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STARTING A MINOR CASE CLAIM IN THE MAGISTRATES COURT

If someone owes you a debt, this sheet will give you some information about the steps you may wish to take. This includes starting a Minor Case Claim in the Magistrates Court.

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

The person you bring a claim against is called a 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.

You must write a letter of demand if you want to recover the cost of lodging the Claim from the Defendant.

The letter of demand should:

- prove the person owing the money (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;
- includes copies of quotes or invoices when applicable; *and*
- be sent by registered mail and the signed postal receipt kept.

Make sure you keep copies of all letters sent to the other party.

Checking the basis of your claim

You should always seek legal advice. Some of the things you may need advice on include:

- negotiating an agreement with the other person because 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 action against Government Departments and Public Authorities.

Seek legal advice as soon as possible about

- 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 have to choose to have your claim heard as a Minor Case or you may make a General Procedure Claim.

General Procedure Claims

The General Disputes Division 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.

Legal representation is allowed.

Claims of \$7,700.00 or less can still be started in the General Disputes Division, 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 called Starting a General Claim Procedure Case in the Magistrates Court.

Minor Case Claim

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

- it is for an amount of \$7500.00 or less; or
- it is a dispute involving residency tenancy bond or
- a residency tenancy dispute to the value of \$10,000 or less.

The aim of the Minor Cases procedure is to help the parties 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 those in the General Division. You are not expected to comply with the 'rules of evidence'.

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

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

Fees in the Magistrates Court

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

- lodging a claim;
- there is a bailiff service fee; *or*
- a person is seeking to have judgments enforced.

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 when:

- the person is disadvantaged and unable to pay; *or*
- the clerk considers it to be in the interest 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 are 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 which certifies entitlement to Commonwealth health concessions.

or if you are:

- a prisoner or 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 Minor Case Claim

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

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

- court fees ;
- service fees; *or*
- costs of enforcing judgment (claimed after judgment if magistrate's orders are not followed).

Disputes in the Magistrates Court can be settled at any stage until 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 up 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 you have started you 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.

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 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, the following costs may be claimed:

- court fees: *or*
- service fees.

Other costs may be awarded in exceptional circumstances or if there was no basis for the other party's defense or claim. If you wish to claim other costs you should write this on your claim. You do not have to state an amount.

You will need to convince the Magistrate that exceptional circumstances exist and you would suffer an injustice if the costs were not awarded. Get legal advice about this.

Each copy of the claim must be signed photocopies and carbon copies of the 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 corporation 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 for 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 individual's parent, guardian or litigation guardian;
- hand the document to someone who is reasonably believed to be 18 years of age or over, at the person's place of business 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 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 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.

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.

When the Claim has been 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 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 for 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 defence document. Get legal advice about what should be in your statement of claim.

The defendant admits the claim

If the defendant admits to your 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 judgment 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 claim and wish to admit to that part only. They may make an offer to pay in installments. The Registrar will advise you of the defendant's part admission. If you accept the amount confessed to, judgment will be entered for that amount. You do not have to accept the defendant's proposal for repayment by installments.

You can enforce a judgment 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 judgment must be made within 12 months of the date the claim was served on the defendant.

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.

A hearing for assessment of damages

In some circumstances the Registrar may be able to give default judgment 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*
- the amount 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 judgment.

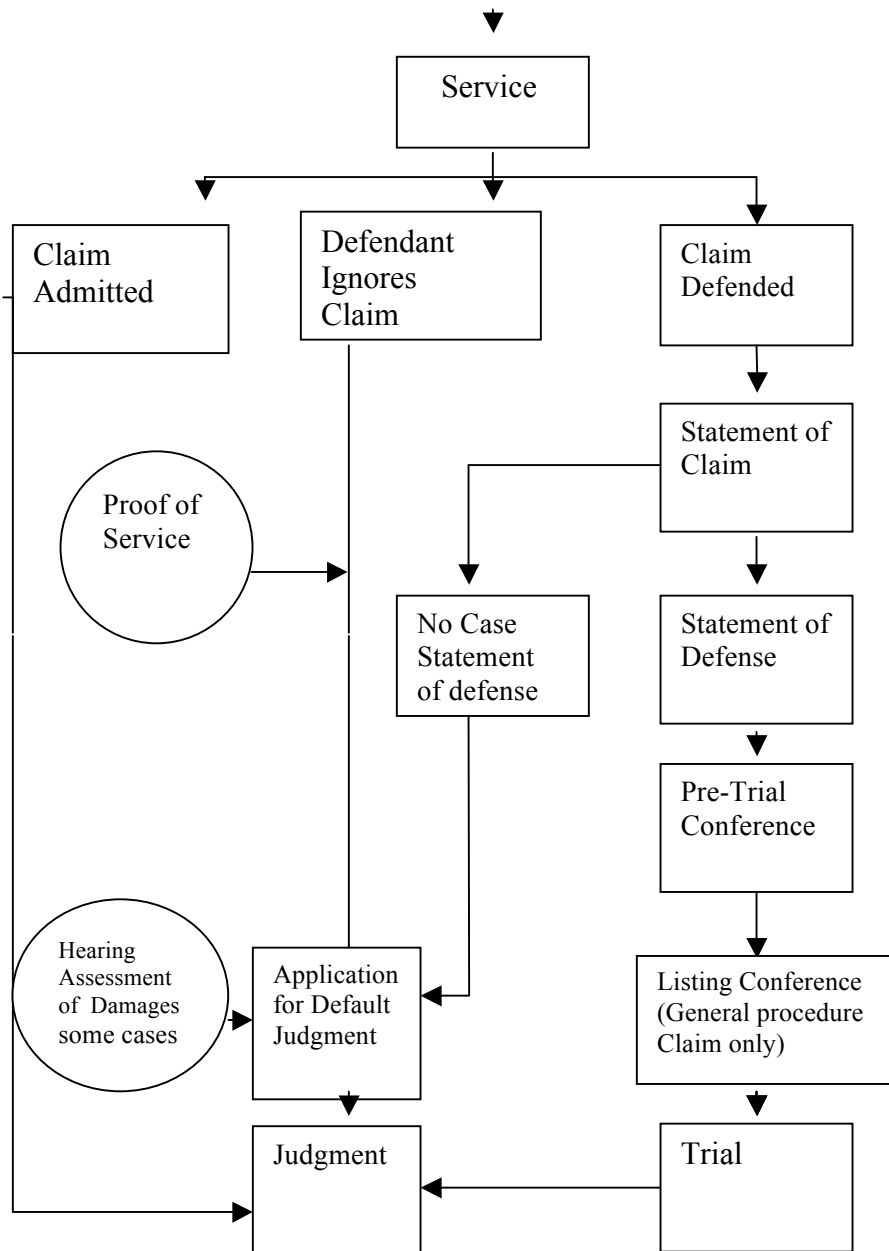
Specified amount

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.

Minor Procedure Claim



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