



Self-Represented Litigants Procedural Guide

For claims in the civil jurisdiction of the Magistrates
Court of Western Australia

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Table of Contents

1	Introduction.....	5
2	eLodgment	6
3	Is the Magistrates Court the right place for you?	7
4	Relevant Legislation.....	8
5	General court information.....	9
5.1	Location.....	9
5.2	Can the Magistrate or court staff help me with my case?	9
5.3	Preparing yourself for court.....	10
6	Type of Matter: Minor Case Claims.....	11
6.1	What legislation is relevant?	11
6.2	Can I have legal representation?.....	11
6.3	What is the overall process for Minor Case Claims?	11
6.4	How do I commence a claim?	12
6.5	How do I serve the Form 4?	12
6.6	What happens after you have served the defendant?.....	15
6.7	What options are available to the defendant?	15
6.8	What happens next?.....	17
6.9	What is a Status Conference?.....	17
6.10	What is a Pre-Trial Conference?.....	17
6.11	Fees	18
7	Type of Matter: General Procedure Claim.....	18

7.1	What legislation is relevant?	19
7.2	Can I have legal representation?.....	19
7.3	What is the overall process for these claims?.....	19
7.4	How do I commence a claim?	20
7.5	How do I serve the Form 3?	20
7.6	What happens after you have served the defendant?.....	22
7.7	What options are available to the defendant?	22
7.8	What happens next?.....	24
7.9	What is a Pre-Trial Conference?.....	25
7.10	What is a Status Conference?	27
7.11	Fees	27
8	Type of Matter: Consumer/Trader Claims	27
8.1	What legislation is relevant?.....	28
8.2	Can I have legal representation?.....	28
8.3	What is the process for these claims?	28
8.4	How do I commence a claim?	29
8.5	Fees	29
9	Type of Matter: Conferring Act Applications	29
9.1	What is the process for these applications?	29
9.2	Fees	30
10	Type of Matter: Residential Tenancy Claim	30
10.1	What legislation is relevant?	30

10.2	Where can I get assistance?	31
10.3	Can I have representation?.....	31
10.4	How do I commence this process?	31
10.5	How do I serve notice on the defendant?.....	32
10.6	What happens once the respondent has been served?.....	32
10.7	What happens in a residential tenancy matter hearing?.....	33
10.8	What orders can be made?	33
10.9	Fees	34
11	Type of Matter: Civil Judgment Enforcements	34
11.1	What is the relevant legislation?.....	34
11.2	What orders can be requested?	35
11.3	How do you apply for an enforcement order?.....	36
11.4	Suspension Order.....	36
11.5	Fees	36
12	Type of Matter: Restraining Order	36
12.1	What is the relevant legislation?.....	37
12.2	What is the general process?	38
12.3	How do I commence an application?	38
12.4	Where can I get assistance?	39
12.5	Fees	40

1 Introduction

This guide has been designed to assist people who do not have a lawyer to present their matters in the Magistrates Court of Western Australia ("Magistrates Court"). If you are representing yourself in civil proceedings in the Magistrates Court, it may be helpful to have information available which outlines:

- how the court operates;
- basic legal concepts and terms;
- information about court rules, procedures, practices, protocols and etiquette;
- direct you to required forms and relevant legislation; and
- refer you to agencies that may be able to provide you with legal advice and/or assistance.

The information provided in this guide is not a substitute for obtaining professional legal advice specific to your particular circumstances, but it is hoped that the information provided will make it easier for you to navigate through the court system.

The document is up to date as at the date on the front cover. Changes in legislation and rules after this date may impact the accuracy of the material in this guide. Please check the [Magistrates Court website](https://www.magistratescourt.wa.gov.au/)¹ for latest updates and/or revisions.

Relevant legislation can be found on the [Western Australian Legislation](https://www.legislation.wa.gov.au/)² website.

¹ Magistrates Court website - <https://www.magistratescourt.wa.gov.au/>

² Western Australian Legislation - <https://www.legislation.wa.gov.au/>

2 eLodgment

As of **1 March 2021**, all Magistrates Court civil procedure applications and forms **excluding** Restraining Order applications, **MUST** be lodged electronically on the eCourts Portal. Information, including how to register for the eCourts Portal can be found on the [Magistrates Court website](#)³.

The Magistrates Court's ECMS is the electronic case management system for managing proceedings in all Western Australian courts and tribunals and is available through the eLodgment system on the eCourts Portal for use by the legal profession, government agencies and self-represented litigants.

User guides, instructional videos and frequently asked questions can be located on the Magistrates Court web page.

Proceedings in the Court's civil jurisdiction are commenced by lodging originating documents. Once commenced other documents can also be lodged using the ECMS. Lodgment fees are paid online and all court orders and listings can be accessed electronically by parties to the proceedings.

Benefits of eLodgment include the ability to lodge civil procedure applications and forms electronically; access court documents and court orders 24/7; view online all civil procedure matters that you, or your client are linked to and receive court documents and court orders electronically.

For specific information on fees refer to the [Magistrates Court Fees](#)⁴.

³ Register for the eCourts Portal - <https://www.magistratescourt.wa.gov.au/E/elodgment.aspx>.

