the peace or an authorised witness. It is a criminal offence to make false statements in your affidavit.

What does the court consider in working out which is the “right” court to list the case at?

The court has the power to change the venue if it would be more convenient or fair to the parties to do so.

Notice of the objection is then sent to the claimant who has a chance to argue why they believe the location is correct.

If the claim has been started at the Magistrates Court:

- nearest to your home or business address which existed not more than six months before the claim was lodged, or
- the place where the claim arose either wholly or in part

the court will be unlikely to change the venue.

The registrar will notify you of the court’s decision.

What happens after I lodge my response to a claim?

When you have lodged your response, the registrar will give a copy of your response to the claimant and any other parties.

Minor case claims

For minor case claims the registrar must within 14 days after a defendant lodges a response, list the case for a status conference.

The registrar will let you know in writing when and where your conference is on.

A status conference is listed before a magistrate. The purpose of this conference is to give the parties a chance to settle the case.

General procedure claims

In general procedure claims, unless the claimant lodged and served a “statement of claim” with their claim, they must do so:

- within 14 days after receiving your response that indicates an intention to defend the claim, or
- such other time as is ordered by the registrar.

The statement of claim sets out their case against you.

In general procedure claims, you may lodge and serve a “statement of defence” or “statement of defence and counter claim” with your response. Otherwise, it must be lodged and served within 14 days, or such other time as is ordered by the registrar, after you are served with the relevant statement of claim.

For general procedure claims (including general procedure consumer/trader claims), if all parties agree, a party can apply to the court for a registrar to list the case for pre-trial conference after the claimant has lodged and served their claim but before the claimant is served with a statement of defence, or a statement of defence and counterclaim. If this application is not made, within 14 days after being served with a statement of defence, the claimant must ask the registrar to list the case for a pre-trial conference using a *Form 28*.

A pre-trial conference is a meeting between the parties to try to settle a case. It is held before a registrar.

What is a “statement of defence”?

In a general procedure claim, if you are defending a claim you will be required to complete and lodge a statement of defence (or statement of defence and counterclaim) on the approved form. This should set out why you are arguing against the

claim. Unless otherwise ordered by a registrar, it must include:

- the material facts relevant to your defence;
- any necessary particulars of your defence;
- the legal basis of your defence; and
- the details of anyone you allege is liable for the claim and the basis for saying this.

It is not to include evidence. Its purpose is to help to narrow the issues in dispute between you and the claimant and sets out your case.

If you fail to lodge a statement of defence within the required time the claimant may apply for default judgment against you.

Get legal advice before you complete your statement of defence.

A judgment has been made against me. What does that mean?

If a judgment has been made against you, the claimant will be called the *judgment creditor* and you are the *judgment debtor*.

The judgment creditor can ask the court to enforce the judgment against you.

Enforcement may include:

- selling your personal property or real estate
- you having to go to the court to give details of your income and assets
- your employer having to pay some of your wages towards the judgment debt
- more costs for you to pay.

If a judgment has been made against you, and:

- you don't understand, or
- you don't have money to pay

get legal advice.

Don't ignore the judgment.

What legal costs may be involved?

General procedure claim

The magistrate will usually order the loser to pay the winner's fees and legal costs – including lawyer's fees if lawyers represent one or both parties.

Minor case claim

Lawyers are not allowed to represent you before the court unless the court gives you permission and all the parties agree. The magistrate will usually order that the loser pay the winner's allowable costs. Allowable costs are court and service fees. In some limited cases lawyer's costs can also be ordered.

Settling a case

Civil disputes in the Magistrates Court can be settled at any stage until judgment is given.

