



Magistrates Court of Western Australia Civil Jurisdiction

Fact Sheet 9 – When a claim has been served

This fact sheet sets out information about the responses a defendant may make when served with a claim

Information for Claimant

When a claim is served

The defendant has a period in which they must respond to the claim. As provided for in the claim form, this time is calculated from the date that a defendant is served with the claim. They have a period of **14 days** if service is within Western Australia or **21 days** if service is within another state or territory of Australia. No further action can be taken during this time.

Paying the claim in full

If the defendant chooses to pay the amount claimed, they must make payment either to you or your lawyer. The Court cannot accept any payment on your behalf. At the time of payment a receipt should be given to the defendant.

It is not necessary to notify the court when payment has been made in full. However, you are encouraged to file a formal discontinuance of your claim.

Admission to the full amount claimed

If the defendant admits to the claim, you will receive a 'Notice of Admission of Claim' from the Court with details of any offer by the defendant to pay in full or by instalments.

If you accept the offer, you should contact the defendant and confirm your acceptance and provide details of where and how the payments should be made to you.

If you do not accept the defendant's offer to pay by instalments or pay in full on or before the nominated date, you may proceed to enforce payment without further notice.

See fact sheet: No 23 – Enforcing a Judgment

If part of the claim is admitted

A defendant may respond by admitting to part of your claim. If a defendant chooses to do this, they must lodge a **Form 15, 15A or 15B – Response to Claim** for the remaining amount (see in this Fact Sheet the section '**Defend the claim**').

You may accept the part of the claim admitted to by the defendant as full satisfaction of your claim (including cost and interest) by lodging and serving a notice of acceptance in an approved form within **14 days** after receiving the response.

Parties may wish to contact each other to see whether a settlement can be arranged by consent. If you reach an agreement both parties should jointly complete and lodge **Form 49 – Memorandum of Consent**.

The forms are available on the Magistrates Court website:

www.magistratescourt.wa.gov.au.

If you do not accept the part admission and the defendant has lodged a **Form 15, 15A or 15B – Response to Claim** refer to '**Defend the Claim**'.

If the case is a general procedure claim the claimant must then request a Registrar to list the case for a pre-trial conference within **14 days** after the claimant receives from the Court a copy of this response. If the case is minor case claim the case will be automatically listed for a **pre-trial conference**.

Where liability is admitted but there is a dispute as to the amount in a claim for an unliquidated amount.

A defendant may respond to a claim for an unliquidated amount by admitting liability for the whole of the claim but not agree to the amount sought by you.

The defendant in their response may apply to the Court to determine the amount that should be awarded for the claim.

In the case of a General Procedure Claim the Registrar will list the case for a Pre- Trial conference and notify you and the other parties in writing.

In the case of a Minor Case Claim the Registrar will list the case for a Status Conference and notify you and the other parties in writing.

See Fact Sheet:

No 18 - Assessment of Damages under \$10,000

No 19 - Assessment of Damages over \$10,000

Defend the claim

The defendant may defend the whole of the claim. The Court will advise you when a response that indicates an intention to defend has been lodged.

In a Minor Case Claim the court will give a copy of the intention to defend to each party and the Registrar will list the case for a status conference before a Magistrate.

See fact sheet: No 14A Minor Case Status Conference

In a General Procedure Claim, if you didn't lodge and serve a statement of claim at the time of lodging your originating claim, you must within **14 days** of receiving notice of an intention to defend, lodge and serve a statement of claim.

The defendant must lodge and serve a statement of defence or statement of defence with counterclaim within **14 days** of receipt of the statement of claim. You may but need not lodge a reply to a statement of defence within **14 days**

of being served. You must lodge a reply to a statement of defence and counterclaim. Refer to '**counterclaim**'.

Within **14 days** of receipt of a statement of defence or lodging a statement of defence to counterclaim, the claimant must request the Registrar to list the case for a **Pre-Trial Conference**.

See fact sheet: No 13 – Pre-Trial Conference General Procedure Claim

Counterclaim/Third Party Claim

A counterclaim means that the defendant is making a claim against you, which arises from the same set of circumstances. A third party claim means that the defendant is making a claim against a party other than the claimant relating to the claim made against the defendant.

In a Minor Case Claim a Defendant may, when lodging a response to claim, request a Counterclaim or Third Party Claim by completing Part I of **Form 15A Response to Minor Case Claim**. The Registrar will provide the response to every party and list the case for a Status Conference.

See fact sheet: No 14A - Minor Case Status Conference

In a General Procedure Claim, if a defendant intends to make a counterclaim or third party claim, they must lodge and serve a **Form 8 – Counterclaim** and/or a **Form 9 – Third Party Claim** with their statement of defence.

Application for change of venue

If the defendant has made an application for a change of venue, you will be served with that application.

See Fact Sheet: No.11 - Change of Venue.

No response to the claim

If the defendant fails to respond to your claim, you may apply for default judgment to be given after the time for responding to your claim has expired.

To apply you must lodge a **Form 13 - Application for Default Judgment**, together with a **Form 10 – Certificate of Proof of Service by Bailiff** or **Form 11 - Affidavit of Service**, that proves the date your claim was served.

The forms are available on the Magistrates Court website:

www.magistratescourt.wa.gov.au.

If your claim is for an unspecified amount of damages, it may be necessary to have the amount of damages you are claiming assessed by the Court. Following your application for default judgment to be given and the payment of the prescribed fee, the Court will notify you of the date for the hearing of an assessment of damages.

See Fact Sheet:

No. 18 - Damages (Not Exceeding \$10,000)

No. 19 – Damages (Exceeding \$10,000)

How do I enforce a judgment

After judgment has been given, you may proceed to apply to the court for an order to enforce payment.

See Fact Sheet: No. 23 - Enforcing a Judgment

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.