



Magistrates Court of Western Australia Civil Jurisdiction

Fact Sheet 21B – Applications – Minor Case Claim

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, often before judgment is entered, under the Magistrates Court (Civil Proceedings) Act 2004 section 17(3), 18(6), or 19(3).

Making an Application

Complete and lodge a **Form 23**.

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

When lodging an application the lodging party can elect for it to be **heard ex-parte**, which does not require attendance from either party, or it can be heard with all parties in attendance. Whether attendance is required is dependent on

the orders the lodging party is seeking. (see below Application not requiring attendance and Application requiring attendance).

Prior to lodging an application, unless the application does not require service (see Application not requiring attendance below), the party must confer with the other party to try and resolve the matter(s) giving rise to the application.

Application not requiring attendance (ex-parte)

What is it?

An application where the orders requested **do not** require a magistrate to hear from the other parties before making a decision. Generally, these orders are simpler in nature.

In order to make an **ex-parte** application, the lodging party must lodge an original application using the Courts Electronic Case Management System (ECMS) [eCourts Portal](#). These applications do not require a fee to be paid.

Examples:

- 1.** In the instance where a party wishes to amend their own details or those of another party 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 'substituted service' to get permission to serve the document by alternate means e.g. e-mail or post, if personal service is a requirement.

How is it assessed?

When the lodging party requests to have an application heard on an **ex-parte** basis, the magistrate will make orders based on the information provided in the affidavit. Neither party is required to be present when the application is being assessed.

Application requiring attendance

What is it?

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

In order to make this type of application, the lodging party must lodge an original application at the court registry where the claim was commenced. A hearing date will be allocated upon processing of the **Form 23 – Application**. It is the responsibility of the lodging party to serve the **Form 23 – Application** on any other party and notify them of the hearing date at least **10 days** prior to the hearing (see below Serving a document).

Examples:

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

How is it assessed?

The application will be heard at a hearing before the magistrate where all parties are required to attend. The hearing date is set by the court registry when the application is processed.

Serving a Document

You can make arrangements to serve the claim yourself.

The application is to be served at least **10 days** prior to the hearing.

See Fact Sheet: No. 8 Serving a Court Document

Proof of Service

If you serve the application yourself, you will need to complete and lodge a **Form 11 – Affidavit of Service**. This proves that the application was served on the other party.

This form is available from the Magistrates Court website:

www.magistratescourt.wa.gov.au

If you have requested the court to arrange for a bailiff to serve the application, the bailiff will complete and lodge a **Form 10 – Certificate of Proof of Service by Bailiff**.

Response to an application

A party who has been served with a **Form 23 – Application** must lodge and serve a **Form 24 – Response to Application** and **Form 2 – General Form of Affidavit** stating whether

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

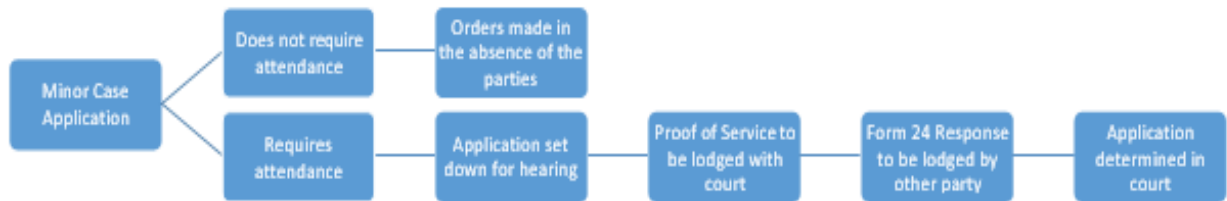
Non-attendance on an application

If the party lodging the application does not attend the hearing, then the Court may make an order in the absence of that party. This could include dismissing the application.

If the non-lodging party does not attend the hearing and the Court can be satisfied that service of the application has been effected, then the Court may make an order in the absence of that party, which could be in the terms of the application.

Failure to respond to an application

Where a party fails to lodge and serve a response to an application before the hearing, a Magistrate may still proceed with the hearing and make a decision on the application in the absence of a **Form 24 – Response**.



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.