



INFORMATION PACKAGE

FOR

UNREPRESENTED LITIGANTS

IN THE CIVIL JURISDICTION

OF THE

DISTRICT COURT OF WESTERN AUSTRALIA

DISTRICT COURT
OF WESTERN AUSTRALIA
LEVEL 2, CENTRAL LAW COURTS,
30 ST GEORGE'S TERRACE,
PERTH WA 6000
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SEPTEMBER 2005

IMPORTANT INFORMATION - DISCLAIMER

The information provided in this package is designed to inform the public generally about the civil procedure in the District Court and increase awareness about court protocol. This document does not prescribe all that must be known to commence or defend proceedings, such information can only be found in legislation and other legal writings. Use of this document by anyone involved in proceedings is done at their own risk and no liability arises.

1. BACKGROUND

The District Court was established in Western Australia by the *District Court of Western Australia Act 1969*. It has its principal registry at 30 St George's Terrace, Perth, Western Australia and maintains registries in Albany, Broome, Bunbury, Carnarvon, Derby, Esperance, Geraldton, Kalgoorlie, Karratha, Kununurra and Port Hedland.

There are 21 Judges of the Court, based in Perth, who travel on circuit to country areas on a regular basis. The Judges delegate some of their duties to five Registrars appointed under the provisions of the *District Court Act 1969*. Occasionally the Registrars travel to country registries, in particular, to Bunbury.

The registry in Perth is situated at the Hay Street end of Level 2 within the Central Law Courts at 30 St George's Terrace, Perth. The Court has the use of facilities at Level 12 in the adjoining building at 32 St George's Terrace for pre trial conference purposes. More information can be found on the courts website (www.districtcourt.wa.gov.au).

2. JURISDICTION OF THE DISTRICT COURT

In Civil matters the Court has jurisdiction to hear claims up to a monetary limit of \$250,000. In the case of claims for damages for personal injury there is no monetary limit to the jurisdiction of the District Court. The Court has exclusive jurisdiction in regard to claims for damages for injury sustained in motor vehicle accidents. The following table sets out the original jurisdiction for the major courts:

Court	Civil Jurisdiction	Criminal Jurisdiction
Supreme Court	Unlimited jurisdiction in civil claims.	Indictable offences that carry a penalty of life imprisonment or strict security life imprisonment.
District Court	Claims up to \$500,000. Unlimited jurisdiction for personal injury claims. Exclusive jurisdiction for motor vehicle claims	All indictable offences other than those that carry a penalty of life imprisonment or strict security life imprisonment.
Magistrates' Court	Claims up to \$50,000	Matters of a criminal nature that are not required to be heard by a superior court.

Subject to the provision concerning motor vehicle accidents, claims of a monetary value of up to \$50,000 should be commenced in the Local Court at one of its metropolitan or country registries, claims between \$50,000 and \$500,000 should be commenced in the District Court and claims for an amount higher than \$500,000 should be commenced in the Supreme Court. The District Court has power to transfer an action to a more appropriate court or more appropriate registry.

3. ROLE OF COURT STAFF

Court staff cannot provide legal advice. Court staff are not lawyers. There are penalties for persons other than lawyers who give legal advice. Court staff will assist wherever possible but such assistance is limited to procedural advice.

4. LEGAL ADVICE

It is appreciated that the cost of obtaining legal advice can be expensive. However, there are a number of organisations, including those indicated below, which can provide legal advice at a minimal cost:

<u>Legal Aid Commission of WA</u>	
55 St George's Terrace, Perth	9261 6222
3 Bannister Street, Fremantle	9335 7108
DOLA Building Midland Square (cnr The Avenue)	
Midland	9274 3327
42 Maritona Street (cnr Dugan), Kalgoorlie	(08) 9091 3255
141 Victoria Street, Bunbury	(08) 9721 2277
40 Dampier Terrace, Broome	(08) 9192 1888
28 Throssell Road, South Hedland	(08) 9172 3733
<u>Law Society of WA</u>	
89 St George's Tce, Perth	9221 4402
<u>Citizens Advice Bureau of WA</u>	
25 Barrack Street, Perth	9221 5711
<u>Consumer Credit Legal Service</u>	
207 Murray Street, Perth	9481 7662
<u>Sussex Street Community Law Service</u>	
29 Sussex Street, East Victoria Park	9470 2676

5. COMMENCEMENT OF AN ACTION

Actions may be commenced in a number of ways. The most usual is by the issue of a Writ of Summons. Although actions may be commenced in other ways such actions would generally require the advice of a legal practitioner.