⁴ Magistrates Court fees - https://www.magistratescourt.wa.gov.au/_files/Magistrates_Court_Fees.pdf

3 Is the Magistrates Court the right place for you?

Before taking any steps, it is first necessary to identify where you should commence your matter.

The Magistrates Court has a civil jurisdiction to deal with matters up to the value of \$75,000. Examples of matters that can be brought in the Magistrates Court include:

- Monetary claims for debt or damages (for example, damage to property from a motor car crash) (referred to as general procedure or minor case claims).
- Consumer/trader claims.
- Residential tenancies claims.
- Claims for the recovery of real estate up to \$75,000.
- Actions under the *Civil Judgments Enforcement Act 2004* (WA).
- Restraining Order applications.

Some pieces of legislation confer on the Magistrates Court of WA jurisdiction to deal with applications/disputes that arise under that legislation e.g. the *Dividing Fences Act 1961*.

Information on each type of matter is provided in detail in sections 5 to 10.

The Magistrates Court **cannot** hear civil matters that involve:

- A dispute concerning the meaning of a will, titles to land, defamation, or personal injuries from a motor vehicle accident.
- The Building Commissioner or a dispute the State Administrative Tribunal can deal with under the *Building Services (Complaint Resolution and Administration) Act 2011* (WA).

- Claims above \$75,000. If you are claiming a monetary amount more than \$75,000 but not more than \$750,000 you will need to go to the District Court of Western Australia. If your claim is for more than \$750,000 you will need to go to the Supreme Court of Western Australia.
- Children's Court matters.
- Family law matters.
- Federal jurisdiction matters.

4 Relevant Legislation

The Magistrates Court is established under the *Magistrates Court Act 2004* (WA).

The Court's civil jurisdiction is predominately governed by the *Magistrates Court (Civil Proceedings) Act 2004* (WA) and Rules of the Court.

Also, in the civil jurisdiction, the *Civil Judgments Enforcement Act 2004* (WA), *Residential Tenancies Act 1987* (WA) and the *Restraining Orders Act 1997* (WA) may be applicable depending on the nature of the matter.

The Court also issues Practice Directions, which give guidance about practice and procedure in the Magistrates Court. These are available from our website.

5 General court information

5.1 Location

The Magistrates Court has multiple registries located around the State. For a complete list of metropolitan and regional courts please refer to the [Court Locations and Contacts](#)⁵ page.

The Magistrates Court of Western Australia, Perth Registry, is based in the Central Law Courts Building - 501 Hay Street PERTH – Telephone 9425 2222.

Metropolitan Courts:

- Armadale - 109 Jull Street, Telephone 9399 0700.
- Fremantle - 8 Holdsworth Street, Telephone 9431 0300.
- Joondalup - 21 Reid Promenade, Telephone 9400 0700.
- Midland - 24 Spring Park Road, Telephone 9250 0200.
- Rockingham - Whitfield Street, Telephone 9527 6433.
- Mandurah - 333 Pinjarra Road, Telephone 9583 1100.

Standard courthouse Registry hours are Monday to Friday 9:00am to 4:00pm.

5.2 Can the Magistrate or court staff help me with my case?

The Magistrate cannot speak to you about your case, except when your case is being heard and when the other party is there. The Magistrate is impartial and therefore cannot advise you how to conduct your case.

⁵ Court Locations and Contacts - https://www.magistratescourt.wa.gov.au/C/court_locations_contacts.aspx

If you are in doubt as to the correct procedure, you may seek the Magistrate's directions.

Court staff will help you in any way they can, but staff cannot give you legal advice or make recommendations about what you should do.

They can provide court forms; information about court practice and procedure; information about when a hearing is listed; and information about court fees.

Please assist court staff by providing any information that they request, as this will ensure that the Court runs effectively and efficiently.

5.3 Preparing yourself for court

- The court does not require any standard of dress, but it is expected that you dress in a way that is appropriate for the occasion.
- Make sure you have records of all notices, receipts and other relevant documents that will support your case. Take both the original documents and photocopies to all meetings and your court date. You should also become familiar with the parts of relevant legislation that relate to your case.
- Arrive at the court before your scheduled time and plan that the proceeding may take up to half a day or longer. The Court can still deal with a claim when only one party to a dispute attends court so if you are not there when your case is called, it could start without you.
- If you intend to call witnesses to support your case, make sure they also know what documents to bring and the court's location and hearing time. You will need to serve them with a Witness Summons (available from the court) if they will not attend court voluntarily.
- If you are concerned about your physical safety or the safety of others in relation to the matter you are attending court for, please contact the court at which you are required to attend. If you become concerned for

your safety whilst in the court building, please inform court staff as soon as possible.

- If you, or a witness, need an interpreter, please contact the court to make the appropriate arrangements.

At court:

- You should observe court etiquette.
- Call the Magistrate 'your Honour'.
- Stand up when it is your turn to speak or when you are spoken to by the Magistrate and sit down when you or the Magistrate has finished.
- Only one person is allowed to speak at a time. The Magistrate will tell you when it is your turn to speak.

6 Type of Matter: Minor Case Claims

Minor Case Claims deal with disputes about monetary amounts up to **\$10,000**.

6.1 What legislation is relevant?

Magistrates Court (Civil Proceedings) Act 2004 (WA).

