

Starting a general procedure claim in the Magistrates Court of WA



If someone owes you a debt under \$75,000 this sheet will give you some information about steps you may wish to take to recover the amount. It covers starting a general procedure claim in the Magistrates Court of WA ('the Magistrates Court'). If your claim is a consumer/trader claim there are some differences in procedure not covered here.

If you are starting a claim in the Magistrates Court you are called the "claimant". The person you bring the claim against is called the "defendant".

Where do I start?

Get legal advice about writing a letter of demand

Taking a case to court should be a last resort. Before starting a case in the Magistrates Court, you should write a **letter of demand** to the other party saying there is a debt and that you want them to pay it.

You must write a letter of demand if you want to recover the costs of lodging the claim from the defendant.

The letter of demand should:

- prove the person owing the money (the defendant) knew the debt had to be paid, or provide details of how the debt arose
- clearly set out the relevant dates, agreements and amounts
- include **copies** of quotes or invoices if applicable
- include a clear timetable for action you may take unless settlement proposals are received, and
- be sent by registered mail and the signed postal receipt kept.

Keep copies of all letters sent to the other party.

You need to decide if you want your letter to be "without prejudice".

"Without prejudice" is a statement made when you don't want to affect your legal rights. It means you

don't intend to harm your existing rights or claims with what you say in the letter if the dispute later needs to be settled in court.

If you write a letter saying, "without prejudice" it cannot be used in court as evidence against you. You can still bring the letter into court but you can't give it to the magistrate as evidence. You can refer to it but only to show that you tried to negotiate a solution.

You may decide to not put "without prejudice" in your letter if you think you may want to present the letter in court as evidence. If you are not sure what is best for you in your case you should get legal advice.

What if I do not get the response I want to my letter of demand?

Check the basis of your claim

You should always seek legal advice before going to court.

Some of the things you may need advice on include:

- Negotiating an agreement with the other person. Any legal action can be costly, time consuming and stressful.
- If an offer of settlement has been made, whether you should accept it.
- Whether there is a legal basis to your claim.

- The “proof” or “evidence” you need to support your claim.
- Whether you are within the time limit to start a claim.
- The chances of your claim being successful.
- The costs involved in going to court.
- Which procedure in the Magistrates Court you should follow to make your claim.
- Where to lodge your claim.

Are there time limits for taking action?

Most legal proceedings must start within a certain period of time.

In some circumstances special considerations apply to actions concerning children and people with mental disabilities.

In some cases, the court may extend these time limits. In some cases, the time limit cannot be extended and you will be unable to have the court hear your case.

Seek legal advice as soon as possible about:

- what these time limits are
- what to do if you are outside a time limit.

What are the different ways a claim can be dealt with in the Magistrates Court?

There are two ways a claim can be made in the Magistrates Court. You may choose to have your claim heard as a minor case or as a general procedure claim.

The Magistrates Court of WA:

- Does not hear disputes concerning the meaning of wills, titles to land, defamation, or personal injuries from a motor vehicle accident.
- Can deal with claims for debt or damages, including disputes between a consumer and a trader over the sale, supply or hire of goods or services, up to \$75,000.
- Cannot deal with a claim that the Building Commissioner or the State Administrative Tribunal (SAT) can deal with under the *Building Services (Complaint Resolution and Administration) Act 2011 (WA)* [BSCRA Act]. As it is complicated which cases can be dealt

with you should get legal advice before starting any court action about a building dispute.

- If appropriate, can transfer a case to the Building Commissioner to be dealt with as a complaint under section 55(2) of the BSCRA Act.

The Magistrates Court can deal with some residential tenancy disputes. The procedure for these is not covered in this information sheet. It can also deal with a claim by a property owner to recover possession of real property in some situations. This is also not covered here.

Minor case

You can choose to have your claim for a debt or damages heard as a minor case if it is for an amount of up to \$10,000.

The process in a minor case is informal and proceedings are not as complex as in those under general procedure.

Legal representation is not allowed unless all parties and the magistrate agree.

