



## Magistrates Court of Western Australia

### Civil Jurisdiction

### Fact Sheet 20 – Summary Judgment

*This fact sheet sets out information for the claimant and defendant.*

#### What is Summary Judgment?

If a party can show that the other party has no reasonable prospect of succeeding, they can apply to the Court to give judgment in their favour without having to go through the formal trial process.

#### Summary Judgment for the Claimant

If the defendant has not satisfied the court that their defence has a reasonable prospect of succeeding, the court may give judgment without a trial.

#### Summary Judgment for the Defendant

If the **claimant** has not satisfied the Court that the claim has a reasonable prospect of succeeding, the **Court may give judgment without a trial**.

#### Lodging an application for Summary Judgment

You must confer with the other party to try and resolve the matters in the application. If you cannot resolve the matters, you may make the application.

Lodge a **Form 23 – Application** and a supporting **Form 2 – General Form of Affidavit**. If the claim is a general procedure claim, the lodging party will

be required to pay a prescribed fee. The fee schedule is available from the Magistrates Court website: [www.magistratescourt.wa.gov.au](http://www.magistratescourt.wa.gov.au).

An application for summary judgment must be lodged electronically using the Courts Electronic Case Management System (ECMS) [\*\*eCourts Portal\*\*](#).

You must serve a copy of the application and affidavit, on all other parties. Upon receiving the application, they have 14 clear days to lodge and serve a **Form 24 – Response**.

Upon receipt of the response, the court will list the matter for a hearing.

If no response is received, the Magistrate will determine the application in chambers, or direct that the application be listed for a hearing.

If you receive a notice to attend a hearing 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

### **See Fact Sheet: No 21 - Applications**

### **Affidavit supporting the application by the claimant**

A **Form 2** must be lodged with the **Form 23** to support the claimant's application by providing evidence to satisfy the Court that the defence does not have a reasonable prospect of succeeding.

### **Affidavit supporting the application by the defendant**

A **Form 2** must be lodged with the **Form 23** to support the defendant's application by providing evidence to satisfy the Court that claim does not have a reasonable prospect of succeeding.

## Serving a document

The Court can arrange service of your claim by a bailiff. Bailiffs are officers of the Court who are located throughout the State. You must prepay the service fee and the travelling fee.

The fee schedule is available from the Magistrates Court website:  
[www.magistratescourt.wa.gov.au](http://www.magistratescourt.wa.gov.au).

Alternatively, you can make arrangements to serve the claim yourself.

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

## Proof of service

If you have requested the Court to arrange for a bailiff to serve the summary judgment application, the bailiff will complete a **Form 10 - Certificate of Proof of Service by Bailiff** and send it to you.

If you serve the application yourself, you will need to complete a **Form 11 - Affidavit of Service**. This proves that the summary judgment application was served.

This form is available on the Magistrates Court website:  
[www.magistratescourt.wa.gov.au](http://www.magistratescourt.wa.gov.au).

## Response to summary judgement application

A party who has been served with a **Form 23 - Application** must lodge and serve a **Form 24 - Response to the Application** and **Form 2 – General Affidavit** stating whether they consent or object to each order sought.

The **Form 24** and **Form 2** must be lodged at least three working days before the hearing of the application.

Complete and lodge **Form 24- Response to Application** and **Form 2 - General Affidavit**.

Unless you consent to every order sought in the **Form 23 - Application**, an affidavit supporting the response and any related application by the party must be lodged.

## **Who must attend**

Unless the Court orders otherwise, all parties must attend in person or with their lawyer.

## **Hearing your application for summary judgment**

In order to determine whether a claim or a defence has a reasonable prospect of succeeding, the Court may determine any necessary question of fact or law.

The Court may:

- Dismiss the application
- Give such judgment as the nature of the case requires
- Where the application is made by the claimant, give the defendant leave to defend the claim or the part of the claim or
- Where the nature of the case permits, dispose of the proceedings finally in a summary manner.

## **What happens next?**

If the claimant is successful with their application for summary judgment, they may then proceed to enforce the judgment.

### **See Fact Sheet: No. 23 - Enforcing a Judgment**

If the defendant's application has been granted, then the case will then follow the normal process defended claims.

### **See Fact Sheets: No. 13 - Pre-trial Conference General Procedures**

**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.