



Magistrates Court of Western Australia Civil Jurisdiction

Fact Sheet 21A – Applications - General Procedure Claim

This fact sheet is intended to help people who do not have legal representation in preparing applications with or without an appearance by the parties.

What is an Application?

An application is a request to the Court to make an order, often before judgment is entered, under the Magistrates Court (Civil Proceedings) Act 2004 section 17(3), 18(6), or 19(3).

Making an Application

Prior to lodging an application, the party must confer with the other party to try to resolve the matters giving rise to the application

If you are unable to resolve the matter(s), you are required to complete and lodge **Form 23 - Application** and if required, pay the prescribed fee.

A **Form 23 - Application** must be lodged with a supporting **Form 2 – General Affidavit**.

These forms and the fee schedule are available from the Magistrates Court website: www.magistratescourt.wa.gov.au

When lodging an application the lodging party can elect for it to be **heard ex-parte**, which does not require attendance from either party, or it can be heard

with all parties in attendance. Whether attendance is required is dependent on the orders the lodging party is seeking. (see below Application not requiring attendance and Application requiring attendance).

Prior to lodging an application, unless the application does not require service (see Application not requiring attendance below), the party must confer with the other party to try and resolve the matter(s) giving rise to the application.

Application not requiring attendance (ex-parte)

What is it?

An application where the orders requested **do not** require a magistrate to hear from the other parties before making a decision. Generally, these orders are simpler in nature.

In order to make an **ex-parte** application, the lodging party must lodge an original application using the Courts Electronic Case Management System (ECMS) [eCourts Portal](#). These applications do not require a fee to be paid.

Examples:

- 1.** In the instance where a party wishes to amend their own details or those of another party e.g. amend the spelling of their name;
- 2.** In the instance where multiple attempts of service have been unsuccessful, a party may apply for 'substituted service' to get permission to serve the document by alternate means e.g. e-mail or post, if personal service is a requirement.

How is it assessed?

When the lodging party requests to have an application heard on an **ex-parte** basis, the magistrate will make orders based on the information provided in the affidavit. Neither party is required to be present when the application is being assessed.

Application requiring attendance

What is it?

An application where the orders requested require a magistrate to hear the opinion of both parties before making a decision. Generally, these orders are more complex in nature.

In order to make this type of application, the lodging party must first confer with the other party to try and resolve the matter in the application. If no resolution can be received they will be required to lodge an original application original application using the Courts Electronic Case Management System (ECMS) [eCourts Portal](#) and pay the prescribed fee. The party lodging the application will also be responsible for serving the application on the other party (see below Serving a document).

Examples:

- 1.** Where a claimant or defendant makes an application for summary judgment;
- 2.** When a defendant applies to dismiss the claim or the claimant applies to dismiss a counterclaim.

How is it assessed?

The lodging party is required to lodge **proof of service** (see below proof of service) once the application has been served. Upon receipt of proof of service of the application, the application may be listed for a hearing or determined without a hearing in the absence of the parties depending on whether the other party responds to the application.

Serving a Document

For applications requiring attendance the lodging party is required to serve the other party with the application.

You can make arrangements to serve the claim yourself.

See Fact Sheet: No. 8 Serving a Court Document

Proof of Service

If you serve the application yourself, you will need to complete and lodge a **Form 11 – Affidavit of Service**. This proves that the application was served on the other party.

This form is available from the Magistrates Court website:

www.magistratescourt.wa.gov.au

If you have requested the court to arrange for a bailiff to serve the application, the bailiff will complete and lodge a **Form 10 – Certificate of Proof of Service by Bailiff**.

If the court cannot be satisfied that service of the application has been effected and if a **Form 24 – Response to Application** is not lodged by the other party, then the court will take no action in relation to the application.

Response to an application

When a party is served with a **Form 23 – Application**, that party must, no later than 14 days from when they were served with the application, lodge a **Form 24 – Response to Application** stating whether they consent or object to each order sought.

Unless that party consents to every order sought in the **Form 23 – Application**, a **Form 2 – General Form of Affidavit** supporting the response must be lodged together with the **Form 24 – Response to Application**.

Upon receipt of the **Form 24 – Response to Application**, the Court may do any of the following:

- Allocate a hearing date for the application to be heard before a magistrate;
- Determine the application without a hearing and in the absence of the parties.

Non-attendance on an application

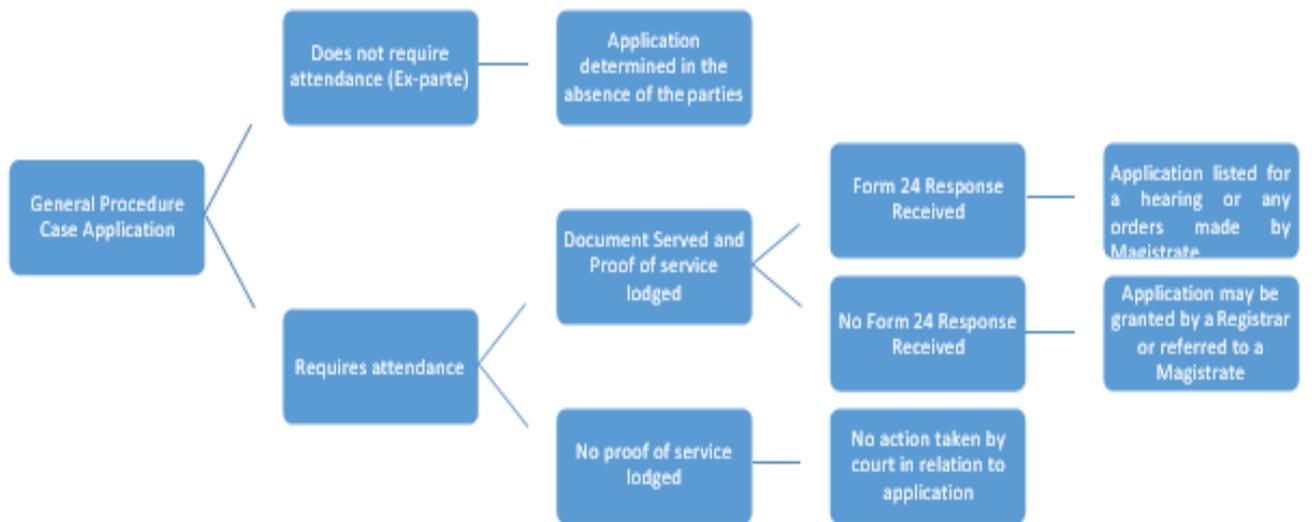
If the party lodging the application does not attend the hearing, then the Court may make an order in the absence of that party. This could include dismissing the application.

If the non-lodging party does not attend the hearing and the Court can be satisfied that service of the application has been effected, then the Court may make an order in the absence of that party, which could be in the terms of the application.

Failure to respond to an application

Where a party fails to lodge and serve a **Form 24 - Response to Application**, a Registrar may do the following if the Court can be satisfied that the application has been served:

- Grant the application, if satisfied that the person making the application is entitled to relief;
- Refer the application to a magistrate.
- If referred to a magistrate, they may do the following:
- Make a decision on the application in the absence of the parties;
- Direct a Registrar to list the application for hearing before a magistrate that requires the parties to attend.



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.