

Going to the Magistrates Court

If you have a dispute and have not been able to resolve it directly or through conciliation, then going to the Magistrates Court may be the next step.

Going to court is not necessarily expensive or difficult, but some work needs to be done to ensure you make the best possible case.

The Magistrates Court

The Magistrates Court deals with cases where the total claim is up to \$75,000 (excluding costs).

These include:

- consumer/trader claims;
- residential tenancy matters;
- claims for debt or damages; and
- claims for the recovery of real estate property.

Your claim will have to go to the District Court if you are claiming an amount more than \$75,000 but not more than \$750,000. If your claim is for more than \$750,000 you will need to go to the Supreme Court. Disputes about building services, residential park tenancies and strata management issues are handled by the State Administrative Tribunal.

There is probably a Magistrates Court near you. In addition to the Central Law Courts in Perth, the Magistrates Court has six courthouses in the metropolitan area and over 20 in regional Western Australia.

For contact details for the various courts and the State Administrative Tribunal, see the More information section on pages 5–6 of this fact sheet.

Common terms

A claimant (or applicant) is someone who starts the court process by lodging a form because they want something from a defendant (or respondent). This fact sheet refers to them both as the parties.

A Magistrate makes the decision at a full hearing (or trial) at the Magistrates Court. The Magistrate's final decision is an order. Disputes are often resolved by a Court Registrar before going to a full hearing. A bailiff is someone used by the court to deliver documents, evict people and seize property.

What type of claim can I make?

Consumer/trader claim: A claim can 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). Under the *Fair Trading Act 2010*, traders can sometimes be considered consumers when they purchase goods for the business. Consumer Protection or the Small Business Development Corporation can provide further information about your rights in these matters.

Residential tenancy: An application can be made when a lessor (usually a landlord or their agent) or a tenant wants to enforce certain conditions of a tenancy agreement or to claim money under the agreement. Examples include applying for orders to:

- terminate a tenancy agreement;
- recover rent owing;
- recover money for damages or repairs and for unpaid utilities (gas, electricity, water);
- settle a security bond dispute;
- get repairs to the rented premises completed by the lessor; or
- get reimbursement from the lessor for repairs to the rented premises that have been completed.

Debt or damages: You can make a claim in the Magistrates Court when you are owed money by someone, or if you want compensation for loss, injury or harm caused by someone.

Recovery of real estate property: A claim can be made to recover possession of your real estate property (where there is no agreement under the *Residential Tenancies Act 1987*) if the annual rental value is up to \$75,000. This claim can be used for commercial property or when people are living in a place illegally.

Will I need a lawyer?

If your claim is for an amount up to \$10,000, known as a minor case claim, lawyers are not usually allowed to represent either party and the procedures are less formal. Lawyers can be used in claims for amounts over \$10,000, known as general procedure claims. These claims have stricter rules about their procedures, for example, on how a party provides evidence to the court.

How do I start the process?

If a conciliation service like the one provided by Consumer Protection or the Small Business Development Corporation is not able to help you resolve your matter, you can lodge the

appropriate form with the Magistrates Court. You do not have to try conciliation or wait for a conciliation outcome before applying to the court, but conciliation will stop if you apply to the court.

Magistrate Court forms must be lodged online via their electronic lodgement system available at magistratescourt.wa.gov.au. You will need an exemption from the court to be able to manually lodge a form at a Court Registry.

How much will it cost?

You will have to pay a filing fee when lodging a form. The amount depends on the type of claim you are making, how much you are claiming (or the rental value of the property), whether you are an individual or a company, and whether you are financially disadvantaged, making you eligible for a reduced fee.

After you have lodged your claim form with the court you will need to 'serve' or give it to the defendant. You can pay a service fee (and a travelling fee) to have a court bailiff do this for you. The travelling fee depends on the region and distance. If you choose to serve the notice yourself there are guidelines you will need to follow. For more on these see the Magistrates Court's fact sheet 8, Serving a court document.

There may be other court fees to pay depending on how far along the process your case proceeds. Visit the Magistrates Court website for a list of current court fees and rates.

You might also need to pay for a lawyer if your claim is over \$10,000, although you are allowed to represent yourself. If you cannot afford a lawyer, you might be eligible for legal aid.

If you are successful, the defendant may be ordered to pay your legal costs and your court fees. There is no guarantee that you will recover all your losses through the court process and if you fail to prove your claim you might have to pay for the defendant's legal costs as well as your own. Even if you are successful there are limits to the amount of legal costs that one party will be ordered to pay the other, so you might

not get all your money back. Both parties usually have to pay their own legal costs if they chose to have the more formal procedures for disputes less than \$10,000. For disputes over \$10,000 the unsuccessful party is usually ordered to pay legal costs, which can amount to tens of thousands of dollars.