Magistrates Court (Minor Case Procedure) Rules 2005 (WA).

6.2 Can I have legal representation?

The claimant and the defendant cannot have legal representation unless all parties and the Magistrate agree.

6.3 What is the overall process for Minor Case Claims?

The overall process for minor case claims is as follows:

- a) The claimant lodges a claim with the Magistrates Court.
- b) A copy of the claim is served on the defendant.
- c) The defendant has 14 days from the date of being served to decide whether to defend the claim. The claimant cannot proceed with the claim until this period has expired.
- d) The defendant may decide to admit to the claim and pay the debt, ignore the claim or defend the claim. If the claim is ignored you can make an application to the Court for judgment.
- e) If the claim is not defended, an application for default judgment can be made by the claimant. If the claim is defended, the Court Registrar will list a Status Conference within 14 days of receiving notice from the defendant. A Status Conference will bring together both parties and attempt to reach a settlement. If no settlement is reached at the Status Conference, the case may be referred for a further Status Conference, to attend a Pre-Trial Conference, attend a Mediation or list the matter for a trial.

6.4 How do I commence a claim?

You will need to lodge a Minor Case Claim **Form 4 – Minor Case Claim** electronically through the Magistrates Court [eCourts Portal](#)⁶.

When you lodge the **Form 4 – Minor Case Claim**, you will need to pay a fee. Once you have lodged your claim with the court you will need to serve it on the defendant.

6.5 How do I serve the Form 4?

Once you have lodged your claim with the court you will need to serve it on the defendant. 'Service' is the legal term used to describe the giving or

⁶ eCourts Portal - <https://ecourts.justice.wa.gov.au/eCourtsPortal/>

delivering of court documents to another person. You can serve the claim yourself or the court can arrange the service of your claim by a bailiff at a fee.

6.5.1 What are the most common methods of personal service on an individual?

Personal service of a document on an individual can be by:

- Handing the document to the individual or, if the individual is a person under a legal disability, to the individual's parent, guardian or litigation guardian.
- If the individual or the individual's parent, guardian or litigation guardian does not accept the document, put the document down in his or her presence and advise him or her of the nature of the document.
- Hand the document to a person who is authorised, in writing, to receive documents on behalf of the individual.
- Hand the document to someone at the person's usual or last known place of residence or business who is believed, on reasonable grounds, to have reached 18 years of age.
- Hand the document to the lawyer acting for the individual.

6.5.2 What other methods of service are available when personal service is not required?

By delivering it or sending it by pre-paid post, to an individual's residential or principal place of business address for service.

6.5.3 Serving a corporation

- Hand the document to a person who, on reasonable grounds, is believed to be director of the corporation who resides in Australia; or
- Hand the document to a lawyer who is representing the corporation; or

- In accordance with the Corporations Act 2001 (Cth) section 109X, including posting the document to the company's registered office.

6.5.4 Serving a strata title company

Section 125 of the *Strata Titles Act 1985* (WA) provides that service may be effected by leaving the claim with the Chairman or Secretary of the strata company, with any member of the council or with every proprietor of a lot.

6.5.5 Serving an incorporated association

The Associations Incorporation Act 2015 (WA) provides that service may be effected upon an incorporated association (e.g. sporting club) by:

- Serving the process, notice or other document, personally or by post, on a member of the committee of the association.
- Leaving the process, notice or other document at the address of a member of the committee of the association, with any person apparently over the age of 16 years.
- Leaving the process, notice or other document at, or by sending it by post to, the address for service (if any) last notified to the Commissioner of the association.

Note: an incorporated association may lodge notice of an address for service of any process with the Commissioner.

6.5.6 How do I provide proof of service?

Before you can make application for a default judgment you will need to provide the Court with proof that your claim has been served by providing the court with an affidavit of service or certificate of service issued by the Bailiff.

6.6 What happens after you have served the defendant?

From the date that the defendant is served with the claim, they have a period of time to respond (14 days if the address for service of the defendant is within WA and 21 days if the address for service of the defendant is outside of WA).

6.7 What options are available to the defendant?

The defendant may choose to:

1. Defend the claim.
2. Admit the claim in full and agree to pay the amount claimed either in full immediately or by instalments.
3. Admit part of the claim and defend the rest and may offer an amount as full satisfaction of the claim.
4. Admit liability for the claim but dispute the amount claimed.
5. Ignore the claim.

6.7.1 What happens if the defendant defends the claim?

The defendant may defend the claim and also lodge a counterclaim.

This occurs when the defendant believes that the claimant owes them money or damages, or the claim should be reduced by an amount owed to the defendant. The defendant will need to complete a **Form 15A** – Response to Claim.

The response will need to be lodged electronically through the Magistrates Court website. A copy will be provided to the claimant.

6.7.2 What happens if the defendant admits the claim?

Judgment will be entered by the Registrar. The claim can be paid in full immediately or if the defendant can't pay immediately they can make an offer of repayment to the claimant.

6.7.3 What happens if the defendant admits to part of the claim?

The defendant will need to lodge a **Form 15A** - Response to Claim. A copy will be provided to the claimant.

The claimant can accept the amount offered by lodging and serving a **Form 60A** - Notice of Acceptance.

Judgment will be entered by the Registrar.

If the claimant does not accept the part admission, the matter will go to trial.

