



SUPREME COURT OF WESTERN AUSTRALIA

Factsheet: Starting a civil action

Before filing the documents to commence your civil action with the Supreme Court you should consider the following information.

1. Time Limits

Civil actions must be commenced within a fixed time after the cause of action arises.

In general the *Limitation Act 2005 (WA)* sets the relevant time limit; which is 6 years from the date when the cause of action arises (s.13 *Limitation Act 2005*).

However, the *Limitation Act 2005 (WA)* sets certain specific limitation periods for particular causes of action (see ss.14 to 29 *Limitation Act 2005 (WA)*). For example, an action for personal injury cannot be commenced if more than 3 years have elapsed since the cause of action accrued (s.14 *Limitation Act 2005*) and an action for defamation cannot be commenced if more than 1 year has elapsed since the publication (s.15 *Limitation Act 2005 (WA)*).

What is the cause of action?

A cause of action arises on the occurrence of the events giving rise to the claim. For example, in the case of a claim for injuries it will be the time when the accident or other event leading to the injuries occurred.

Other legislation may also contain specific time limits. For example, an application for an assessment of legal costs by a client must be brought within 12 months of the specific milestones set out in s295(6) of the *Legal Profession Act 2008 (WA)*.

You should check any legislation which may be relevant to your claim to ascertain whether a time limit, other than the general time limit, applies to your circumstances.

Most time limits set by the *Limitation Act 2005 (WA)*, or by other Acts, can be extended by a court in specific circumstances, see generally Part 3, Divisions 1 to 6 of the *Limitation Act 2005 (WA)*. However, it is important to commence your action as soon as possible.

2. Filing Fees

Fees are payable when filing an originating process, which is the document that commences a civil action. More information is available on the fees pages of the website.

There are reduced fees payable for eligible entities, such as small business or non-profit associations. To be eligible for these you will need to complete and submit a Form 1 Declaration that a person is a small business or non-profit association.

There are also reduced fees payable for eligible individuals. An individual may be considered eligible for a fee reduction if they are the holder of a Government issued concession card, on the grounds of financial hardship or in the interests of justice.

You can apply to the Court for a reduced fee by submitting a Form 2 (Application to Reduce Fee). If you are filing your document using the Court's electronic document lodgment system (EDS) you can verify your concession card at the time of filing.

You can find further information in the [Supreme Court \(Fees\) Regulations 2002](#).

3. Originating Process

An originating process is the document filed to begin an action. The plaintiff files the originating process. Actions in the Supreme Court are commenced, most commonly, by a Writ of Summons (writ) but there are other types of originating process used in the court.

<p>Types of originating process:</p> <p>Writ of summons: Used to commence all civil actions in the Supreme Court with some exceptions (see below).</p> <p>Originating summons: Generally used to commence civil actions to be heard in chambers.</p> <p>Originating motion: Generally used to commence actions where there is no defendant or the action is authorised by legislation (such as the XX Act).</p>	<p>To commence an action by writ of summons you are required to use Form 1 (General Form of Writ of Summons).</p> <p>The writ must include an address at which documents can be served on you (the plaintiff), either by post or personal delivery. You must provide a physical street address. A post office box or similar postal address will not be accepted.</p> <p>Where one of the parties is a company, it cannot take any step in an action (which includes the filing of an originating process) without representation by lawyers unless the Court first otherwise approves; see the <i>Rules of the Supreme Court 1971</i> (RSC) Order 12 r.1(2).</p>
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Indorsement of claim or statement of claim

The Form 1 General Form of Writ of Summons contains an indorsement of claim, which is a broad general statement outlining the nature and basis of the claim. If you file a writ with an indorsement of claim, you will have to file a statement of claim, within the prescribed time limit, after service of the writ.

You can choose instead to file a writ indorsed with a statement of claim. The Statement of Claim is a statement of all of the material facts and all of the particulars which the plaintiff must set out for the purposes of the claim. The defendant will be required to file a defence, within the prescribed timeframe, after service of a writ which contains the statement of claim.

A writ is valid for service for 12 months after the date on which it is accepted for filing by the Court. That date is included in the writ issued by the Court for service.

