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## **STARTING A GENERAL PROCEDURE CLAIM IN THE MAGISTRATES COURT**

**If someone owes you a debt this sheet will give you some information about steps you may wish to take. It includes starting a General Procedure Claim in the Magistrates Court.**

**If you are starting Claim in the Magistrates Court you will be called the Claimant.**

**The person you bring a Claim against is called the Defendant.**

### **Write a letter of demand**

Before starting an action 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, and your letter 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 when applicable; *and*
- Be sent by registered mail and the signed postal receipt kept.

Keep copies of all letters sent to the other party.

### **Checking 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.
- Is there a legal basis to your claim?
- Are you within the time limit to start a claim?
- What are the chances of your being successful?
- What costs are involved in going to court?
- In which division of the Magistrates Court should you make your claim?
- Which locality is the correct jurisdiction for your claim?

### **Time limits**

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

In some circumstances special considerations apply to actions concerning children.

Special time limits apply for starting actions against Government Departments and Public Authorities. You need to know:

- What these time limits are; *and*
- What to do if you are outside a time limit.

### **Magistrates Court Actions**

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 you may make a General Procedure Claim.

#### **A Minor case**

You can choose to have your claim heard as a Minor Case if:

- It is for an amount of \$7,500.00 or less;
- It is a dispute involving a residential tenancy bond; *or*
- A residential tenancy dispute to the value of \$10,000 or less.

The process in Minor Case is informal and proceedings are not as complex as in those in the General Division.

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

To find out about Minor cases see the information sheet called **Starting a Minor Case Claim in the Magistrates Court.**

## **General Procedure Claims**

A General Procedure Claim deals with disputes concerning amounts up to \$50,000.00

It does not hear disputes concerning wills, titles to land, defamation, or personal injuries from a motor vehicle accident.

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 \$7,500 the loser usually pays the winner's legal costs. Special rules called the 'rules of evidence' apply at the trial.

Claims of \$7,500.00 or less can still be started as General Procedure Claims, but, in most cases, if you have a lawyer, you will have to pay your own legal costs even if you win.

## **Fees in the Magistrates Court**

Generally, Court fees are payable in a General Procedure Claim in the Magistrates Court when:

- lodging a Claim;
- there is a bailiff service fee;
- listing the matter for a pre-trial conference;
- listing the matter for trial; *or*
- seeking to have a judgment enforced.

Fees are also payable for:

- Applications for default judgment;
- Applications for summary judgment; *or*
- Other applications to the Court.

## **When you don't have to pay Court fees**

The Registrar of the Magistrates Court has the power to decide if and how a person has to pay court fees, if:

- The person is disadvantaged and unable to pay; *or*
- The clerk considers it to be in the interests of justice to do so.

The Registrar can decide to:

- Waive the fees. This means the Registrar will have decided you don't have to pay;
- Reduce the fees; *or*
- Defer the fees. This means the Registrar will collect the fees at a later stage.

**There are certain fees the Registrar must waive, and these include if you have a:**

- health care card;
- health benefit care;
- pensioner concession card;
- Commonwealth seniors health card; *or*
- any other social Security or Veteran's Affairs card that certifies entitlement to Commonwealth health concessions;

Or if you are:

- a prisoner or a person lawfully detained in a public institution;
- person under 18;
- getting Austudy or Youth Training Allowance;
- getting Abstudy; *or*
- a person who has legal aid.

You should tell the person at the Court counter if any of the above applies to you.

### **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. Usually if the amount you are claiming is \$7,500.00 or less, each person must pay their own lawyers 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 you start your Claim in?**

You can file your claim in any WA Magistrates Court.

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

- the home or business address of the Defendant which existed not more than 6 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 if you have started your Claim in one Court 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.

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

## **Commencing the claim**

An action can be commenced in the Magistrates Court by lodging a Claim. 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 suing a partnership and the ACN number if suing a company; *and*
- A summary of what is claimed.

When commencing the Claim, include costs for things such as:

- Service fees;
- Costs associated with transporting witnesses; *and*
- Arranging quotes etc.