6.7.4 What if the defendant admits liability for the claim but disputes the amount?

The Court will list it for a Status Conference.

6.7.5 What happens if the defendant ignores the claim?

The claimant may apply for default judgment. The claimant will need to provide proof of service.

6.7.6 Can the defendant lodge a response late?

The defendant can lodge a response late if the claimant has not applied for default judgment even if the time limit for lodgment has expired.

6.8 What happens next?

Once the defendant has lodged a response, with an intention to defend a claim, the Registrar will give a copy of the response to the claimant. The Registrar will list the matter for a Status Conference and the parties will be notified of the date.

6.9 What is a Status Conference?

A Status Conference gives parties an opportunity to settle the case. It is hoped that the parties will be brought to a settlement that will then prevent the need for going to trial.

At the Status Conference, the Magistrate may:

- Determine what facts, if any, are agreed by the parties.
- Order the parties to lodge and serve lists of documents the parties may tender in evidence at the trial and exchange any other documents or information.
- Order the parties to attend a Pre-Trial Conference or Mediation.
- List the case for a further Status Conference.
- Make any other orders necessary to facilitate settlement or ensure the case is ready for trial.

If you do not attend a Status Conference, the Magistrate may give default judgment against you.

6.10 What is a Pre-Trial Conference?

A Pre-Trial Conference is where the parties appear before a Registrar of the Court in an attempt to resolve the dispute.

6.10.1 Who must attend?

All parties must attend the Pre-Trial Conference **in** person. If a party is a corporation, it may be represented by one of its officers whom it has authorised to do so.

If a party's attendance is likely to cause undue expense or the party is of ill health, a party may apply to the Registrar prior to the Pre-Trial Conference for the hearing to be conducted by audio link.

6.10.2 What happens if the parties settle?

Any party may make an offer (or a number of offers) to settle the dispute. If a settlement is reached, the Registrar will draw up a **Form 49** - Memorandum of Consent Orders for both parties to sign.

This order becomes a judgment of the Court and can be enforced by the successful party.

6.10.3 What happens if the case does not settle at the Pre-Trial Conference?

If a settlement is still not reached at the Pre-Trial Conference, the Registrar may list the matter for another Pre-Trial Conference or a Status Conference.

6.11 Fees

Court fees are generally payable for minor case claims when lodging a claim, when an enforcement officer (e.g. a bailiff) serves the claim and when you are seeking to have a judgment enforced.

7 Type of Matter: General Procedure Claim

General Procedure Claims in the Magistrates Court deal with disputes about monetary amounts up to **\$75,000**.

7.1 What legislation is relevant?

Magistrates Court (Civil Proceedings) Act 2004 (WA).

Magistrates Court (Civil Proceedings) Rules 2005 (WA).

7.2 Can I have legal representation?

Yes – you can be represented by a lawyer for general procedure claims.

7.3 What is the overall process for these claims?

The process for general procedure case claims is as follows:

1. The claimant lodges a claim with the Magistrates Court.
2. A copy of the claim is served on the defendant.
3. The defendant has 14 days from the date of being served to decide whether to defend the claim. The claimant cannot proceed with the claim until this period has expired.
4. The defendant may decide to admit to the claim and pay the debt, ignore the claim or defend the claim. If the claim is ignored you can make application to the Court for judgment.
5. If the claim is not defended, an application for default judgment can be made by the claimant. If the claim is defended, the claimant must within 14 days of being served with the statement of defense from the defendant or within 14 days of serving a Statement of Defence to Counterclaim (if applicable) apply to the Court to list the matter for a Pre-Trial Conference.

A Pre-Trial Conference will bring together both parties and attempt to reach a settlement. If no settlement is reached, the case may be referred to a Status Conference and the case may be listed for a trial.

7.4 How do I commence a claim?

You will need to lodge a **Form 3** – General Procedure Claim.

7.5 How do I serve the Form 3?

Once you have lodged your claim with the court you will need to serve it on the defendant. 'Service' is the legal term used to describe the giving or delivering of court documents to another person. You can serve the claim yourself or the court can arrange the service of your claim by a bailiff at a fee.

7.5.1 What are the most common methods of personal service on an individual?

Personal service of a document on an individual can be by:

- Handing the document to the individual or, if the individual is a person under a legal disability, to the individual's parent, guardian or litigation guardian.
- If the individual or the individual's parent, guardian or litigation guardian does not accept the document, put the document down in his or her presence and advise him or her of the nature of the document.
- Hand the document to a person who is authorised, in writing, to receive documents on behalf of the individual.
- Hand the document to someone at the person's usual or last known place of residence or business who is believed, on reasonable grounds, to have reached 18 years of age.
- Hand the document to the lawyer acting for the individual.
- Hand the document to a lawyer who is acting for the individual.

7.5.2 What other methods of service are available when personal service is not required?

By delivering it or sending it by pre-paid post, to an individual's residential or principal place of business address for service.

7.5.3 Serving a corporation

- Hand the document to a person who, on reasonable grounds, is believed to be director of the corporation who resides in Australia; or
- Hand the document to a lawyer who is representing the corporation; or
- In accordance with the Corporations Act 2001 (Cth) section 109X, including posting the document to the company's registered office.

