

Starting a minor case claim in the Magistrates Court of WA

If someone owes you a debt or damages under \$10,000 this sheet will give you some information about steps you may wish to take to recover the amount. It includes starting a minor case claim in the Magistrates Court of WA ('the Magistrates Court'). This information sheet cannot replace legal advice. Getting legal advice about your individual situation is important.

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'.

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
- set out a clear timetable for further legal action unless settlement proposals are received, and
- be sent by registered mail and the signed postal receipt kept.

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

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

This 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.

“You should always seek legal advice before going to court.”

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
- 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*.
- Can deal with some residential tenancy disputes. The procedure for this is not covered in this information sheet. See *the Department of Mines, Industry Regulation and Safety* website at: <http://www.commerce.wa.gov.au/consumer-protection> under the heading Consumer Protection for more information.
- Can deal with claims by a property owner to recover possession of real property (real estate) up to a gross rental value of \$75,000. This is also not covered in this information sheet.

Minor case procedure

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

The aim of the minor case claim procedure is to help the parties to come to an agreement.

If the parties cannot or will not agree, the court must hear the matter at a trial and make a decision. This is only done as a last resort.

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

All proceedings are to be held in private unless the court otherwise orders.

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

General procedure

General procedure claims deal with disputes about amounts up to \$75,000.

Legal representation is allowed.

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

To find out about starting a general procedure claim see the Information sheet: *Starting a general procedure claim in the Magistrates Court*. See under the heading *Where can I get more information?* for how to obtain a copy.

What court fees will I have to pay?

Generally, court fees are payable in a minor case in the Magistrates Court when:

- lodging a claim
- an enforcement officer, for example, a bailiff, serves the claim, and
- seeking to have judgment enforced.

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 court 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.

You can also apply to 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 satisfied 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.

What about my legal costs in a minor case claim?

Usually lawyers will not be allowed to represent people in a minor case claim. In most cases even if a lawyer represents a person each person must pay their own lawyer's fees.

However, legal costs may be awarded in exceptional circumstances, or if there was no basis for your claim or the other party's defence.

You will need to convince the magistrate that exceptional circumstances exist and you would suffer an injustice if the costs were not awarded. The defendant would have to do the same to get legal costs. Get legal advice on whether the exceptions may apply in your case.

The party who wins the case can claim 'allowable costs'. Allowable costs are:

- court fees

- service fees, and
- costs of enforcing judgment (claimed after judgment if the magistrate's orders are not followed).

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.

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How do I start the claim?

A case can be started in the Magistrates Court by lodging and serving a *Minor Case Claim Form 4*.

Claims 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 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 exempted from lodging a document electronically, the court or a registrar may give directions to you about how to lodge the document.

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.
- Full names and addresses of all parties including all the partner's names if making a claim against a partnership and the Australian Company Number (ACN) if making a claim against a company.
- A summary of facts relevant to your claim, documentary evidence in support of your claim, and the amount of your claim.

When starting the claim, costs for the

- court filing fee, and
- service and travelling fee

may be claimed.

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

As set out under the heading *What about my legal costs in a minor case claim?* other costs may be awarded in certain circumstances. If you wish to claim other costs you should write this on your claim. You do not have to state an amount.

Each copy of the claim must be signed, for example, the court copy, and the defendant's service copy. Photocopies and carbon copies of signatures are not acceptable.

To find out the correct name and address for a business or corporation go to the Australian Securities and Investments Commission website: <https://asic.gov.au/online-services/search-asics-registers/>.

Which Magistrates Court should I start my claim in?

When you can, it is best to lodge your online claim by selecting 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 magistrate will decide which court location is more convenient and fair for the 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 issued or later.

Legal advice should always be sought before joining defendants.

What do I have to do after lodging my claim?

Once you have lodged your claim online with the court you will need to 'serve' the copy you get back from the court 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 may be different.

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

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.

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 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 a *Form 11 Affidavit of service* 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 download one from the Magistrates Court 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 is served?

After receiving a claim, the defendant has a limited time to enter 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, and may offer an amount as full satisfaction of the claim
- 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 claim and also seek the court's permission to 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 makes a request to lodge a counterclaim get legal advice about what you can do. The defendant can also make a request to the court to make a third party claim.

If the defendant lodges a response, the court within 14 days list the case for a status conference.

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.

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 to be 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. They should tell you briefly the basis of the offer to help you decide whether to accept it.

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 your 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 unliquidated (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 case will then be listed for a status conference before a magistrate.

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

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

Default judgment is when judgment is given in your favour without a trial because the other party has not done what is required within the set time frame. You will need to prove the claim has been served. An affidavit of service or an enforcement officer's certificate is proof of service.

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

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

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

Liquidated amount

A liquidated (specified) 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.

Unless it is more than 12 months since the claim was served, the registrar can give default judgment for a liquidated amount without a hearing and in the absence of the parties. If it is more than 12 months, the registrar can do this with the approval of a magistrate.

Unliquidated amount

An unliquidated (unspecified) 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.

