

Recovery of a Debt

Small Business Development Corporation

The Magistrates Court of Western Australia began operating in May 2005. It amalgamates the former Court of Petty Sessions, Local Court and Small Claims Tribunal into a single court.

This Court has multiple registries located around Western Australia to deal with various criminal and civil matters, including claims for debts.

The Magistrates Court

The Magistrates Court deals with civil matters including:

- general procedure claims for debt or damage up to \$75,000; and
- minor case claims for debt or damages up to \$10,000.

With a debt of \$10,000 or less, you can elect to make either a general procedure claim or a minor case claim.

Legal representation

A lawyer cannot represent you if you are making a minor case claim for less than \$10,000, unless all parties agree or the court grants special permission. If you choose to make a general procedure claim for an amount up to \$10,000, you can choose to be represented by a lawyer. However, your lawyer's costs will not generally be recoverable – even if your claim is proved – unless the court is satisfied that exceptional circumstances exist.

Recovery of costs

Court, service and enforcement costs are generally recoverable.

Reduction of fees for small business

For both general procedure claims and minor case claims, small businesses and non profit associations may apply to have lodgement fees reduced. Information sheets are available from the Department of the Attorney General website www.justice.wa.gov.au.

The claim

Before you (the claimant) make a claim, you must know:

- the amount you want to claim;

- the date on which the services or goods were supplied;
- the basis on which the defendant owes you the money; and
- the correct name and address of the defendant.

The defendant

If a purchase order was issued by your client or customer for the goods or services, the **defendant** would be the business identified on the order by their name and ABN. If the order was verbal, ensure that the person issuing the order had the authority to do so.

The Business Names Branch of the Department of Commerce, offers a business name search for a fee. The search provides a computer printout of the details of a registered business name, including the owners' names and addresses, or a copy of the original documents lodged. Information can be requested in person, by telephone on 1300 30 40 14, by mail, or online <https://bizline.commerce.wa.gov.au/bnonline/>.

Listings and some information on both business names and on registered companies can be found on the National Names Index on the Australian Securities and Investments Commission (ASIC) website, www.asic.gov.au. For more detailed information on a company, you may search the National Names Index at the ASIC Service Centre, Level 3, 66 St Georges Terrace, Perth. The ASIC information line is 1300 300 630. Alternatively, you may arrange a company or business name search by contacting one of the service providers listed on the National Names Index. Fees are payable.

Magistrates Court – minor cases procedure

The minor cases procedure for defended matters in the Magistrates Court will generally be as follows:

- The claimant lodges a claim and a copy of the claim is served on the defendant. The approximate cost is from \$74.50 for an individual.
- The defendant is required to enter a defence to the claim within 14 days from the date of service of the claim and a copy of the defence is served on the claimant.
- The claimant has 14 days after service of the defence to provide to the defendant the claimant's case statement.
- The defendant has 14 days after being provided with a case statement by the claimant to provide to the applicant the defendant's case statement.
- After the exchange of the case statements the court will fix a date for a compulsory pre-trial conference (PTC) where it is hoped the parties will settle.
- Depending on the time the parties take to respond to one another and court listings, a PTC may be held within approximately four weeks of the exchange of case statements and within approximately ten weeks of the claim being lodged.
- If the parties fail to settle the claim the case goes to trial (before a Magistrate), which is expected to take place, depending on listings, within four to six weeks of the PTC; and judgement is likely to be given on the day of the trial for a minor cases claim.
- The Court can order mediation of the case, or any issue arising under it, at any stage of the proceedings.
- For minor case claims that are undefended the claimant can obtain and enforce judgement 14 days after service on the defendant.

Further information on procedure

Further information on court procedures, fact sheets and forms to be lodged can be obtained from the website www.magistratescourt.justice.wa.gov.au, from the Magistrates Court and any Magistrates Court registry.

Magistrates Court location

The Court is located at:
Central Law Courts
30 St Georges Terrace
PERTH WA 6000
Tel: (08) 9425 2222
Fax: (08) 9421 1075
www.magistratescourt.wa.gov.au

Other options

Other options available for the recovery of debts include:

- A mediated settlement
- Use of a debt collector
- Use of a lawyer

Credit management

The Small Business Development Corporation (SBDC) small business brief *Credit management* provides guidance on implementing and maintaining a credit management system to minimise exposure to bad debts.

Publications

Publications available from the SBDC Business Information Centre or online at www.smallbusiness.wa.gov.au include the following titles:

Dun & Brad Street's Guide to Cash Flow and Credit Risk

PLU 301\$39.95

For further information and guidance contact:

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Level 2, 140 William Street
PERTH WA 6000
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Fax: (08) 6552 3399
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Website: www.smallbusiness.wa.gov.au

This publication is also available upon request in alternative formats such as large print, electronic format, audio, or braille.

Disclaimer

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