

**MAGISTRATES COURT OF WESTERN AUSTRALIA
CIVIL JURISDICTION
FACT SHEET 17**

SUMMONSING A WITNESS

This fact sheet explains how to summons a witness when you are appearing as a claimant or defendant in a civil proceeding.

What is a witness summons?

A witness summons is issued by the Court at the request of a party to a case that requires a person to attend the Court to give oral evidence or to produce evidentiary material.

Obtaining a witness summons

The following forms can be obtained from any Magistrates Court registry or our website: www.magistratescourt.wa.gov.au.

- **Form 46 – Application for a Witness Summons**
- **Form 47 – Witness Summons to give Oral Evidence**
- **Form 48 – Witness Summons to Produce Evidentiary Material.**

Lodging the form

The completed **Form 46** and the relevant **Form 47** and/or **Form 48** must be lodged at the registry where the trial of the case is to be conducted. A request may be made before the matter is listed for trial, not less than 14 days before the date of the trial or an earlier date as directed by the Court.

Serving the witness summons

The witness summons must be served personally.

This can be done by the court who can arrange service of your witness summons by a bailiff. Bailiffs are officers of the Court and are located throughout the State. You must pre-pay the service fee.

Alternatively, you can make arrangements to serve the witness summons yourself. At the time a witness is served with a witness summons, or at a reasonable time before the attendance date, a party which issues a witness summons must ensure:

- An amount that is likely to be sufficient to meet the reasonable expenses of attending the Court must be tendered to the witness
- Arrangements to enable the witness to attend the Court must be made with the witness
- The means to enable the witness to attend the Court must be provided to the witness

Reasonable expenses

Reasonable expense is an amount of money that is likely to be sufficient to cover the reasonable expenses for the witness to attend and/or produce evidentiary material. For example, an amount of money to cover the costs of photocopying documents or for public transport.

Proof of service

The witness summons must be served on the witness at least 14 days before the trial date or an earlier date as directed by the court in accordance with Practice Direction 1/2008.

If you have requested the court to arrange for a bailiff to serve the witness summons, the bailiff will complete a certificate of service and send it to you to lodge with the court.

If you serve the witness summons yourself, you will need to complete the service certificate, which is attached to the return of service copy of the **Form 47** and **Form 48**. This is proof that you have served the witness summons.

This form is available from the Magistrates Court website: www.magistratescourt.wa.gov.au.

Witness fees and expenses

When a witness attends the hearing to give evidence, and has suffered a loss of earnings or incurred other expenses exceeding the amount of reasonable expenses tendered to them, the party who issued the summons must reimburse the witness in respect of their loss or expense.

If your case is not heard on the day it is listed, you will still have to reimburse your witness expenses.

The court is not responsible to pay any witness expenses.

Expert witness

This is a person who has expert knowledge about the subject they are giving evidence about (for example, a doctor or psychiatrist).

It is your responsibility to reach an agreement with these witnesses regarding their costs for coming to Court.

What if a witness lives interstate or overseas?

It is your responsibility to arrange the service of the witness summons and pay any travel and accommodation expenses.

Order for costs

If you are successful with your case, you may apply to the Court for an order for the payment of costs. These costs may include the costs of your witnesses attending Court.

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.