7.5.4 Serving a strata title company

Section 125 of the *Strata Titles Act 1985* (WA) provides that service may be effected by leaving the claim with the Chairman or Secretary of the strata company, with any member of the council or with every proprietor of a lot.

7.5.5 Serving an incorporated association

The Associations Incorporation Act 2015 (WA) provides that service may be effected upon an incorporated association (e.g. sporting club) by:

- Serving the process, notice or other document, personally or by post, on a member of the committee of the association.
- Leaving the process, notice or other document at the address of a member of the committee of the association, with any person apparently over the age of 16 years.
- Leaving the process, notice or other document at, or by sending it by post to, the address for service (if any) last notified to the Commissioner.

Note: an incorporated association may lodge notice of an address for service of any process with the Commissioner.

7.5.6 How do I provide proof of service?

Before you can make application for a default judgment you will need to provide the Court with proof that your claim has been served by providing the court with an affidavit of service or certificate of service issued by the Bailiff.

7.6 What happens after you have served the defendant?

From the date that the defendant is served with the claim they have a period of time to respond (14 days if the address for service of the defendant is within WA and 21 days if the address for service of the defendant is outside of WA).

7.7 What options are available to the defendant?

The defendant may choose to:

1. Defend the claim.
2. Admit the claim in full and agree to pay the amount claimed either in full immediately or by instalments.
3. Admit part of the claim and defend the rest and may offer an amount as full satisfaction of the claim.
4. Admit liability for the claim but dispute the amount claimed.
5. Ignore the claim.

7.7.1 What happens if the defendant defends the claim?

The defendant may defend the claim and also lodge a counterclaim. This occurs when the defendant believes that the claimant owes them money or damages, or the claim should be reduced by an amount owed to the defendant.

The defendant will need to lodge a **Form 15** – Response to Claim a copy will be provided to the claimant.

7.7.2 What happens if the defendant admits the claim?

Judgment will be entered by the Registrar. The claim can be paid in full immediately or if you can't pay immediately you can make an offer of repayment.

7.7.3 What happens if the defendant admits to part of the claim?

You can accept the amount offered by lodging and serving a notice of acceptance. The defendant will need to complete a **Form 15** – Response to Claim.

Judgment will be entered by the Registrar. If you do not accept the part admission, the matter will go to trial.

7.7.4 What happens if the defendant admits liability for the claim but dispute the amount claimed?

With a general procedure claim, the Registrar will list the case for a Pre-Trial Conference.

7.7.5 What happens if the defendant ignores the claim?

The claimant may apply for default judgment. The claimant will need to provide proof of service.

7.7.6 Can the defendant lodge a response late?

The defendant can lodge a response late if the claimant has not applied for default judgment even if the time limit for lodgment has expired.

7.8 What happens next?

If the defendant has lodged a response, the Court Registrar will give a copy of the response to the claimant.

The claimant will need to lodge and serve a Statement of Claim within 14 days of receiving the response from the defendant advising of their intention to defend the claim (unless they already completed this with their claim).

The defendant must then lodge a Statement of Defence or a Statement of Defence and Counterclaim within 14 days of receiving the Statement of Claim. Should a counterclaim be lodged the claimant will need to lodge and serve a Statement of Defence to Counterclaim.

A Pre-Trial Conference will then take place.

7.8.1 What is a Statement of Claim?

A Statement of Claim is a statement of the facts on which the claim is based and of the type of relief or remedy that the applicant is seeking. It helps to narrow the issues in dispute and reveals your case.

7.8.2 What is a Statement of Defence?

A Statement of Defence is a statement of the facts on which the defence is based and helps narrow the issues in dispute and reveals your case.

The claimant may make an application to the Court to give default judgment against you if you do not lodge your Statement of Defence.

7.8.3 What happens if the defendant is served with a Statement of Claim but does not lodge a Statement of Defence or Statement of Defence with a Counterclaim?

The claimant may make an application to the Court to give default judgment against you if you do not lodge your Statement of Defence.

7.8.4 What happens if the defendant has lodged and served a Statement of Defence?

The claimant must within 14 days after the claimant is served with the Statement of Defence, request the Registrar to list the case for a Pre-Trial Conference.

Once the Registrar receives the request, they will set a date, time and place and all parties will be notified.

7.8.5 What happens if the defendant has lodged and served a Statement of Defence with a counterclaim?

The claimant must within 14 days of service, lodge and serve 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 to list the case for a Pre-Trial Conference.

When the Registrar receives the request, the Registrar will set a date, time and place for a Pre-Trial Conference and all parties will be notified.

7.9 What is a Pre-Trial Conference?

A Pre-Trial Conference is where the parties appear before a Registrar of the Court in an attempt to resolve the dispute of a case before a Registrar.

Within 14 days of the claimant being served with a Statement of Defence, the claimant must request a Registrar to list the case for a Pre-Trial Conference.

If the claimant has lodged and served a Statement of Claim but has not yet been served with a Statement of Defence, or a Statement of Defence with Counterclaim, and both parties agree, the claimant may apply to the Court for an early Pre-Trial Conference (**Form 28** – Request for Pre-Trial Conference).

7.9.1 Who must attend?

All parties must attend the Pre-Trial Conference **in person**. If a party is a corporation, it may be represented by one of its officers whom it has authorised to do so.