All actions in which damages (monetary compensation) are sought should be commenced by writ. A writ is a document outlining to the court and to the other party

(referred to as the defendant) the basis of the plaintiff's claim. **An example of a writ is shown at Annexure A.**

The writ should contain a Statement of Claim (see **Statement of Claim** below), or, alternatively, an Indorsement of Claim. An indorsement of claim is a concise statement of the cause of action upon which the plaintiff relies. Its intention is to inform the defendant of the nature of the action he or she has to face. An indorsement in a motor vehicle accident claim might look something like this:

“The plaintiff’s claim is for damages for injuries received in a motor vehicle accident caused by the negligent driving of the defendant and which occurred on 19th September 1998 at the intersection of Scarborough Beach Road and Huntriss Street Doubleview in the State of Western Australia”

There are many types of causes of action and it is not possible to give examples of all of them. A writ must be filed in the registry of the District Court from which it is to be commenced. Upon filing the writ a fee is payable by the plaintiff and upon payment of the fee the plaintiff will receive a copy of the writ with the seal of the Court upon it. **The fees payable in the District Court are shown in the table set out at Annexure B.** Details of the basis upon which the Court may waive fees are set out in the section headed **Waiver of Fees** at the end of this booklet.

6. SERVICE

Once filed it is necessary to serve the writ on the defendant (or each defendant if there is more than one). If the defendant is a company then service is achieved by posting a copy of the writ to the company at its registered office. The copy should be a complete copy and it is advisable to photocopy the sealed copy of the writ for the purposes of service to ensure that the defendant receives all the information to which it is entitled.

If the defendant is a person rather than a company it is necessary to serve the writ on the defendant personally. Personal service means that the defendant must be given a true copy of the writ and allowed the opportunity to inspect the original sealed writ (which should be immediately available for inspection) if he/she wishes to do so. Within three days of service the original sealed writ should be indorsed with the particulars of service in the place provided for it on the writ. It is permissible for the plaintiff to serve the writ but it is recommended that the plaintiff engage the assistance of a professional process server who will serve the writ and attend to the necessary documentation. There is a charge of about \$50 or \$60. The cost of service may vary depending on the distance travelled and the number of attempts required to serve the writ.

Where a defendant deliberately evades service of a writ or where a defendant cannot be found but the plaintiff is able to inform the court of a means by which the writ might be brought to his attention (e.g. by advertisement in the paper) substituted service may be allowed.

An application for substituted service should be by way of a Motion (**an example is shown at Annexure C**), which should be supported by an affidavit setting out the facts upon which the applicant relies. **An example of the kind of affidavit that might be required is set out at Annexure D.**

7. APPEARANCE (BY DEFENDANT) TO WRIT

Each writ has endorsed on its front the number of days within which the defendant is required to file an appearance in the registry from which that writ was issued. The amount of time varies according to the location of the defendant and increases the further the defendant lives from the registry.

If the defendant wishes to dispute the claim the defendant must lodge a document called an Appearance with the court and serve a copy of that document on the plaintiff. This process is called appearance. **A sample form of an appearance is found at Annexure E.**

An appearance must specify an address for service not more than 66 kilometres from the registry of the court in which the writ was issued. If the defendant wishes to challenge the jurisdiction of the court to entertain the action or raise some other fundamental issue the defendant should file what is known as a Conditional Appearance. It is then incumbent upon the defendant to bring an application by Chambers Summons raising his or her objection to the jurisdiction of the court or the regularity of the proceedings and seeking the court's determination upon that issue. If the defendant filing a conditional appearance does not bring such a chamber summons within 14 days he or she will lose the right to dispute the regularity of the proceedings or the jurisdiction of the court.

8. DEFAULT OF APPEARANCE

If the defendant does not file an appearance within the time required the plaintiff is entitled to apply for a Default Judgment. **An example of a default judgment is shown at Annexure F.** Before a default judgment can be entered it is necessary for the plaintiff to prove, by filing an affidavit of service, that the defendant has been properly served with the writ. **The form used to prepare an affidavit of service can be found at Annexure G.**

9. SERVICE ONCE AN APPEARANCE HAS BEEN FILED

Service of documents other than a writ is achieved by posting, faxing or delivering those documents to the address for service of the party. It is not necessary for those documents to be served in person. In the case of the plaintiff the address for service is shown on the writ and in the case of the defendant it is shown on the appearance. If, during the course of the proceedings a party changes its address for service, it is required to file and serve on each other party a notice that states the new address for service, which replaces the original address on the writ or the appearance.

10. STATEMENT OF CLAIM

If the statement of claim is not already included in the writ, the plaintiff must file and serve one (a copy must be served on each defendant) within 14 days after the defendant enters an appearance. A statement of claim sets out the cause of action upon which the plaintiff intends to rely. It must be divided into paragraphs and must set out the material facts the plaintiff will need to prove in order to establish his right to relief. That relief must be specifically claimed. It is sufficient for a claim for damages to state that “the plaintiff claims damages” without the need to specify the amount of damages which the plaintiff considers would properly satisfy his or her claim.

