



## Magistrates Court of Western Australia

### Civil Jurisdiction

## Fact Sheet 32 – Default Inquiry

### What is a Default Inquiry?

This is an inquiry into the alleged failure of the judgment debtor to comply with an a time for payment order or on more than 2 occasions, has not paid an instalment in accordance with an instalment order.

### When and how do I apply?

Complete and lodge a **Form 6 - Application or request to a Court** and pay the prescribed application fee (if not previously paid).

This form is available on the Magistrates Court website:

[www.magistratescourt.wa.gov.au](http://www.magistratescourt.wa.gov.au).

You will need to indicate on your application whether you require the judgment debtor to bring to the Court any records that will be used at the default inquiry hearing.

The Court will fix a date, time and place for the hearing and notify you.

### Serving a default inquiry summons

You may summons any other person to the inquiry to give evidence.

Complete and lodge **Form 6 - Application or request to a Court** and pay the prescribed fee, which includes the Bailiff's enforcement fees.

This form is available on the Magistrates Court website:

[www.magistratescourt.wa.gov.au](http://www.magistratescourt.wa.gov.au).

The default inquiry summons must be served on the judgment debtor no later than five days before the date of hearing.

The Court can arrange service by a Bailiff. Bailiffs are officers of the Court and are located throughout the State.

Alternatively, you can make arrangements to serve the default inquiry summons yourself.

**See Fact Sheet: No. 8 - Serving a Court Document**

## **Attending a default inquiry**

You must attend before the Court to conduct the examination of the judgment debtor.

## **Failure to attend a default inquiry hearing**

If you do not attend, the Court has the power to award costs against you.

If the judgment debtor fails to attend the inquiry, the Court may issue a warrant to have him or her arrested and brought before the Court.

**See Fact Sheet: No. 35 - Warrant for Arrest**

A person who has been summonsed to attend Court and either:

- does not obey the summons; or
- refuses to be sworn or answer any lawful questions

is guilty of a contempt of Court.

**See Fact Sheet: No. 37 Contempt of Court**

## **Nature of the default inquiry**

If the Court is satisfied that the judgment debtor has disobeyed an instalment order or a time for payment order, the judgment debtor will be guilty of a "contempt of Court".

## **Default on a time for payment order**

If the judgment debtor:

- had the means to pay the judgment debt but did not pay it; and
- did not have a reasonable excuse for not paying the judgment debt

the Court can make an order for imprisonment for contempt of Court.

## **Default on an instalment order**

If two or more of the instalment payments were not paid and the judgment debtor:

- had the means to pay the instalment but did not pay it; and
- did not have a reasonable excuse for not paying the instalment for contempt of court.

## **Order for imprisonment**

If the Court decides to imprison a person for contempt of Court, it may order that the imprisonment be suspended, so the judgment debtor can comply with:

- a new time for payment order; or
- the instalment order or an amended or new instalment order.

## **What if the judgment debtor does not comply with the new order?**

You may issue a warrant for the arrest and imprisonment of the judgment debtor.

The imprisonment of the judgment debtor does not:

- extinguish or reduce the judgment debt; or
- terminate an instalment order unless the Court orders otherwise.

**See Fact Sheet: No. 36 - Order for Arrest and Imprisonment for Contempt of Court where Imprisonment where Imprisonment previously Suspended.**

**This is a guide only. The content is subject to change.**

If you are unsure about any of the information in this fact sheet, contact your nearest registry or seek legal advice.