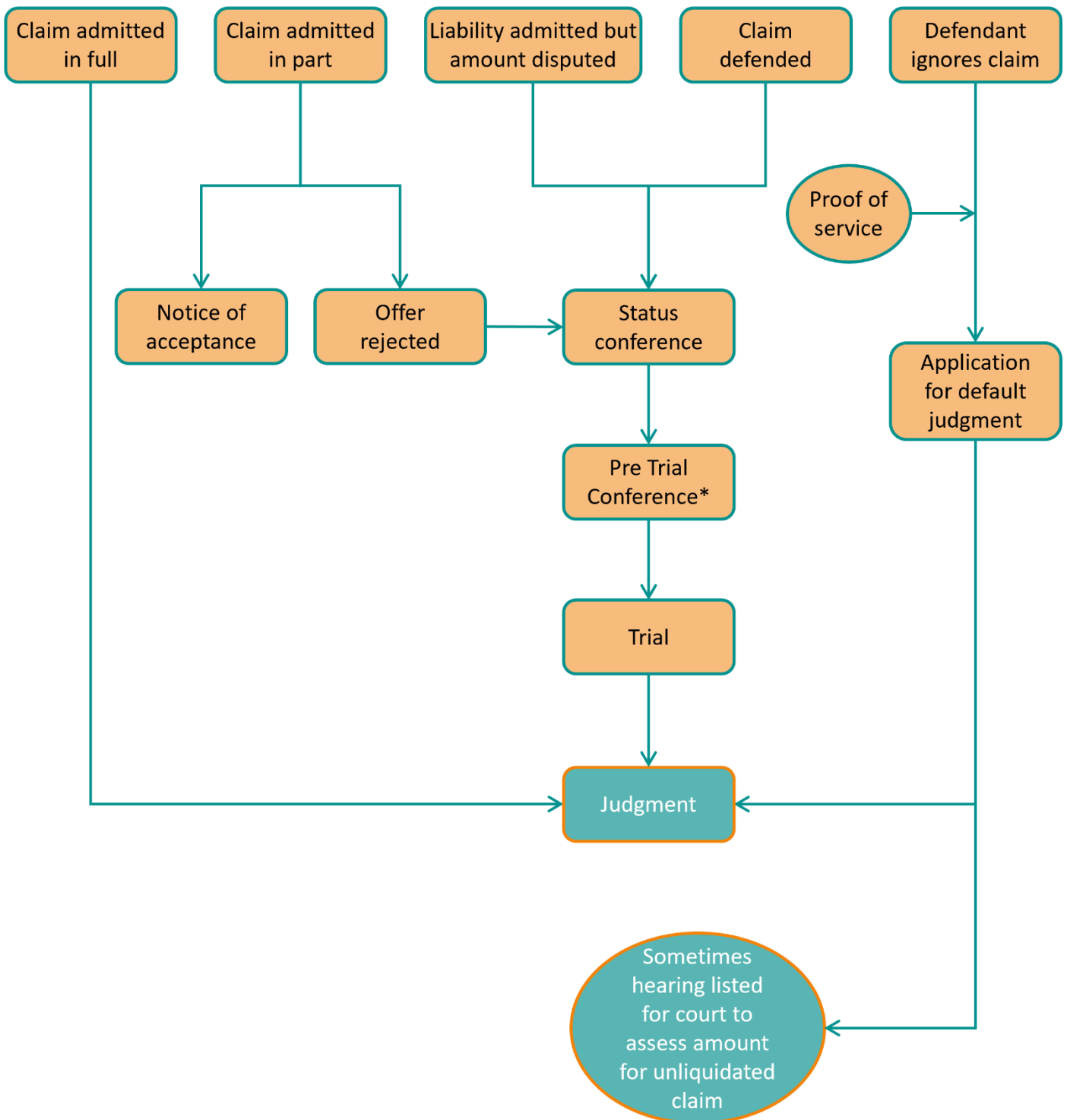
The earlier settlement takes place, the less the costs will be.

If your defence has no legal merit you should settle the matter as soon as possible even if it means paying all or some of the other parties' costs to the date of settlement.

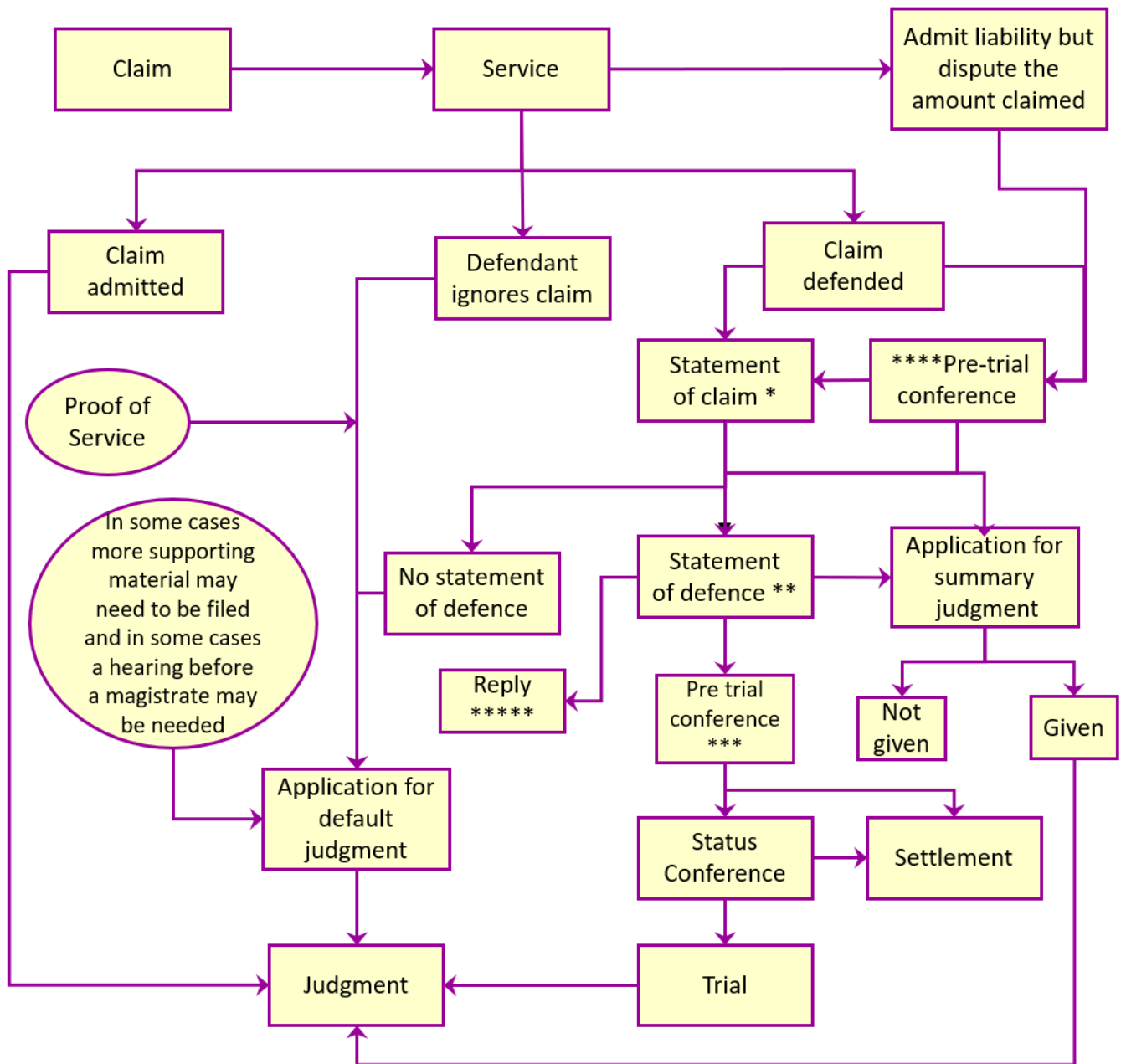
Where can I get more information?

