

**MAGISTRATES COURT OF WESTERN AUSTRALIA
CIVIL PROCEEDINGS
FACT SHEET 9**

**WHEN A CLAIM HAS BEEN SERVED
INFORMATION FOR CLAIMANT**

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

The defendant has a period of time 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.

If the defendant admits to claim but is unable to pay in full

If the defendant admits to the claim, you will receive a 'Notice of Admission of Claim' from the Court and a copy of their response, stating the defendant's offer to pay by instalments or to pay in full on or before a certain date.

It is your decision as to whether the defendant's offer to pay by instalments or to pay in full on or before a certain date is accepted.

If you don't accept the defendant's admission to pay by instalments or pay in full on or before the date prescribed, you may proceed to enforce payment without further notice.

**See Fact Sheet:
No.23 – Enforcing a Judgment.**

The defendant may contact you or your lawyer to confirm acceptance of their offer. All payments made must be paid directly to the claimant or their lawyers.

If the defendant admits liability for an un-liquidated claim but does not agree with the claim amount

General Procedure Claim

The defendant should complete an admission of the claim in the relevant section of **Form 15 – Response to General Procedure Claim** and tick the appropriate box, which makes an application to the court to determine that amount. The registrar must list the case for a pre-trial conference and notify all parties in writing.

Minor Case Claim

The defendant should complete an admission of the claim in the relevant section of **Form 15A – Response to Minor Case Claim** and tick the appropriate box, which makes an application to the court to determine that amount. The registrar must list the case for a status conference and notify all the parties in writing.

If you receive a notice to attend a pre-trial conference or status conference and you are aware of a risk to yourself or others in relation to the matter, you should contact the Court at which you are required to attend.

If the defendant admits to part of the claim

The defendant may wish to contact the claimant or their lawyer to see whether a settlement can be arranged by consent. If you reach agreement, a **Form 49 - Memorandum of Consent Order** should be completed and lodged with the court registry where the claim was commenced.

If you cannot reach agreement to settle the claim and the defendant admits only a part of the amount claimed but wishes to defend the rest of the claim, they should complete a defence to the claim.

For a General Procedure Claim, if the defendant chooses to admit part of the claim but wishes to defend the rest of the claim, they must lodge a **Form 15 – Response to General Procedure Claim**.

For a Minor Case Claim, if the defendant chooses to admit part of the claim but wishes to defend the rest of the claim, they must lodge a **Form 15A – Response to Minor Case Claim**. Additionally, where part of the claim is admitted, the defendant must outline the basis upon which they admit part of the claim in their response.

The Court will give notice of your intention to defend the claim, part admission and a copy of the defendant's response to all parties.

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.

GENERAL PROCEDURE CLAIM:

If the defendant responds by defending the full amount claimed

If you do not accept the part admission, please refer below on how to proceed when the defendant responds by defending the full amount claimed.

The defendant should complete the intention to defend general procedure claim section on the **Form 15 – Response to General Procedure Claim** and lodge it with the Registry of the Court where the claim commenced.

The Court will give notice of the intention to defend the claim and a copy of the response to all parties. 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 the notice of intention to defend lodge and serve a statement of claim. However if you did, the defendant must lodge and serve a statement of defence, or a statement of defence with counterclaim within 14 days of receipt of the statement of claim.

Within 14 days of receipt of the statement of defence, the claimant must request a Registrar to list the case for a pre-trial conference. This is completed by lodging a **Form 28 – Request for Pre-Trial Conference** and paying the prescribed fees pursuant to *Magistrates Court (Fees) Regulations 2005*.

Lodging a counterclaim or third party claim

A counterclaim means that the defendant is making a claim against you, which arises from the same set of circumstances.

If the defendant intends to make a counterclaim, they must lodge and serve a **Form 68 – Statement of Defence with Counterclaim**.

If the defendant intends to make a third party claim, they must lodge and serve a **Form 9 – Third Party Claim** with their statement of defence or their statement of defence with counterclaim.

A fee is payable for lodging a Statement of Defence and Counterclaim or a Third Party Claim.

If the defendant has lodged and served a statement of defence with counterclaim, the claimant must within 14 days of service, lodge and serve a statement of defence to the counterclaim. Within 14 days of the claimant lodging a statement of defence to the counterclaim, the claimant must request the registrar list the case for a pre-trial conference. This is completed by lodging a **Form 28 – Request for Pre-**

<p>MINOR CASE CLAIM: If the defendant responds by defending the full amount claimed.</p>	<p>Trial Conference and paying the prescribed fees pursuant to <i>Magistrates Court (Fees) Regulations 2005</i>.</p> <p>To defend the claim, the defendant must complete a Form 15A – Response to Minor Case Claim and lodge it with the Registry of the Court where the claim commenced.</p> <p>The court will give notice of the defendant’s response and provide a copy of the response to all parties.</p> <p>A registrar must within 14 days after receipt of the response to claim, list the case for a status conference before a Magistrate.</p>
<p>Lodging a counterclaim or third party claim</p>	<p>If the defendant intends to make a counterclaim and/or third party claim, they must complete Part I of the Form 15A – Response to Minor Case Claim and lodge it together with their response.</p> <p>Part I will be dealt with by a Magistrate at a status conference.</p>
<p>What occurs if no response is filed?</p>	<p>If the defendant fails to respond to your claim, you may apply for <i>default judgment</i> 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.</p> <p>The forms are available on the Magistrates Court website: www.magistratescourt.wa.gov.au</p>
<p>Application for change of venue</p>	<p>If the defendant has made an application for a change of venue, you will be served with that application.</p> <p>See Fact Sheet: No. 11 – Change of Venue</p>

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.