

# Starting a general procedure claim

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. If your claim is a consumer/trader claim, there are some differences in procedure not covered here.

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

## Terms used

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'.

## Forms used

You can get any forms mentioned here from any Magistrates Court registry or you can download them from the [Magistrates Court website](#) or complete an electronic copy on the [eCourts portal](#).

## 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:

- explain how the person owing the money 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. If it is sent by email ask for a read receipt.

Keep copies of all letters, emails or text messages sent to the other party.

You need to decide if you want your letter or email 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. You should get legal advice if you are not sure what is best for your situation.

## 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.

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## Are there time limits for taking action?

Most legal proceedings must start within a certain 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, and what to do if you are outside a time limit.

## How can a claim 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 claim 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. You should get legal advice before starting any court action about a building dispute because it is complicated to determine which cases can be dealt with in the Magistrates Court of WA.

The Magistrates Court can transfer some cases to the Building Commissioner. It can deal with restraining orders applications and some residential tenancy disputes. The procedure for these is not covered in this infosheet. 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 infosheet: ‘Starting a minor case claim in the Magistrates Court’. See under the heading below

'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, including lawyer's fees if the winner was represented or paid for assistance. Not all your legal costs may be covered by this order.

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 you will still 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 relevant Department.

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.

## 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). If it is a consumer/trader general procedure claim, a different form (Form 7) is required.

Claims and other documents lodged during your case must be lodged on the eCourtsPortal at: <https://ecourts.justice.wa.gov.au/eCourtsPortal/> 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 the reasons why you need 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 given an exemption, the court or a registrar may give directions about how to lodge the document. This might be over the counter, by email, by post or by fax.

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## What information goes in the claim form?

All 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.
- A summary of what is claimed.

When starting the claim, costs for things such as:

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

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.

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/>.

## Which Magistrates Court should I start my claim at?

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

- the home or business address of the defendant which existed within 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 location where you started your claim 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.

## 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.

You should always get legal advice before joining defendants.

## Serving an individual

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

## 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. 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 organise the service yourself you must provide an affidavit of service (Form 11) to explain how, when and where the claim was served. This must be lodged with the court.

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, for example, a bailiff, to serve the claim. An enforcement officer has wider powers to serve documents.

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

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 response must normally be lodged within 14 days after service. If the defendant's address for service was outside Western Australia, then within 21 days.

The time limit for entering a response runs from the day after the claim is served.

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

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## 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 or at the same time lodge a "defence and 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 defence and 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
- before 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 in full or by instalments. 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 defendant should briefly set out the basis of their part admission to help you decide whether to accept the offer.

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

within 14 days after receiving the response. 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.

The registrar will list the case for a pre-trial conference and notify you and the other parties in writing.

## 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?

If you have applied for a default judgment against the defendant, the court may be able to make a default judgment without a hearing if the claim, or the relevant part of the claim:

- is for a liquidated (specified) amount (see below)
- is for an unliquidated (unspecified) amount (see below) of \$10,000 or less
- is for an unspecified amount of between \$10,000 and \$75,000 and the registrar can assess the amount from any supporting material lodged in relation to the claim.

If the claim is for an unliquidated amount of between \$10,000 and \$75,000, but the registrar is unable to assess the unliquidated amount from the supporting material lodged in relation to the claim, the registrar may do any or all of the following:

- request a party lodge additional supporting material;
- give default judgment for a specified amount if the registrar is able to assess the amount from any additional material provided;
- give default judgment for an unliquidated amount and list the matter for a hearing by the court of the claim to assess the amount that should be awarded.

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

If a registrar notifies the defendant of your application for default judgment you must lodge and serve a supporting affidavit at least 14 days before the hearing. The court may also ask a party to lodge additional supporting material. Get legal advice if you are required to lodge a supporting affidavit.

The defendant, if notified, 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 liquidated (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 unliquidated (unspecified) amount?

