

**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.

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.

You do not have to accept this offer and may proceed to enforce the total judgment sum if you wish.

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').

A defendant may wish to contact you or your lawyer 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 and return it to the registry where the claim was commenced.

The forms are available on the Magistrates Court website: www.magistratescourt.wa.gov.au.

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. -

See Fact Sheet:
No 23 - Enforcing a Judgment

If you do not accept the part admission and the defendant has lodged a **Form 15, 15A or 15B – Response to Claim**, that indicates an intention 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.

If you receive a notice to attend a pre-trial 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.

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.

The Registrar will list the case for a pre-trial conference and notify you and the other parties in writing.

If you receive a notice to attend a pre-trial 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.

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.

Counterclaim

The defendant may lodge a counterclaim when lodging their statement of defence. This means that the defendant is making a claim against you, which arises from the same set of circumstances.

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.

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. 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 an Order

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.