If a party's attendance is likely to cause undue expense or the party is of ill health, a party may apply to the Registrar prior to the Pre-Trial Conference for the hearing to be conducted by audio link.

7.9.2 What happens if the parties settle?

Any party may make an offer (or a number of offers) to settle the dispute. If a settlement is reached, the Registrar will draw up a **Form 49** - Memorandum of Consent Orders for both parties to sign.

This order becomes a judgment of the Court and can be enforced by the successful party.

7.9.3 What happens if the case does not settle at the Pre-Trial Conference?

If a settlement is still not reached at the Pre-Trial Conference, the Registrar may list the matter for another Pre-Trial Conference or a Status Conference.

7.10 What is a Status Conference?

A Status Conference gives parties an opportunity to settle the case. It is hoped that the parties will be brought to a settlement that will then prevent the need for going to trial.

At the Status Conference, the Magistrate may:

- Determine what facts, if any, are agreed by the parties.
- Order the parties to lodge and serve lists of documents the parties may tender in evidence at the trial and exchange any other documents or information.
- Order the parties to attend a Pre-Trial Conference or Mediation.
- List the case for a further Status Conference.
- Make any other orders necessary to facilitate settlement or ensure the case is ready for trial.

If a party does not attend a Status Conference, the Magistrate may give default judgment against you.

7.11 Fees

For general procedure claims, court fees are payable when: lodging a claim, an enforcement officer (e.g. a bailiff, serves the claim), listing the matter for a Pre-Trial Conference, listing the matter for trial and seeking to have judgment enforced.

8 Type of Matter: Consumer/Trader Claims

A consumer/trader claim may be made for a dispute about the sale, supply or hire of goods or services between a consumer and a trader (shop, business or service provider) up to the value of \$75,000.

It usually arises from the performance of work or the provision of services; the payment or relief from payment or the return or replacement of goods.

These claims may start as a general procedure claim or minor case consumer/trader claim depending on the value of the claim.

See [Fact sheet 4 Consumer/trader claim](#)⁷.

8.1 What legislation is relevant?

Magistrates Court (Civil Proceedings) Act 2004 (WA).

Magistrates Court (Minor Case Procedure) Rules 2005 (WA).

Magistrates Court (Civil Proceedings) Rules 2005 (WA).

8.2 Can I have legal representation?

If the claim is up to \$10,000 in value and lodged as a minor case claim, the claimant and the defendant cannot have legal representation unless all parties and the Magistrate agree.

If the claim is up to \$75,000 in value and lodged as a general procedure claim, you can be represented by a lawyer.

8.3 What is the process for these claims?

8.3.1 Minor Case Consumer Trader Claim

The overall process for minor case consumer trader claims is as follows:

- The claimant lodges a claim with the Magistrates Court.

⁷ Fact sheet 4 Consumer/trader claim - https://www.magistratescourt.wa.gov.au/_files/Civil_factsheet_4.pdf

- The matter is listed for a Status Conference and the Court notifies the parties of the time/date of the conference.
- A Status Conference will bring together both parties and attempt to reach a settlement. If no settlement is reached at the Status Conference, the case may be referred for a further Status Conference, to attend a Pre-Trial Conference, attend a Mediation or list the matter for a trial.

8.3.2 General Procedure Consumer Trader Claim

The process is essentially the same as for a General Procedure Claim – refer to section 7.

8.4 How do I commence a claim?

You will need to lodge a:

- **Form 6** – Consumer/Trader Claim Minor Case; or a
- **Form 7** –General Procedure Claim (Consumer/Trader).

8.5 Fees

There is a lodgment fee and also for a general procedure claim service fees to be paid upon lodgment of the claim.

9 Type of Matter: Conferring Act Applications

Some pieces of legislation confer on the Magistrates Court of WA jurisdiction to deal with applications/disputes that arise under that legislation. E.g. *The Dividing Fences Act 1961*.

9.1 What is the process for these applications?

The overall process for conferring act applications is as follows:

- Unless the conferring act provides otherwise the claim is commenced by lodging a **Form 53** - Application Under Conferring Act with the Magistrates Court.
- The matter is listed for a Status Conference and the Court notifies the parties of the time/date of the conference.
- A Status Conference will bring together both parties and attempt to reach a settlement. If no settlement is reached at the Status Conference, the case may be referred for a further Status Conference, to attend a Pre-Trial Conference, attend a Mediation or list the matter for a trial.

9.2 Fees

There is a lodgment fee for the application.

10 Type of Matter: Residential Tenancy Claim

When a lessor or a tenant wants to enforce certain conditions of a tenancy agreement or to claim money under the agreement.

The most common disputes which end up in court include:

- Disputes about the return of bond money.
- Overdue rent.
- Damage to property.
- Maintenance of the premises.
- Problems when ending tenancy agreements.

10.1 What legislation is relevant?

The *Residential Tenancies Act 1987* (WA) sets out the rights and responsibilities of tenants and landlords, as well as providing the process for settling disputes.

The Act applies, even if you do not have a formal lease or anything in writing. The Residential Tenancies Regulations 2005 (WA) also applies.