To find out about minor cases see the Legal Aid WA information sheet: **Starting a minor case claim in the Magistrates Court**. See under the heading **Where can I get more information?** for how to obtain a copy.

General procedure

A general procedure claim deals with a dispute about an amount up to \$75,000.

The procedure in a general procedure case is more formal than in a minor case.

Legal representation is allowed and where the claim is above \$10,000, the loser usually pays the winner’s legal costs. Special rules called the ‘rules of evidence’ apply at the trial.

A claim of \$10,000 or less can still be started as a general procedure claim, but in most cases, if you have a lawyer, you will have to pay your own legal costs even if you win.

What court fees will I have to pay?

Generally, court fees are payable in a general procedure claim in the Magistrates Court when:

- lodging a claim
- an enforcement officer, eg a bailiff, serves the claim
- listing the matter for a pre-trial conference
- listing the matter for trial, and
- seeking to have judgment enforced.

Fees are also payable for:

- an application for default judgment
- an application for summary judgment, and
- other applications to the court.

You do not have to pay the fee if you are under 18 when it is payable.

When you may be eligible to pay a set reduced fee

If you are an “eligible individual” you will only pay a set reduced fee (where applicable).

You are an “eligible individual” if:

- you have one or more of the following cards:
 - a health care card
 - a health benefit card
 - a pensioner concession card
 - a Commonwealth seniors health card, or
 - a card issued by Centrelink, or the Department of Veterans' Affairs, that certifies entitlement to Commonwealth health concessions

or

- if you are:
 - getting Austudy, a youth training allowance or Abstudy

and your eligibility is confirmed by the court with the Department of Human Services

or

- if you are a person who has a grant of legal aid for the proceedings.

If you are not eligible in these ways, you can apply to a registrar or the court for a direction that you are an “eligible individual”. The court or a registrar may direct that you are an “eligible individual” if it is agreed that the full fee would cause you financial hardship and/or that it is in the interests of justice that you pay the set reduced fee.

Ask at the court registry for the form you need to use.

What about my legal costs in a general procedure claim?

The magistrate will usually order the loser to pay the winner’s court fees and legal costs – including lawyer’s fees if lawyers represent one or both parties. Not all your legal costs may be covered by this order.

Usually if the amount you are claiming is \$10,000 or less each person must pay their own lawyer’s fees.

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 case 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.

Which Magistrates Court should I start my claim in?

You can lodge your claim at any Western Australian Magistrates Court registry except one where the only registrar is a member of the police force who has been appointed as a deputy registrar.

When you can, it is best to lodge your claim in the Magistrates Court nearest to either:

- the home or business address of the defendant which existed not more than six months before the claim was issued, or
- the place where the claim arose either wholly or in part.

The defendant can object to the court you have started your claim in and ask for the matter to be shifted to another court. If you have started in one of the places suggested above, the court is

unlikely to shift the claim. The court will decide which court location is more convenient and fair for all parties.

A decision by a magistrate on an application to change a venue cannot be appealed.

How do I start the claim?

A case can be started in the Magistrates Court by lodging and serving a general procedure claim (Form 3). The claim can be lodged online if you have a valid credit card. If it is a consumer/trader general procedure claim a different form (Form 7) is required.

The following information must be provided when lodging the claim:

- The identity of the defendant. **It is essential that the defendant is correctly identified on the claim. Get legal advice if you are not sure who the correct defendant is.**
- **Full names and addresses of all parties** including all the partner's names if you are making a claim against a partnership and the Australian Company Number (ACN) if making a claim against a company.

and

- A summary of what is claimed.

When starting the claim, costs for things such as:

- service fees
- costs associated with transporting witnesses
- arranging quotes, etc

may be claimed and added to the amount sought. You do not have to specify the amount of costs. Write on the claim that you are claiming **costs**.

Interest may also be claimed from the date the claim arose. Write on the claim that you are claiming interest.