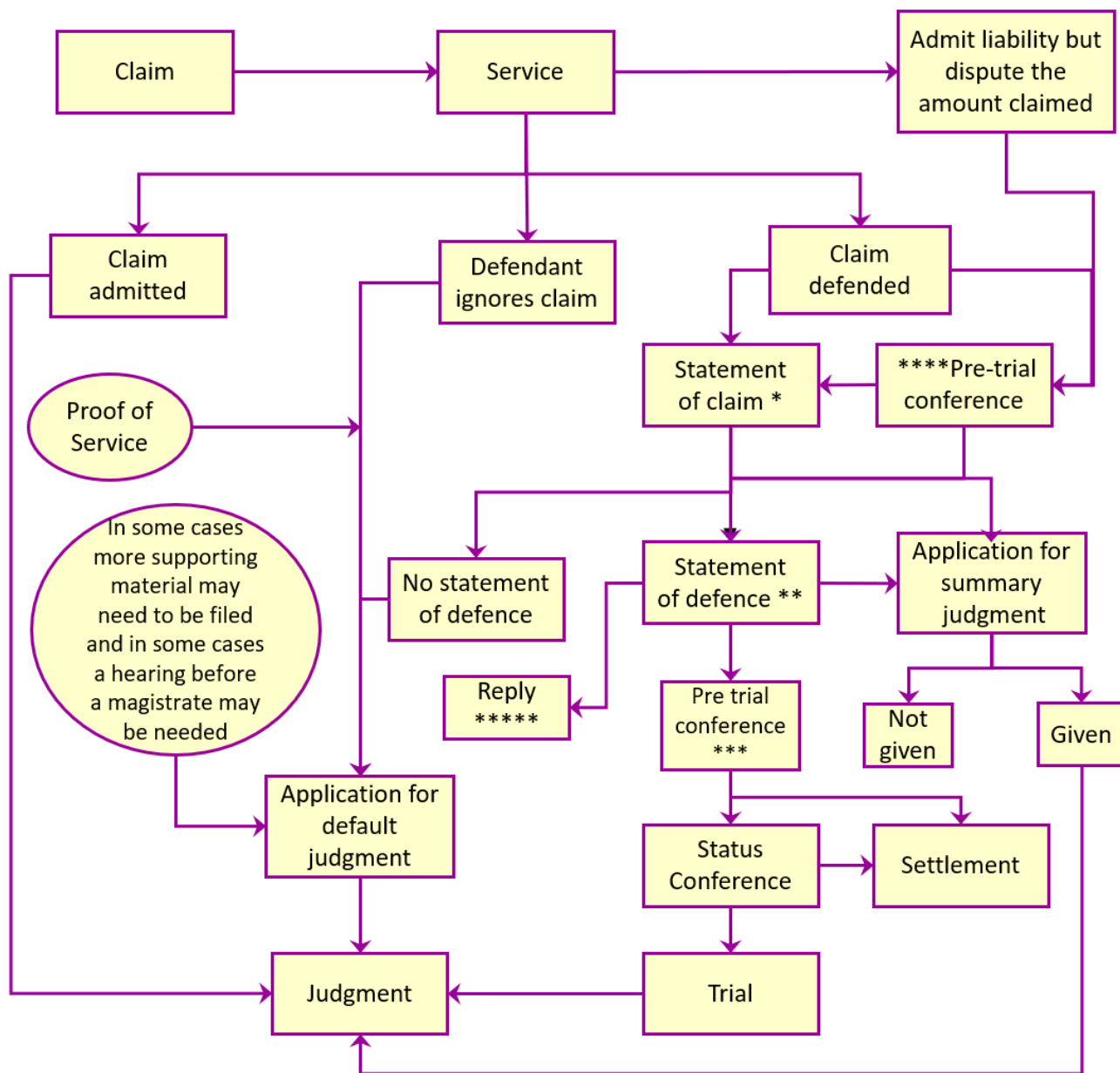
An unspecified (unliquidated) amount is claimed when an exact amount is not known at the time the claim arose, for example, a motor car accident. Loss and damage have occurred but replacement and repair costs are not known at the time the accident occurred.

## Where can I get more information?

- Contact Legal Aid WA's Infoline or Legal Yarn (for First Nations callers) for more information and referral or visit the website at: [www.legalaid.wa.gov.au](http://www.legalaid.wa.gov.au). Copies of infosheets that may help you can be obtained by ringing or visiting any Legal Aid WA office.
- Go to the Magistrates Court of WA website at: <https://www.magistratescourt.wa.gov.au> under the heading Civil Matters or contact a court registry for more information including fact sheets you may need.
- At the eCourts Portal: <https://ecourts.justice.wa.gov.au>

Select 'Magistrates Court' under the heading 'Assisted Lodgment' to start an online application. The system will use your answers to fill out the necessary forms that can be printed out and lodged online.

## Flowchart – 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 CONTACTS

 **Infoline:** 1300 650 579

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

 **Website/InfoChat:** [www.legalaid.wa.gov.au](http://www.legalaid.wa.gov.au)

**Interpreting and relay services to help you contact us:**



**Translating & Interpreting Service:** 131 450

**National Relay Service:** 133 677

### **Perth office**

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

### **Goldfields Office**

Suite 3, 120 Egan Street,  
KALGOORLIE WA 6530  
(08) 9025 1300

### **Midwest & Gascoyne Office**

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

### **East Kimberley Office**

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

### **West Kimberley Office**

Upper Lvl, Woody's Arcade,  
15 – 17 Dampier Terrace,  
BROOME WA 6725  
(08) 9195 5888

### **Southwest Office**

7<sup>th</sup> 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,  
Christmas Island,  
INDIAN OCEAN WA 6798  
(08) 9164 7529

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