The Supreme Court filing system is electronic and you will have to register as a registered user in order to file a writ. Once the writ is accepted for filing you will then be able to access the Courts electronic file for your action. More information on the Court's electronic filing system (EDS) is available on the EDS page of the website. You will also be able to download a user guide for self-represented litigants.

Anyone can request a copy of the writ from the Court, as of right; so any writ you file can be accessed (on payment of the required fee) by any member of the public, corporation or association.

4. Service

Once a writ (or other originating process) has been issued, it is then necessary for the Plaintiff to arrange service of the writ (or other originating process) on each Defendant.

Form of service

In general, service on an individual must be effected personally, see Order 9 r.1 of the Supreme Court Rules, which deals with matters relevant to service inside the jurisdiction.

Service on a company is effected at its registered office and in the case of a company can be effected by posting the document to the registered office. The registered office is the address set out in the company's official documents and can be found by a search at the offices of the Australian Securities and Investments Commission (ASIC).

There are additional requirements when service has to be effected in another state or territory. Service outside of Western Australia requires compliance with the procedure set out in Order 10 and service outside Australia requires compliance with the procedure set out in Order 11 of the RSC.

A writ served on a person outside Western Australia, but still in Australia, has no effect unless the person was served under the *Service and Execution of Process Act 1992* (Cth). Service outside of Australia is more complicated and generally requires compliance with various international conventions.

You must meet the service requirements set out in the RSC or service of the writ (or other originating process) will be totally ineffective.

In certain circumstances the Court may permit service to be effected other than personally. This is known as substituted service. In appropriate cases the Court can also deem service that has not been strictly effected according to the RSC as valid service. Substituted service is generally ordered only after a party has exhausted all reasonably available means to effect personal service. The methods of substituted service vary according to the circumstances. It may take the form of service by post, service on another person or service by advertisement in a newspaper.

Timing

Generally you must serve of a writ on the defendants within 12 months of its filing with the Court. You can't serve a writ after this time without first obtaining the permission of the Court.

You will need to prove to the Court that you have served the writ on every defendant by filing an affidavit of service. This step is unnecessary if each defendant files an appearance.

An affidavit of service must specify:

- the time, date and place when the document was served on the defendant
- who served the document
- which documents were served
- the method by which it was established that the person required to be served was in fact the person served.

(The server will usually ask whether the person served if they are the person named in the writ and the person served responding will reply in the affirmative.)

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Private bailiffs or process servers can be engaged to serve documents in Australia. They will charge a fee for their service which usually includes the preparation and provision of the affidavit of service. Bailiff's fees can usually be recovered as part of the costs of the claim by the successful party.

5. Appearance

The next step after service has occurred is for each defendant to file a memorandum of appearance with the Court. An appearance is notice of the Defendant's intention to contest the action and the RSC provide that, unless the Court otherwise permits, a defendant cannot take any step in an action without filing an appearance.

A memorandum of appearance is Form 6 in the RSC and is available on the Supreme Court website. If a legal practitioner acts for a defendant, then the practitioner will enter the appearance on behalf of their client.

The defendant has a time limit for filing their memorandum of appearance. The time limit will depend on where the defendant was served. The different time limits are set out in the writ (or other originating process).

Address for Service

The memorandum of appearance must specify an address at which documents can be served on the defendant either by post, electronic mail or personal delivery. The address must be a physical street address. A post office box or similar postal address does not suffice.

On filing the appearance, the defendant will receive a stamped copy of the appearance by the Court. This shows the date on which the appearance was filed. A copy of the stamped notice of appearance must be served on the plaintiff. If registered for the EDS, the defendant will then have access to the Court file in the EDS.

What happens next?

What happens next depends on whether each defendant files an appearance or fails to do so within the allowed time.

If a defendant fails (after proper service) to enter an appearance to a writ then a plaintiff can apply for judgment in default of appearance to the writ [Order 13 RSC] against the defendant.

The RSC specify a timetable for subsequent court documents to be filed and served after the filing of an appearance [Order 20 RSC]. The action will move into the case management phase of proceedings.