10.2 Where can I get assistance?

If you have any doubt about whether your rental situation is covered by the Act, call the Consumer Protection Advice Line on 1300 30 40 54 or look online on the [Department of Mines, Industry Regulation and Safety](#)⁸ website.

10.3 Can I have representation?

Both tenants and lessors are entitled to be represented by a property manager or a person employed or engaged by a not-for-profit organisation or similar body to act as an advocate for tenants or lessors.

You must show the court that your representative has sufficient knowledge of the issue and your authority to act on your behalf.

10.4 How do I commence this process?

- **Form 6** – Application for Disposal of Bond Money is used for bond disputes where the amount in dispute is not more than the amount held in the bond account, and the bond has not been paid out.
- **Form 12** – Court Application is used for general disputes (such as unpaid rent, damage to property), a dispute where the amount being sought is greater than the bond, or circumstances arising from family and domestic violence.
- **Form 11** – Proceeds of Sale of Abandoned Goods.

⁸ Department of Mines, Industry Regulation and Safety - <https://www.commerce.wa.gov.au/consumer-protection/renting-home>

You will need to lodge your application electronically through the Magistrates Court [eCourts Portal](#)⁹.

Notes: During the application process you may be asked to enter the bond reference number and party details. You can find these on your lodgment certificate. If you do not have your lodgment certificate, email bondsadmin@dmirs.wa.gov.au to request a copy.

You must also lodge a **Form 24** - Authorisation For An Agent if you are a property manager or a person employed or engaged by a not-for-profit organisation representing the applicant.

10.5 How do I serve notice on the defendant?

The Court will serve/notify all parties of the application and the date/time of any court hearing including if an address is not known.

Any notice to be served/given to a person whose address is not known is regarded as having been served if a copy of it is [published on the eCourts Portal](#)¹⁰.

10.6 What happens once the respondent has been served?

If the respondent does not lodge a **Form 5** - Notice of Intention to Dispute Application for Disposal of Bond Money within 7 days of service of the application an order may be made without a formal hearing.

If the respondent lodges a **Form 5** - Notice of Intention to Dispute Application for Disposal of Bond Money, the application is listed before the Court and the parties are notified.

⁹ eCourts Portal - <https://ecourts.justice.wa.gov.au/eCourtsPortal/>

¹⁰ Notice of Residential Tenancy Applications - <https://ecourts.justice.wa.gov.au/eCourtsPortal/ResidentialTenancy>

If the respondent lodges a form of consent an order is made in terms of the application.

10.7 What happens in a residential tenancy matter hearing?

The first hearing is usually conducted before a Registrar, but it may also be conducted before a Magistrate.

If both parties appear at the hearing and the respondent consents to an order being made an order is made.

If both parties appear at the hearing and the respondent does not consent to an order being made, a Registrar will make attempts to have the parties negotiate a settlement and consent to an order being made.

If the matter cannot be settled, and remains in dispute, it is then referred to a Magistrate for hearing.

If the first hearing is conducted by a Magistrate and the matter is disputed the matter may proceed immediately to hearing or may be adjourned to another day for hearing.

If only the applicant appears the application can be heard without the other party being present and an order made.

10.8 What orders can be made?

The following orders may be made:

- Ending a tenancy agreement.
- Requiring the tenant to vacate the premises.
- How bond money will be paid out.

- Requiring that an action be carried out in accordance with the tenancy agreement.
- Stopping any action which breaches the tenancy agreement.
- Payment of compensation by the person in breach of the agreement, for loss or injury (other than personal injury), caused by the breach.
- Payment of rent into the court until the owner carries out the Court's order to remedy a breach or for compensation.

If an order is granted and the tenant can demonstrate they would suffer hardship if it was effective immediately, they can ask the Court to suspend the order for up to 30 days.

If the respondent does not pay an amount ordered by the Court, action can be taken to enforce the order.

10.9 Fees

For information on fees refer to the [Magistrates Court Fees](#)¹¹.

11 Type of Matter: Civil Judgment Enforcements

If you are to receive money but the judgment debtor does not pay you by the date stated in the judgment or agreed to at a Pre-Trial Conference, you can then apply to the Magistrates Court to enforce the judgment and add the cost of doing so to the debt.

11.1 What is the relevant legislation?

Civil Judgments Enforcement Act 2004 (WA).

¹¹ Magistrates Court Fees - https://www.magistratescourt.wa.gov.au/_files/Magistrates_Court_Fees.pdf

11.2 What orders can be requested?

Any of the following orders may be requested to enforce a judgment to recover money that has not been paid:

- Time for payment order.
- Instalment order.
- Earnings appropriation order.
- Debt appropriation order.
- Property (seizure and sale) order.
- Appointment of a receiver.

Notes: Time to pay order – this requires the judgment debtor to pay the debt in full immediately or on, or before, a date set by the Court.

Instalment order – This requires the judgment debtor to pay the debt by regular amounts set by the Court.

Earnings appropriation order – this requires an employer, who pays the judgment debtor, to pay a portion of those earnings to you.

Debt appropriation order – is a Court order requiring a third person to pay all, or part of, the judgment debt to the judgment creditor instead of the judgment debtor.

Property (seizure & sale) order – authorises a bailiff to seize and sell as much of your real or personal property as necessary to pay the judgment debt.

