



# SUPREME COURT OF WESTERN AUSTRALIA

## Factsheet: Before starting a civil action

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The Supreme Court does not require you to undertake any formal steps before becoming involved in action. We suggest however that you consider the following before starting or defending an action.

### 1. Is there another way?

Litigation in this Court has certain features which apply to all parties. Litigation is often

- time-consuming – it may take many months or years to conclude and during that period, it will take up much of your time. It will keep you away from doing other more profitable or enjoyable activities.
- expensive - litigation in the Supreme Court is very expensive. Even though you may not be paying for your own lawyer, your action may take on a life of its own and be difficult to end without costs having to be paid. The Supreme Court costs scales, which you may find here ([link](#)) show what an unsuccessful party may have to pay to the successful party.
- stressful – parties often find that litigation will come to dominate their lives and damage relationships with those close to them.

Bear these matters in mind if you are thinking about starting an action in this court. Do you really **need** to achieve the outcome that you will be seeking in the action? For example, do you really need that small strip of land which sits on the boundary with your neighbour?

Likewise, as a potential defendant, think about whether you can in fact give the plaintiffs all or some of what is sought. Is it so important to you to retain that small strip of land that your neighbours says is rightfully theirs?

### *Reach an agreement*

Consider whether you should try to reach an agreement with the other party before starting an action. An agreement, even if the terms are not quite what you want or what you think are fair, may be a far better outcome than litigation.

There are private mediation services and private mediators who may be able to assist.

### *A letter before action*

Before starting an action consider writing to the other party setting out:

- the issues as you see them
- the orders that you will seek if you start an action
- a genuine offer to resolve the issues in dispute – which may involve an offer to mediate
- a time (at least 14 days after the date of the letter) within which you would like the other party to respond to your letter.

In order to be effective your letter should be concise and its tone should not be insulting or unpleasant. Be reasonable. Your objective is to avoid litigation, not to encourage it.

### *Legal advice*

Even if you will not be able to afford a lawyer once you are involved in an action, consider whether you can afford to get some legal advice as to the merits or strength of your position **before** the action is commenced. The advice may be expensive but it may save you money in the long run.

If you do get such advice, consider it carefully and don't reject it without very good reason.

Most importantly, do not accept legal advice from unqualified people. Do not let others persuade you to start or defend an action based on their claimed expertise in the area or their claimed legal knowledge. The only people who can give you legal advice are lawyers. Do not take legal advice from anyone else. Ultimately it will be you who suffers the consequences.

## **2. If there is no other way**

If litigation is inevitable then, you should consider the following before going any further.

### *Materials*

You should familiarise yourself with the following materials:

- The Supreme Court Rules
- The Court's practice directions
- Civil Procedure Western Australia

These set out the procedures and practices of the Court and dictate how an action proceeds in the Court.

### *Which Court?*

You need to start an action in the correct court. You may face difficulties and have costs orders made against you if you commence your claim in the wrong court.

The Supreme Court has the power to deal with claims where the amount in issue is over \$750,000. Claims for less than \$750,000 but more than \$50,000 are dealt with in the District Court as are all claims for personal injury regardless of claim amount, and claims for less than \$50,000 in the Magistrates Court. The Supreme Court also deals exclusively with other types of claims – for example, an action in which an injunction or a declaration is sought must be started in the Supreme Court. Similarly a claims in relation to a will or under the *Family Provision Act* must be started in the Supreme Court.

### *Be organised*

Make sure that you are organised. Collect all relevant documents that you will need for your action and organise them so that they are readily available and easily found. If anyone is holding documents on your behalf, such as an accountant, retrieve those documents now. Where possible ensure that you have original documents and not photocopies.

Think carefully about what you want to achieve and how you can achieve it quickly and easily. A risk for litigants who do not have lawyers is to lose focus on the true objective and spend too much time on side issues or irrelevant issues. This results in long drawn-out litigation and costs orders against the party at fault.

Be aware that you will be required to attend court from time to time, usually in the mornings. You will need to take time off work to do so.