Each copy of the claim must be signed unless you lodge your claim electronically. Photocopies and carbon copies of signatures are not acceptable. You can use the following Australian Securities and Investments Commission website to find out valid names and addresses for business and companies: <http://www.asic.gov.au/> under the headings ASIC Connect>Search ASIC Registers.

Who can I make a claim against?

Claims can be made against the following people or organisations:

- individuals (get legal advice about making a claim against a child because special rules apply)
- partnerships
- companies
- certain corporations such as hospital boards, local governments, etc
- incorporated associations such as social clubs, churches, etc.

In some circumstances you may name more than one defendant on the claim. This is called joining defendants. Joining defendants may be done when a claim is lodged or later.

Legal advice should always be sought before joining defendants.

What do I do after lodging my claim?

You have to "serve" your claim on the defendant. This means "give" your claim to the defendant. There are special rules for serving a claim. The rules for serving other documents in your case may be different.

You must serve your claim as soon as practicable. It has to be served within one year after the day on which you lodge it.

The following information is about **servicing a claim on an individual**. If you need to serve a claim on a company, partnership or public authority get legal advice.

A copy of the claim must be served on each defendant. An extra service copy and response copy need to be given to each defendant if there is more than one.

You can arrange to serve the claim yourself, or pay an additional fee for an enforcement officer, for example, a bailiff, to serve the claim.

If you serve the claim yourself you must do one of the following:

- hand the claim to the individual
- if the individual is a person under a legal disability, hand the claim to the individual's parent, guardian or litigation guardian

- hand the document to someone who is reasonably believed to be at least 18 years old at the person's usual or last known place of residence or business, or
- hand the document to the individual's lawyer or to a person who is authorised in writing to receive documents for the individual.

If the person you are trying to hand the document to will not accept it, put the document down in their presence and tell them what the document is.

If you are having difficulty you may have to ask an enforcement officer, eg a bailiff, to serve the claim. The enforcement officer has wider powers to serve documents.

If serving the claim will be too expensive or too difficult, get legal advice.

If you organise the service yourself you must provide an affidavit of service (Form 11) to show that the claim was served. This must be lodged with the court. You can get a Form 11 from any Magistrates Court registry or you can download one from the Magistrates Court's website.

The number of kilometres travelled to serve the claim can be stated in the affidavit of service. The fee for travel can be included as part of the costs on the claim.

What happens after the claim has been served?

After receiving a claim, the defendant has a limited time to lodge a response. The time limit for entering a response runs from the day the claim is served. The response must be lodged within 14 days or if the defendant's address for service is outside Western Australia, then within 21 days.

When working out the date the response must be entered, day one is the day after the claim has been served. For example, if the claim is served on May 1 the response must be lodged by close of business on May 15. If May 15 is a weekend or public holiday the response must be lodged by the close of business on the next day that the court registry is open.

What options does the defendant have?

The defendant may choose to:

- defend the claim

- admit the claim in full and agree to pay the amount claimed either in full immediately, or by instalments
- admit part of the claim and defend the rest
- admit liability for the claim but dispute the amount claimed, or
- ignore the claim.

What if the defendant defends the claim?

The defendant may defend the matter and also lodge a "counterclaim". This occurs when the defendant believes that:

- you owe them money or damages, or
- your claim should be reduced by an amount owed to the defendant.

If the defendant lodges a counterclaim get legal advice about what you can do.

Statement of claim

You may lodge and serve a statement of claim with your claim. Otherwise you must lodge and serve a statement of claim:

- 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.

Get **legal advice** about what should be in your statement of claim.

What if the defendant admits the claim?

If the defendant admits your claim:

- the registrar will let you know, and
- judgment will be entered into the court's records against the defendant for the debt and the costs.

The defendant can include an offer to pay by instalments or in full. You do not have to accept an offer to pay by instalments.

You can enforce a judgment made this way in the same way as if it were a judgment by a magistrate following a trial.

The defendant may contact you before the response has been lodged to make arrangements to pay your claim.

What if the defendant admits part of the claim?

