

**MAGISTRATES COURT OF WESTERN AUSTRALIA
CIVIL PROCEEDINGS
FACT SHEET 10**

**WHEN SERVED WITH A CLAIM
INFORMATION FOR DEFENDANT**

This fact sheet sets out the options available to you when you have been served with a claim.

You only have a certain period of time to respond to the claim, 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. This time commences from when you are served with the claim. If you fail to respond to the claim within this time, the claimant can apply for default judgment against you.

Paying the claim in full

If you choose to pay the amount claimed, you must make payment either to the claimant or their 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.

If you admit to the claim but are unable to pay in full

If you admit that the claim is owed and want to put forward an offer of repayment, you can do this by lodging a **Form 15, 15A, 15C, or 15D** – Response to Claim at the registry of the Court where the claim was commenced. You must complete the relevant section stating that you admit to the total amount claimed and offer to pay by way of instalments or in full on or before a prescribed date.

The forms are attached to the claim and/or are available on the Magistrates Court website: www.magistratescourt.wa.gov.au.

You are encouraged to contact the claimant prior to lodging your admission to arrange a payment plan or seek acceptance of your offer.

If you admit to the claim, the Court will notify the Claimant of your Notice of admission and a copy of your response stating your offer.

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

All payments must be made directly to the claimant or their lawyer and should start on the day nominated.

Does the claimant have to accept my offer of payment?

You should ask for a receipt and keep it as a record that you have paid.

The claimant does not have to accept your offer and they may proceed to enforce payment without further notice.

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

If you admit to part of the claim

If you do not admit to the whole amount claimed, you may admit to part of the claim and intend to defend the balance. If you choose to do this, you must complete and lodge a defence to the claim in the relevant section of a **Form 15, 15A, 15C or 15D** – Response to Claim.

You may wish to contact the claimant or their lawyer to see whether a settlement can be arranged by consent. If you reach an agreement both parties should complete a **Form 49 – Memorandum of Consent Order** form and lodge it with the Registry where the claim was commenced.

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

For a General Procedure Claim:

You must complete the relevant section on the **Form 15 – Response to General Procedure Claim** stating that you admit liability for part of the claim made and the amount in which you offer as full satisfaction of the claim.

For a Minor Case Claim:

You must complete the relevant section on the **Form 15A – Response to Minor Case Claim** stating that you admit liability for part of the claim made and the amount in which you offer as full satisfaction of the claim. You must also outline within Part H the basis upon which you admit part of the claim.

If you admit liability but dispute the amount in a claim for an unliquidated amount

If in your response you admit liability for the whole of an unliquidated claim and you do not agree to the amount sought by the other party, you may in your response apply to the Court to determine the amount that should be awarded for the claim.

For a General Procedure Claim:

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

For a Minor Case Claim:

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

See Fact Sheet:
No 18 - Assessment of Damages under \$10,000
No 19 - Assessment of Damages over \$10,000

**FOR GENERAL
PROCEDURE CLAIMS:**

If you defend the full amount claimed:

You 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 your response to all parties.

If the claimant didn't lodge and serve a statement of claim at the time of lodging the originating claim, the claimant must within 14 days of receiving your notice of intention to defend, lodge and serve a statement of claim.

However if they did, you 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 you are making a claim against the claimant, 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.

A fee is payable for lodging a Statement of Defence with 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 service 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-Trial Conference** and paying the prescribed fees pursuant to *Magistrates Court (Fees) Regulations 2005*.

**FOR MINOR CASE
CLAIMS:**

If you defend the full amount claimed:

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.

The court will give notice of the defendant's response and provide a copy of the response to all parties.

Lodging a counterclaim or third party claim

A registrar must within 14 days after receipt of the response to claim, list the case for a status conference before a Magistrate.

If you intend to make a counterclaim and/or third party claim, you must complete **Part I of the Form 15A – Response to Minor Case Claim** and lodge it together with your response.

Part I will be dealt with by a Magistrate at a status conference.

What occurs if no response is filed?

If you fail to respond to the claim, the claimant may apply for *default judgment* to be given after the time for responding to the claim has expired.

If default judgment is granted against you, the claimant may proceed to enforce the judgment.

See Fact Sheet:
No. 23 - Enforcing an Order

Application for change of venue

If you wish to apply for a change of venue, you may make an application.

See Fact Sheet:
No. 11 – Change of Venue

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.