It is important that the statement of claim is restricted to matters that are relevant to the claim. A plaintiff is not allowed to use a statement of claim as an opportunity to attempt to vilify the defendant in a manner that is quite unrelated to the cause of action that he or she intends to pursue. Such statements of claim may be the subject of an application by chamber summons to have them struck out on various grounds. A plaintiff should therefore be careful to restrict a statement of claim to matters that are directly relevant to the claim itself.

An example of a statement of claim is included in Annexure A.

11. DEFENCE

Within 14 days of entering an appearance or after receiving a statement of claim, whichever is the later, a defendant is required to file a defence to that statement of claim. That defence should deal with each of the allegations raised by the statement of claim and indicate whether the defendant admits or denies the allegations. The defendant may introduce other factual matters which he or she believes give rise to a defence.

A defendant may also commence what is called a Counterclaim against the plaintiff in which the defendant not only defends the plaintiff’s claim but also commences a claim against the plaintiff. An example of a situation in which a counterclaim arises might be a situation in which the plaintiff sues the defendant for the cost of paint supplied and delivered and the defendant counterclaims because he or she alleges that the paint was defective and after it was used had to be stripped and replaced with some other paint.

12. REPLY AND DEFENCE TO COUNTERCLAIM

In most instances it is not necessary for a plaintiff to respond to a defence, however where the defendant raises new issues that were not included in the statement of claim, it is often necessary for the plaintiff to respond to those allegations in a document called a Reply.

A reply should be filed and served on the defendant within 14 days of the service of the defendant's defence. If the defendant has served a counterclaim with his defence it is necessary for the plaintiff to file a defence to that counterclaim. That defence to counterclaim must also be filed within 14 days of the date of service of the counterclaim.

13. REQUESTS FOR PARTICULARS OF STATEMENT OF CLAIM OR DEFENCE

In some instances a defendant or plaintiff may consider that the information provided by a statement of claim or defence is not sufficiently precise and that further information should be provided.

In such circumstances a Request for Further and Better Particulars is prepared and served on the other side. Such a request should identify the paragraph in the statement of claim or defence of which further particulars are required and set out with precision what details the requesting party considers should be given. The request must be made within 21 days of service of the statement of claim or defence to which it relates but the court may extend the time. An application to extend should be by chamber summons.

If the request is not responded to or is only partly answered it is possible to apply to the court for an order forcing the other side to answer the request.

14. DISCOVERY OF DOCUMENTS

Within 75 days of the appearance each party is required to give Discovery. Giving discovery requires each party to prepare a list of documents relevant to the action which either are or have been in that party's possession, power or custody and verifying the correctness of that list with an affidavit. **An example of an Affidavit of Discovery is found at Annexure H.**

It is important to understand that even if a document is no longer in the party's possession it must nonetheless be referred to and its present whereabouts, if they can be ascertained, disclosed. Likewise, even if a document is not in the actual physical possession of a party it may nonetheless be held by another person on that party's behalf (e.g. by an accountant). Documents, which are held by accountants or other agents of a party, are regarded as being in that party's possession and must be discovered.

In some circumstances a party is entitled to claim privilege in respect of the discovery of certain documents. Privilege arises in respect of documents that pass between solicitor and client for the purposes of giving instructions and obtaining legal advice. Privileged documents need to be identified in the list but need not be shown to other parties to the action. It is important to note that only documents brought into existence purely for the purpose of obtaining legal advice are privileged. If they were also brought into existence for an additional purpose then a claim of privilege is not appropriate.

It is possible to challenge the validity of a claim that a document is privileged. Such an application is brought by way of a chamber summons and is listed before a Registrar. The application should be supported by an affidavit setting out the facts upon which the applicant relies.

15. INSPECTION OF DOCUMENTS

Each party is entitled to examine and obtain copies of all non-privileged documents held by each other party. The parties giving discovery must provide the other parties with a reasonable opportunity to inspect the documents. It is the right of a party to attend and examine the originals of all discovered documents for which privilege is not claimed. In most instances however parties are content to accept photocopies of original documents rather than be given the opportunity to attend and inspect the originals.

16. CERTIFICATE OF DISCOVERY

Each party is required to file a certificate that discovery has been provided and the other party given the opportunity to inspect the documents. That certificate should be filed not less than 14 days or more than 28 days after discovery has been given. **An example of such a certificate is shown at Annexure I.**

17. SUMMARY JUDGMENT APPLICATIONS

Both the plaintiff and the defendant have the opportunity to apply to the court for a judgment on the basis that the defendant has no defence or alternatively the plaintiff's claim is unsustainable. Such applications should be brought within 21 days of the date of the appearance. In some circumstances the court will extend the time within which such an application may be brought.

