



Magistrates Court of Western Australia Criminal Jurisdiction

Fact Sheet 41 – Summoning a Witness in a Criminal Case

This fact sheet explains how to summons a witness to give evidence or to produce a document or thing to the Court in a criminal case

What is a witness summons?

A witness summons is a document issued by the Court at the request of a party to a case and requires a person to attend the Court to give oral evidence or to produce a record, document or item.

Obtaining a witness summons

If you wish a person to give evidence and to produce a record or thing you will need to issue two summonses.

To issue a witness summons in a criminal trial you will need to complete an application form **(Form 9)** and two copies of each witness summons **(Form 10 or 11)**. The forms are available at any court registry or online by visiting www.magistratescourt.wa.gov.au.

Please note – A witness summons must be served a reasonable time (at least 14 days) before the date that the witness or records are required at the court.

Completing and lodging the forms

When filling in the application form you will need to:

1. Write in the details of the case and your details as applicant.
2. Write the full name and address of each person you require to be a witness and the type the witness summons you require.
3. Sign the application form

When filling in the witness summons form you will need to:

4. Write in the details of the case.
5. Write the full name and address of the person you require to be a witness – separate forms are required for each witness.
6. Write in the day, month, year and time that the witness is required to attend court – this will be the trial date and the registry staff will be able to provide this information if you need help.
7. If filling out a witness summons to produce a record or document, clearly describe each item you require the witness to produce to the Court.
8. Complete the applicant details.

The completed application form and two copies of each witness summons should be lodged at the court registry where the case is listed. A court officer will check the application form and retain it. If the application is in order, the court officer will seal both copies of the witness summons and return them to you for service.

Serving the witness summons

It is your responsibility to arrange service of the witness summons.

The summons must be served personally on the witness. The Criminal Procedure Act 2004 requires that at the time of service or before the attendance day:

- An amount that is likely to be sufficient to meet the reasonable expenses of the witness must be given to the witness (this is often called conduct money and in metropolitan area is usually the cost of a bus fare from the persons home to the Court or in the country the equivalent train, plane or bus fare); or
- Arrangements to enable the witness to attend court are made with the witness; or
- The means to enable the witness to attend court must be provided to the witness.

Proof of service

The person serving the summons must complete the proof of service section of the witness summons. You should retain this copy as proof that the summons has been served.

Witness fees and expenses

The person who requested the issue of the witness summons is required to pay any reasonable travel and accommodation costs incurred by the witness in attending court. You may also be required to reimburse the witness for any loss of earnings.

Video link

Arrangements may be made for a witness who lives a long distance from the Court to give evidence via video link. The costs of the video link will be your responsibility, but it may be cheaper than a witness appearing in person. If you would like a witness to appear via video link you must apply to the Court well before the trial date.

Other information

If your case is not finalised on the date it is listed, you will still have to reimburse your witness' expenses.

If the charge against you is dismissed, you may be able to apply to the Court for an order for payment of your costs. These costs may include the costs of getting your witnesses to court.

What if the witness will need an interpreter?

If you or any of your witnesses will require the assistance of an interpreter, please notify the court registry as soon as possible. The registry will arrange for an interpreter to attend the trial.

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.