These costs may be claimed and added to the amount sought. You do not have to specify an amount. Write on the Claim that you are claiming costs.

Each copy of the Claim must be signed – photocopies and carbon copies of signatures are not acceptable.

**Interest** may also be claimed from the date the Claim arose. Write on the Claim that you are claiming interest otherwise the Court will not consider it.

## **Who can be sued?**

The following people or organisations can be sued:

- Individuals (get legal advice about suing a child because special rules apply);
- Partnerships;
- Companies;
- Certain corporations such as hospital boards, local governments etc; *and*
- Incorporated Associations such as social clubs, churches, etc.

A separate Claim must be filed for each Defendant.

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 at a later date.

**Legal advice should always be sought before joining Defendants.**

## **Serving the Claim on the Defendant**

There are special rules for serving a Claim. The rules of serving other documents may be different.

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.

You can arrange to serve the Claim yourself, or pay an additional fee for a bailiff to serve the Claim.

If you serve the Claim yourself you must

- hand the claim to the individual;
- if the individual is a person under a legal disability, hand the claim to the individuals' parent, guardian or litigation guardian;
- hand the document to someone at the person's place of business or last known place of residence or business who is reasonably believed to be 18 years of age; *or*

- hand the document to the individual’s lawyer or to a person who is authorised in writing to receive documents on behalf of 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 the bailiff to serve the Claim. The bailiff has wider powers for the purpose of serving documents.

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.

The number of kilometers 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.

### **When the Claim has been served**

After receiving a Claim the Defendant has a limited time to enter a response. There is a time limit for entering a response that 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 21 days.

When working out the date the response must be entered, Day 1 is the day after the claim has been served e.g., 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.

The Defendant may choose to defend the claim, admit the claim or ignore the claim.

### **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*
- That your Claim should be reduced by an amount owed to the Defendant.

## **Counterclaim**

If the Defendant lodges a counterclaim get legal advice about what you have to do.

## **Statement of claim**

You will be required to lodge and serve a Statement of Claim within 14 days of receiving the Defendant's documents of defence. Get legal advice about what should be in your Statement of Claim.

## **The Defendant admits the claim**

If the Defendant admits you claim:

- the Registrar will let you know; *and*
- judgment will be entered into the Courts records against the Defendant for the debt and the costs.

The Defendant can include an offer to pay by installments or in full.

You can enforce a judgement made this way in the same way as if it were a decision by a Magistrate at trial.

## **Part admission**

The Defendant may admit that they owe only part of the amount claimed and wish to admit to that part only. They may make an offer to pay on installments. The Registrar will advise you of the defendant's part admission. If you accept the amount confessed to, judgement will be entered for that amount. You do not have to accept the Defendant's proposal for repayment by installments.

You can enforce a judgement made this way in the same way as if it were a decision by a Magistrate at trial.

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

## **The defendant does not lodge a response**

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

You will need to prove the Claim has been served. An Affidavit of Service or a Bailiff's Certificate is proof of service.

An Application for Default Judgement must be made within 12 months of the date the Claim was served on the Defendant.

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

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

## **A hearing for assessment of damages**

In the same circumstances the Registrar may be able to give default judgement without a hearing.

This can occur when:

- the claim is for a specified amount (see below);
- the claim is for an unspecified amount (see below) of \$500 or less; *or*
- the claim is for an unspecified amount of more than \$500 but not more than \$7,500 and the registrar can assess the amount from supporting affidavits.

The registrar must hold a hearing (Assessment of Damages) when the claim is for an unliquidated amount that:

- is no more than \$7,500 but the Registrar is unable to assess the amount from supporting affidavits; *or*.
- is greater than \$7,500.

At the hearing you must provide proof 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 the Claimant and this is recorded as a judgement.

## **Specified amount**

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

## **Unspecified amount**

An unspecified (unliquidated) amount is claimed when an exact amount is not known at the time the claim arose e.g. a motor vehicle accident loss and damage have occurred but replacement and repair costs are not known at the time the accident occurred.

## A Claim in the Magistrates Court

