



Magistrates Court of Western Australia Criminal Jurisdiction

Fact Sheet 44 – Application to Set Aside a Court Decision

This fact sheet contains information on the procedure to be followed if you want to apply for a court decision made in your absence to be set aside

What is an application to set aside?

This application can be made if a court has convicted you of a charge in your absence and you believe that you have grounds to have the charge reheard.

Who can apply for an application to set aside a decision?

You can apply for a rehearing of the charge if you were not present when the charge was dealt with because:

- You **did not** receive notice of the court date when the decision was made.
- You **did not** receive notice of the court date on which the decision was made, in enough time to enable you to appear.
- You **did** received notice of the court date on which the above decision was made, but did not appear for some good reason.

How do I apply

You apply by completing the **Form 7 - Application to Set Aside a Decision** and an **affidavit** in support of your application and paying the relevant fee.

Forms and current fee Information are available from –
www.magistratescourt.wa.gov.au.

Where do I apply?

You must apply at the court registry where the original decision was made.

Is there a time limit to apply?

There is no time limit, however you should apply as soon as possible after the date the charge was heard.

Do I have to pay the original fine?

The original fine will be temporarily put on hold once the application is filed with the court registry and while awaiting the outcome of the application.

What if my driver's licence is suspended?

If your licence is suspended due to the original decision being registered at the Fines Enforcement Registry, then the suspension will be cancelled pending the outcome of the application to set aside.

If your licence is disqualified as part of the original court decision then you may apply to the Court on the same form for an interim suspension of that disqualification pending the outcome of the application to set aside. Only a magistrate can grant an interim licence disqualification suspension.

What happens to my application?

If you have applied within **21 days** of the original decision a Registrar of the Court may be able to grant your application on the basis of your written application and affidavit. That can be done without you attending before the

Registrar. If the Registrar does not grant your application, the Registrar must refer it to a magistrate.

If you have applied **later than 21 days** from the date of the original decision only a magistrate can deal with your application. The matter will be listed and you will be informed of the court hearing date. You must attend on that date.

What happens if my application is successful?

If the Court grants your application, the original decision and any penalties imposed by the Court are set aside. The charge will be dealt with as if it was a new one and you will have the opportunity to enter a plea of guilty or not guilty to the charge.

What if my application is not granted?

If your application is not granted by a magistrate then the original decision stands and will be enforced .

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.