Unless it is more than 12 months since the claim was served or in this case, if they have the approval of a magistrate, the registrar may give default judgment, in the absence of the parties, against the defendant for an unliquidated amount. In this situation the registrar may do any or all of the following:

- (a) request that a party lodge additional supporting material in relation to the claim;
- (b) give default judgment against the defendant for a specified amount, if the registrar is able to assess the amount from any extra material lodged;
- (c) list the application for a hearing at which the court will assess the amount.

If the application is listed for a hearing, the court will notify all parties at least 28 days before the hearing. You must lodge and serve a supporting affidavit at least 14 days before the hearing. This is your proof of the damage. Get legal advice if you are not sure what to put in your affidavit.

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 must pay you and this is recorded as a judgment.

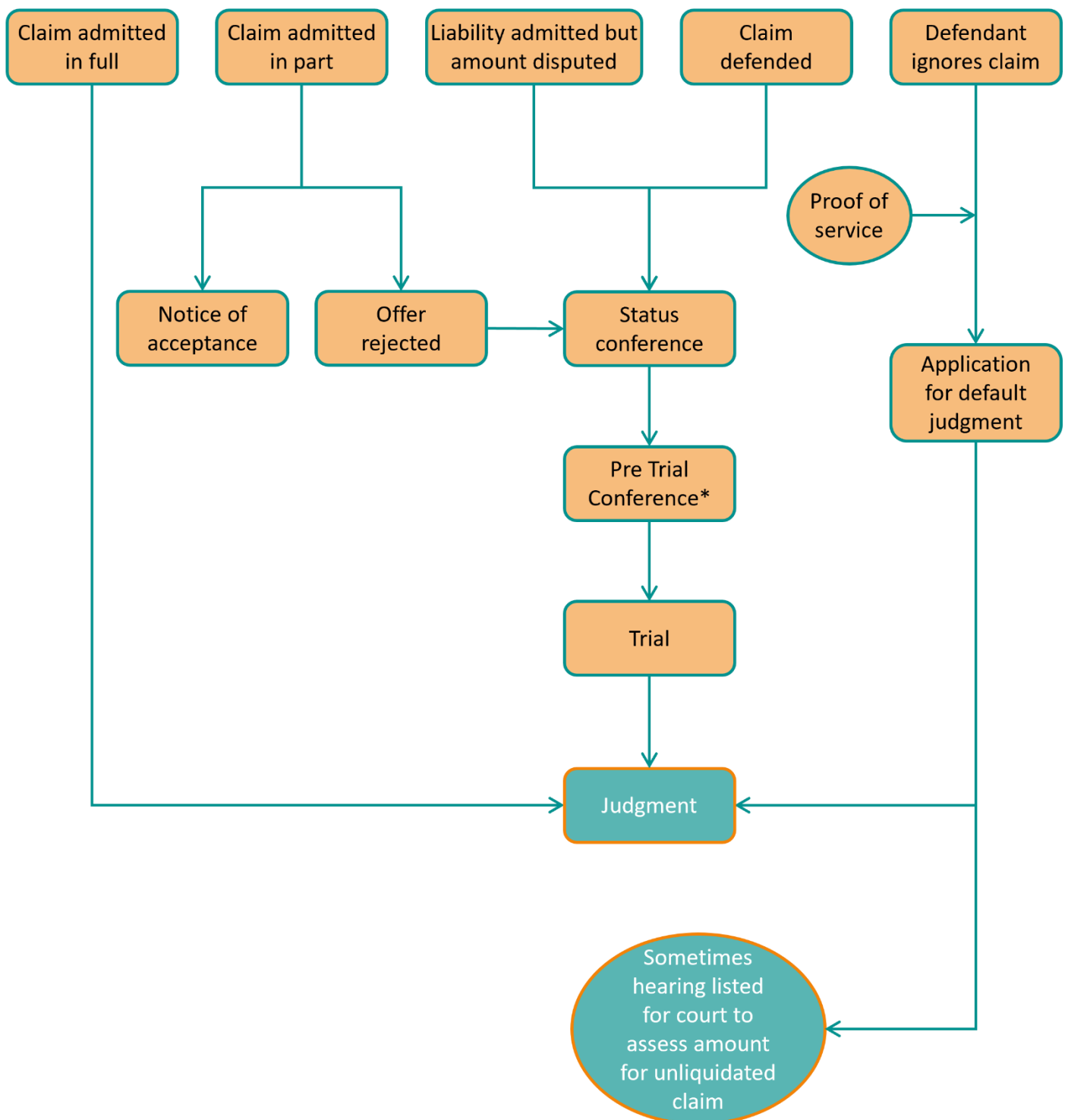
Where can I get more information?

- Contact **Legal Aid WA's Infoline** on **1300 650 579** for information and referral. You can obtain copies of any information sheets referred to above 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: www.magistratescourt.wa.gov.au/ under Civil

Matters or a court registry office for more information including fact sheets.

- At the eCourts Portal:
<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. If you want to claim a reduction in fees you can do this if you have details of your concession card validated as part of your online application.

Flowchart – Minor case claim procedure



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