11.3 How do you apply for an enforcement order?

Lodge a **Form 6** – Application or Request to a Court electronically through the Magistrates Court [eCourts Portal](#)¹².

Note: An application for an enforcement order must be made within 12 years from when judgment was given.

If six years has passed since the judgment, the judgment creditor must obtain the leave of the Court to apply for one of the following enforcement processes: a property (seizure & delivery) order; a property (seizure & sale) order; or a warrant for arrest.

See [Fact sheet 23 Enforcing a judgment](#)¹³.

11.4 Suspension Order

An order that suspends the enforcement of a judgment.

See [Fact Sheet 26 Applying for a Suspension Order](#)¹⁴.

11.5 Fees

For information on fees refer to the [Magistrates Court Fees](#)¹⁵

12 Type of Matter: Restraining Order

The Court can issue a restraining order to protect you from someone who commits family violence or personal violence against you, threatens you or

¹² eCourts Portal - <https://ecourts.justice.wa.gov.au/eCourtsPortal/>

¹³ Fact sheet 23 Enforcing a judgment - https://www.magistratescourt.wa.gov.au/_files/Civil_factsheet_23.pdf

¹⁴ Fact sheet 26 Applying for a Suspension Order - https://www.magistratescourt.wa.gov.au/_files/Civil_factsheet_26.pdf

¹⁵ Magistrates Court Fees - https://www.magistratescourt.wa.gov.au/_files/Magistrates_Court_Fees.pdf

your property, harasses or intimidates you, and you are concerned that it will continue.

There are several types of restraining orders including:

- Family Violence Restraining Order (FVRO) (if you require protection from a person with whom you are, or were, in a family relationship - e.g. married, de-facto partners, ex-partners, related to each other (including by culture or kinship) or otherwise in an intimate or family-type relationship).
- Police Order (give temporary protection against the risk of family violence and can be made in situations where a police officer reasonably believes that an FVRO should be made). Note: These are not an order of the Court but are more immediate and of shorter duration (up to 72 hours).
- Violence Restraining Order (VRO) (against a person you are not or have not been in a family relationship with such as a neighbour, work colleague).
- Misconduct Restraining Order (MRO) (if you require a person who you are not in a family relationship with to be restrained from behaving in a way that could be considered to be intimidating or offensive, damaging your property or breaching the peace).

12.1 What is the relevant legislation?

Restraining Orders Act 1997 (WA).

Restraining Orders Regulations 1986 (WA).

12.2 What is the general process?

12.2.1 Family Violence Restraining Order

See [Fact Sheet 49 Applying for a Family Violence Restraining Order](#)¹⁶.

12.2.2 Police Order

The Police Officer will fill in the details of the Police Order.

A copy of the Police Order will be given to the person protected by the order and a copy will be served on the person bound by the order. It generally lasts for 72 hours.

12.2.3 Misconduct Restraining Order

See [Fact sheet 39 Misconduct restraining order](#)¹⁷.

12.2.4 Violence Restraining Order

See [Fact sheet 38 Violence restraining order](#)¹⁸.

12.3 How do I commence an application?

If you are applying for a Family Violence Restraining Order or Violence Restraining Order:

- Complete an application form at the court, or online through an approved legal service provider. The application form can also be [found on the](#)

¹⁶ Fact Sheet 49 Applying for a Family Violence Restraining Order - https://www.magistratescourt.wa.gov.au/_files/Factsheet49_Applying_for_Family_Violence_Restraining_Order.pdf

¹⁷ Fact Sheet 39 Misconduct Restraining Order - https://www.magistratescourt.wa.gov.au/_files/Civil_factsheet_39.pdf

¹⁸ Fact Sheet 38 – Violence restraining order - https://www.magistratescourt.wa.gov.au/_files/Civil_factsheet_38.pdf

[Magistrates Court website](#)¹⁹. The form will need to be provided to the Front Counter.

If you are applying for a Misconduct Restraining Order:

- Complete an application form at the court, or lodge an application on the eCourts Portal. The [application form](#)²⁰ can also be found on the Magistrates Court website. The form will need to be provided to the Front Counter.

12.4 Where can I get assistance?

Other agencies which may be of assistance include:

- Western Australia Police.
- Department for Child Protection and Family Support.
- Aboriginal Family Law Services.
- Aboriginal Legal Service (WA).
- Legal Aid (WA).

Many Community Legal Centers offer services for people experiencing or at risk of family violence.

The Law Society of WA can provide information about private lawyers who can provide advice and representation in restraining order cases.

The Citizen's Advice Bureau may be able to give advice if you are the Respondent or Person Bound by a Family Violence Restraining Order.

¹⁹ Family Violence Restraining Order Application Form - https://www.magistratescourt.wa.gov.au/_files/Application_Family_Violence_Restraining_Order.pdf

²⁰ Misconduct Restraining Order Application Form - https://www.magistratescourt.wa.gov.au/_files/misconduct_restraining_order_application.pdf

12.5 Fees

There are no fees associated with applying to the Magistrates Court for a Family Violence Restraining Order or Violence Restraining Order.

For a Misconduct Restraining Order refer to the [Magistrates Court Fees](#)²¹.

²¹ Magistrates Court Fees -
https://www.magistratescourt.wa.gov.au/_files/Magistrates_Court_Fees.pdf