- Contact Legal Aid WA's Infoline on 1300 650 579 for information and referral.
- Go to the Magistrates Court of WA website at: <https://www.magistratescourt.wa.gov.au/> or a court registry office for more information including fact sheets and the forms you may need.

Minor case claim procedure



General procedure claim process



Notes

- * A statement of claim may be lodged and served with the original claim. Otherwise a statement of claim must be lodged and served within 14 days after receiving the defendant's response that indicates an intention to defend the claim, or such other time as is ordered by the registrar.
- ** A statement of defence may be lodged and served with the notice of intention to defend. Otherwise it must be lodged and served within 14 days, or such other time as is ordered by the registrar, after the party is served with the relevant statement of claim.
- *** The claimant must ask a registrar to list the case for pre-trial conference within 14 days after the claimant is served with a statement of defence if one has not been requested by a party earlier.
- **** An early pre-trial conference can be agreed to by both parties before claimant is served with a statement of defence or statement of defence and counterclaim.
- ***** Within 14 days of being served with statement of defence, claimant may lodge & serve on defendant a reply to statement of defence

Note : this flow chart does not cover lodging a counterclaim or adding a third party

LEGAL AID WA OFFICES



Infoline: 1300 650 579



Translating & Interpreting Service:
131 450



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



National Relay Service: 133 677
(for hearing and speech impaired)

Perth Office

32 St Georges Terrace,
Perth, WA 6000
1300 650 579
(08) 9261 6222

Midwest & Gascoyne Office

Unit 8, The Boardwalk,
273 Foreshore Drive,
Geraldton, WA 6530
(08) 9921 0200

West Kimberley Office

Upper Level, Woody's Arcade,
15-17 Dampier Terrace,
Broome, WA 6725
(08) 9195 5888

Great Southern Office

Unit 3, 43-47 Duke Street,
Albany, WA 6330
(08) 9892 9700

Goldfields Office

Suite 3, 120 Egan Street,
Kalgoorlie, WA 6430
(08) 9025 1300

East Kimberley Office

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

Southwest Office

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

Pilbara Office

28 Throssell Road,
South Hedland, WA 6722
(08) 9172 3733

Indian Ocean Office

Administration Building,
20 Jalan Pantai, Christmas Island,
Indian Ocean, WA 6798
(08) 9164 7529

This information contains a summary of the law and is correct at the date of publication. It is not legal advice. You should always seek legal advice about your individual situation. Any services referred to which are not operated by Legal Aid Western Australia are not endorsed or approved by Legal Aid Western Australia. ©Legal Aid Western Australia. This information sheet may be copied, reproduced or adapted to meet local needs by community based organisations without permission from Legal Aid Western Australia provided the copies are distributed free or at cost (not for profit) and the source is fully acknowledged. For any reproduction with commercial ends, or by Government departments, permission must first be obtained from Legal Aid Western Australia.

CMS: 2995952v4