The risk of having to pay these costs is something you should carefully consider before lodging a claim with the Magistrates Court.

How long does it take?

Once the defendant is served the notice, they will have 14 days (or 21 days if outside Western Australia) to give the court their response to the claim. Respondents to a residential tenancy application do not have to give the court a response, but they do have to attend the first hearing day.

Many disputes are resolved before going to a full hearing (a trial). The defendant might pay the claim in full, agree with part of the claim, give notice of intention to defend all or part of the claim, or even make a counter claim.

If the defendant ignores the claim, you can apply for 'default judgment' on the appropriate form(s). This means the court will make a decision without a hearing. If a hearing for the assessment of damages is needed there is often no additional fee.

If the defendant wants to defend the claim, the dispute will be scheduled for a status conference (minor case claim) or a pre-trial conference (general procedure claim). This conference is free for residential tenancy applications and less formal claims (under \$10,000), but there is a fee for more formal claims.

Status conferences and pre-trial conferences are private sessions with you, the defendant, and a court official. The court official is there to help guide the session, but not to give legal advice. The whole point is to try to settle your case by agreement rather than go to trial.

Any agreement reached in a status or pre-trial conference is final and enforceable by the court.

If you do not reach an agreement, there may be another pre-trial conference or a listing conference to take the case to a full hearing (the trial). It is common for each of these steps to be separated by several weeks.

Preparing for the status or pre-trial conference and for court

Make sure you have records of all notices, receipts and other relevant documents that will support your case. If you've been through conciliation, it can be helpful to include your closing letter from Consumer Protection as it shows you've tried to resolve the issue.

Take both the original documents and photocopies to all meetings and your court date. It could take you a day or more to organise this information in a way that will be easy for you to refer to at court. 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 more. 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. If they will not attend court voluntarily, you will need to serve them with a Summons to Witness (available from the court). If you need witnesses for a residential tenancy application, you should have them with you at the first hearing day.

At court

You should observe court etiquette:

- Call the Magistrate 'Sir', 'Madam' or 'Your Honour'.
- If you are able, 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 have finished.
- Only one person is allowed to speak at a time. The Magistrate will tell you when it is your turn to speak.

When it is your turn to give evidence at a full hearing, you go into the witness box, take an oath or make an affirmation to tell the truth, and present your version of the dispute in the order that events happened.

You will also show any documents that support your case to the Magistrate at that time. Make sure you tell the Magistrate all the important facts.

When both parties have finished and have been cross-examined (questioned by each other, or each other's lawyers), the Magistrate will make a decision, which is final.

The outcome

Generally, the Magistrate will outline the problem, summarise what has been said and then give the decision, known as an order. This is often done on the day of the hearing. It is common for the court to send you a copy of the order by mail after the hearing.

If the order requires money to be paid to you, you become the 'judgment creditor'. If the order requires money to be paid by you, you become the 'judgment debtor'.

The Magistrate may order the judgment debtor to pay the judgment creditor's court fees and legal costs. The judgment creditor may be allowed to receive interest on the debts owed to them as well. Other costs could be awarded in some limited circumstances.

Enforcement

If you are to receive some money but the judgment debtor does not pay you by the date stated in the judgment or agreed to at a status or 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.

A means inquiry must be scheduled to see if the judgment debtor is able to pay the judgment debt. If they are able, you can apply for a time for payment order or an instalment order. A time for payment order requires the judgment debtor to pay the debt in full on or before a date set by the court. An instalment order requires the judgment debtor to pay the debt by regular instalments as set by the court.

You can also seek a property (seizure and sale) order, which means a bailiff can seize and sell as much of the judgment debtor's real estate property or personal property as necessary to pay some or all of the debt.

When the judgment requires the return of property to you (as in some tenancy disputes) a property (seizure and delivery) order may be needed. This means a bailiff can seize real estate property or personal property for delivery to you.

There are filing fees for the above orders. You must 'serve' your claim or can pay the bailiff to do this for you for additional service and travelling fees. Visit the Magistrates Court website for a list of current fees and rates.

When the problem is still not solved

When the judgment debtor still does not make payments according to a time for payment order or an instalment order you must then apply to the court for a default inquiry.

If the court decides that the judgment debtor has disobeyed an instalment order or a time for payment order, they may be guilty of a contempt of court, for which they can be fined or imprisoned.

There are also orders that can seek payment from third parties (debt appropriation order) or for the judgment debtor's employer to make regular payments from their wages (earnings appropriation order).