The defendant may admit a part of the claim and indicate they will defend the rest. They may make an offer to pay an amount (less than that initially claimed) to settle the case.

The registrar will advise you of the defendant's part admission. If you accept the amount admitted to, you must lodge and serve a notice of acceptance. Judgment will be entered for that amount.

Get legal advice before accepting an offer to settle in this situation.

You can enforce a judgment made this way in the same way as if it were a judgment by a magistrate following a trial.

If you do not consent to accept the defendant's part admission, the matter will go ahead in the normal way and you will have to prove the full amount of the claim at trial.

What if the defendant admits liability but disputes the amount of the claim?

The defendant in their response can admit liability for the whole of an unspecified claim but not agree with the amount sought. In this case, the defendant can apply to the court to decide the amount that should be awarded for the claim.

What if the defendant does not lodge a response within time?

You may apply for **default judgment** if the defendant does not lodge and serve a response within the time stated on the claim.

You will need to prove the claim has been served. An affidavit of service or an enforcement officer's certificate is proof of service.

A registrar must not, without the approval of a magistrate, give default judgment in this situation if more than 12 months has passed since the claim was served on the defendant. If the matter is referred to a magistrate for approval you must make an affidavit setting out the reasons for the delay in having the case finalised. There are other

situations where a registrar cannot give default judgment not set out here.

The defendant may seek to have the default judgment set aside and be allowed to defend the matter. However, certain conditions apply.

If you don't apply for default judgment the defendant may still lodge a response after the time limit has expired.

When does an assessment of damages happen?

Unless it is more than 12 months since the claim was served, in some circumstances the registrar may be able to give default judgment without a hearing.

This can occur when the claim, or the relevant part of the claim:

- is for a specified amount (see below)
- is for an unspecified amount (see below) of \$5000 or less
- is for an unspecified amount of more than \$5000 but not more than \$10,000 and the registrar can assess the amount from any supporting material lodged in relation to the claim.

Unless it is more than 12 months since the claim was served, the registrar may, in the absence of the parties, give default judgment against the defendant for an unspecified amount when the claim is for an unspecified amount that:

- is between \$5,000 and \$10,000 but the registrar is unable to assess the amount from any supporting material lodged in relation to the claim, or
- is greater than \$10,000.

The registrar must then list an application for hearing (assessment of damages).

The registrar of the court will set a date for a hearing and notify both you and the defendant.

At the hearing you must provide **proof** or **evidence** of the damage. There are rules about how this must be done. **Get legal advice.**

The defendant is able to attend the hearing, but only to argue the amount you are claiming. The magistrate will determine how much the defendant has to pay you and this is recorded as a judgment.

What is a specified amount?

A specified (liquidated) amount is claimed when both parties should have known the amount involved when the claim arose. For example, Paul lent David \$2,000 but David refuses to pay the money back. Both Paul and David know the amount in dispute.

