

**MAGISTRATES COURT OF WESTERN AUSTRALIA
CIVIL JURISDICTION
FACT SHEET 21**

APPLICATIONS

This fact sheet is intended to help people who do not have legal representation in preparing applications with or without an appearance by the parties.

What is an application?

An application is a request to the Court to make an order other than a judgment after trial or an order made in or as a consequence of a judgment not being an order to set aside a judgment given under the *Magistrates Court (Civil Proceedings) Act 2004* section 17(3), 18(6) or 19(3).

Making an application?

General Procedure Claim

Prior to lodging an application, unless the application does not require service, the party must confer with the other party to try to resolve the matters giving rise to the application.

If you are unable to resolve the matter(s), you are required to complete and lodge a **Form 23 - Application** and if required, pay the prescribed fee.

A **Form 23 - Application** must be lodged with a supporting **Form 2 – General Form of Affidavit**.

These forms and the fee schedule are available from the Magistrates Court website:

www.magistratescourt.wa.gov.au.

Minor Case Claim

You are required to complete and lodge a **Form 23 – Application**. A **Form 23 – Application** must be lodged with a supporting **Form 2 – General Form of Affidavit**.

How is an application assessed?

There are two ways an application can be assessed.

1. The lodging party may request to have the application heard on an ex-parte basis. This means no parties are required to be present when the application is being assessed.

The magistrate will make orders based on the information provided in the affidavit. Only specific types of applications can be heard in this way. Please refer below for examples.

The lodging party must lodge an original application at the Court registry where the claim was commenced. Please note, no extra copies are required for service.

2. It can be heard at a hearing before a Magistrate where all parties are required to attend. A lodgement fee is required to be paid for applications lodged on General Procedure Claims, which require a hearing.

The lodging party must lodge an original application and extra copies for service at the Court registry where the claim was commenced.

Non-attendance on application

If a party does not attend the hearing, the Court may make an order in the absence of that party, which could be in the terms of the application.

Application not requiring attendance “Ex-Parte”

An application where the orders requested for do not require a Magistrate to hear both parties opinion before making a decision. Genuinely, these orders are simpler in nature.

Examples:

- 1) In the instance where a party wishes to amend the details of another party or their own e.g amend the spelling of their name.
- 2) In the instance where multiple attempts of service have been unsuccessful, a party may apply for ‘substitute service’ to get permission to serve the document by another means e.g. e-mail or post, if personal service is a requirement.

Application requiring attendance

An application where the orders requested for require a Magistrate to hear both parties opinion before making a decision. Genuinely, these orders are more complex in nature.

Examples:

- 1) Where a claimant or defendant makes application for summary judgment.
- 2) When a defendant applies to dismiss the claim or claimant applies to dismiss a counterclaim.

For General Procedure Claims: Response to an 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.

A party which has been served with an application must, no later than 14 days from when they were served with the application lodge and serve

Form 24 - Response to Application and Form 2 - General Form of 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 together with the Form 24 – Response to Application.

Upon receipt of the Form 24 – Response to Application, the court may do the following:

- allocate a hearing date for the hearing of the application;
- determine the application without a hearing, in absence of the parties.

Fail to respond to an application

Where a party fails to lodge and serve a response to an application, a registrar may do the following

- grant the application, if satisfied that the person making the application is entitled to relief;
- refer the application to a Magistrate.

If referred to a Magistrate, they may do the following:

- hear the application in absence of the parties;
- direct a Registrar to list the application for hearing before a Magistrate.

For Minor Case Claims: Response to an 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 Form of Affidavit stating whether they consent or object to each order sought.

The Form 24 – Response and supporting Form 2 – General Form of Affidavit must be lodged and served at least 3 days before the hearing.

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.

The fee schedule is available from the Magistrates Court website: 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 from the Magistrates Court website: www.magistratescourt.wa.gov.au.

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.