If the judgment debtor does not have the money or any property to sell to pay the debt, there is nothing more you can do to get the money owed to you; however, credit rating companies in Australia amend their records on people to reflect the debts listed by the Magistrates Court. It is up to debtors to prove they have paid the debt so that it no longer affects their credit rating.

More information

Watch our video series, **Going to the Magistrates Court in Western Australia**, at consumerprotection.wa.gov.au/magcourt

The **Magistrates Court** produces comprehensive fact sheets about the court process. Printed copies are available from the Magistrates Court offices. Fact sheets, forms, fees, access to the eCourts Portal, and a full list of court offices can be found at magistratescourt.wa.gov.au

Central Law Courts

501 Hay Street, Perth 9425 2222
PerthMagistratesCourt@justice.wa.gov.au

Metropolitan Courts

Armadale 109 Jull Street 9399 0700
armadalecourt@justice.wa.gov.au

Fremantle 8 Holdsworth Street 9431 0300
fremantlecourt@justice.wa.gov.au

Joondalup 21 Reid Promenade 9400 0700
joondalupcourt@justice.wa.gov.au

Mandurah 333 Pinjarra Road 9583 1100
mandurahcourt@justice.wa.gov.au

Midland 24 Spring Park Road 9250 0200
midlandcourt@justice.wa.gov.au

Rockingham Whitfield Street 9599 5100
rockinghamcourt@justice.wa.gov.au

The **State Administrative Tribunal** handles disputes about building services, residential park tenancies and strata management issues.
L6, State Administrative Tribunal Building
565 Hay Street, Perth 1300 306 017
sat.justice.wa.gov.au

The **Small Business Development Corporation** operates a mediation service to resolve business-to-business, retail lease and business-to-government disputes where at least one party is a small business.
smallbusiness.wa.gov.au 13 31 40
info@smallbusiness.wa.gov.au

You may want to **get legal advice** from a private lawyer. Otherwise, there are a number of organisations, including those below, which may give you free or low-cost legal services:

Aboriginal Legal Service of Western Australia
www.als.org.au 1800 019 900

Legal Aid Western Australia can also provide information about the court process.
legalaid.wa.gov.au 1300 650 579

Perth 32 St Georges Terrace 9261 6554

Albany 43-47 Duke Street 9892 9700

Broome 15-17 Dampier Terrace 9195 5888

Bunbury 61 Victoria Street 9721 2277

Geraldton 273 Foreshore Drive 9921 0200

Indian Ocean 20 Jalan Pantai 9164 7529

Kalgoorlie 120 Egan Street 9025 1300

Kununurra 98 Konkerberry Drive 9166 5800

South Hedland 28-32 Throssell Road 9172 3733

Community Legal WA provides a full list of community legal centres in Western Australia on their website at communitylegalwa.org.au.

These community-based organisations include:

Citizens Advice Bureau

(can help you find the right legal centre)

cabwa.com.au 9221 5711

cab@cabwa.com.au

Consumer Credit Legal Service (WA) Inc.

(free legal advice on credit, debit and consumer law issues)

cclswa.org.au 9221 7066

cclswa@cclswa.org.au

Circle Green Community Legal

(legal assistance for tenants)

circlegreen.org.au 6148 3636

1800 621 888 for country callers

Law Access operates a pro bono referral scheme that helps vulnerable Western Australians access free or low-cost legal assistance.

lawaccess.org.au 6488 8725

lawaccess@lawaccess.net.au

For information about bankruptcy and insolvency, refer to the following agencies:

Australian Financial Security Authority

afsa.gov.au 1300 364 785

Australian Securities & Investments Commission (ASIC)

asic.gov.au 1300 300 630

**Department of Energy, Mines,
Industry Regulation and Safety**
www.demirs.wa.gov.au

Regional Offices:

Goldfields/Esperance	(08) 9021 9494
Great Southern	(08) 9842 8366
Kimberley	(08) 9191 8400
Mid West	(08) 9920 9800
North West	(08) 9185 0900
South West	(08) 9722 2888

Consumer Protection Division

Gordon Stephenson House
Level 2/140 William Street
Perth Western Australia 6000
Locked Bag 100, East Perth WA 6892

Call: 1300 30 40 54

Email: consumer@dmirs.wa.gov.au

www.consumerprotection.wa.gov.au



Disclaimer: The information contained in this fact sheet is provided as general information and a guide only. It should not be relied upon as legal advice or as an accurate statement of the relevant legislation provisions. If you are uncertain as to your legal obligations, you should obtain independent legal advice.

This publication is available in other formats on request.

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