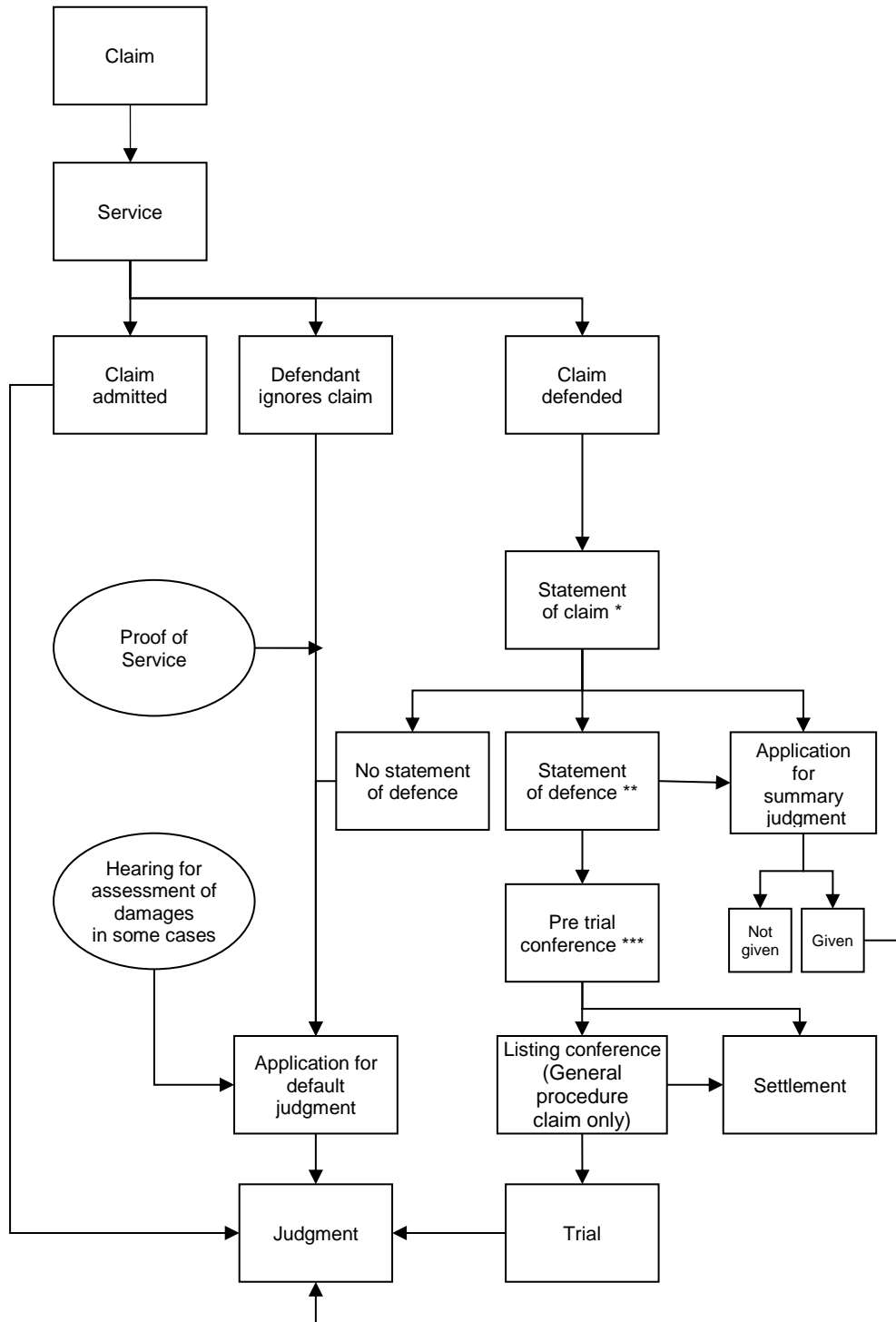
What is an unspecified amount?

An unspecified (unliquidated) amount is claimed when an exact amount is not known at the time the claim arose, for example, a motor car accident. Loss and damage have occurred but replacement and repair costs are not known at the time the accident occurred.

Where can I get more information?

- Contact **Legal Aid WA's Infoline** on **1300 650 579** for information and referral or visit Copies of information sheets that may help you can be obtained by ringing this number or visiting any Legal Aid WA office.
- Go to the [Magistrates Court of WA](http://www.magistratescourt.wa.gov.au/) website at: <http://www.magistratescourt.wa.gov.au/> under the heading Civil Matters or contact a court registry for more information including fact sheets and forms you may need. At the eCourtsPortal: <https://ecourts.justice.wa.gov.au/eCourtsPortal/> **Magistrates Court Online Forms** will help you fill out the forms required to start legal proceedings in some civil cases. It will use your answers to fill out the necessary forms for you. You can pay the fees and lodge online or go to the Magistrates Court registry where you want to start the claim to pay the court fees and lodge the claim. If you want to claim a reduction in fees you will need to lodge your claim in person at the court registry.

General procedure claim flow chart



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 case for pre-trial conference within 14 days after the claimant is served with a statement of defence.

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