An application by either a plaintiff or a defendant for summary judgment must be supported by an affidavit verifying the facts upon which the cause of action or the defence is based.

In the event that the summary judgment application is successful judgment will be entered there and then in terms of the successful application. Such a judgment may relate to the whole or only a part of the action depending on the circumstances.

18. INTERROGATORIES

In some circumstances the parties to the action are entitled to put a set of questions, called Interrogatories, to the other side. These questions must be answered on oath, that is, by affidavit. In the case of actions for damages or personal injury a limited category of interrogatories (defined in Order 3 of the *District Court Rules*) may be administered as of right providing they are served on the other party within 110 days of an appearance being filed. In all other instances a party wishing to interrogate another party must prepare a set of proposed interrogatories and apply to the court by chamber summons for permission to administer those interrogatories to the other side. If the parties agree that interrogatories may be administered it is not necessary to apply to the court.

The answers to interrogatories can be tendered as evidence at trial.

19. ENTRY FOR TRIAL

The plaintiff must enter an action for trial not more than 210 days after the defendant has filed an appearance. Order 4 of the *District Court Rules* covers the procedure for entry for trial. **An example of an entry for trial is shown at Annexure J.** The party entering an action for trial must file two copies of the Book of Papers for the Judge which consists of the statement of claim, defence, reply, counterclaim and defence to counterclaim and any further and better particulars to those pleadings. A copy of the book of papers and the entry for trial must be served on all other parties to the action. A fee is payable when the papers are lodged. (See Fee Schedule)

20. PRE TRIAL CONFERENCE

Upon receipt of an entry for trial the court will fix a date for a Pre Trial Conference to take place. Within the Perth registry the pre trial conferences are conducted on Level 12, May Holman Centre, 32 St George's Terrace. Pre Trial Conferences in Perth are presided over by a Registrar of the District Court.

The purpose of a pre trial conference is to provide the parties with an opportunity to negotiate a settlement of the claim with the assistance and guidance of a court official. The pre-trial conference can be adjourned to another pre trial conference so that negotiations can continue to take place or it can be adjourned to a Listing Conference (see below).

Anything said at pre trial conference is "without prejudice". In other words all discussions must be kept totally confidential and cannot be used as evidence at trial.

21. LISTING CONFERENCE

Actions that are not settled at a pre trial conference then proceed to a Listing Conference at which dates are allocated for the trial. A hearing fee must be paid for each day allocated to the trial. (See Fee Schedule). The fee is payable by the party entering the action for trial.

22. TRIAL

The trial is conducted by a Judge and the evidence almost always consists of sworn testimony of witnesses as well as any relevant documents that are tendered.

Each party has a special responsibility to be ready for trial on the listed date.

Witnesses may be compelled to attend court by serving a subpoena, or summons, upon them. Subpoenas must be served not less than 14 days prior to the date upon which the witness is required to attend. Subpoenas must be served personally. The same general rules that apply to the service of writs, also apply to subpoenas. By and large it would be advisable to have subpoenas served by a process server.

Witnesses who receive subpoenas have the right to apply to the court to have the subpoena set aside or alternatively to have a fee for their attendance fixed prior to the trial date. The parties subpoenaing witnesses are obliged to pay their expenses attending court. Some care must therefore be taken when considering whether or not to subpoena individuals to court.

23. CASE FLOW MANAGEMENT SYSTEM

The District Court has adopted case flow management systems designed to ensure that cases commenced in the District Court are completed in a reasonable time and the court services are efficiently used in the litigation process. In May 2005 a new system was introduced.

That system affects actions in which a memorandum of appearance was filed after 30 May 2005.

FOR ACTIONS IN WHICH A MEMORANDUM OF APPEARANCE WAS ENTERED PRIOR TO 30 MAY 2005

Prior to May 2005 the Court set a number of milestones within which it expected certain stages in the court process to be completed. Those times are calculated from the date of filing of the appearance and are as follows:

Close of Pleadings	60 days
Completion of Discovery	103 days
Entry for Trial	210 days
Pre Trial Conference	270 days
Trial	400 days
Judgment	490 days

In the event that the court record reveals that the milestones have not been met the court will initiate the issue of its own summons and bring the parties before the court to ascertain the reason for the delay and to take any measures which it thinks appropriate to ensure that the court's expectations are satisfied. It is possible for milestone dates to be extended for good reasons.

In cases where the court is not satisfied that a party is diligently pursuing his or her action or the defendant is stalling the action the claim or the defence may be struck out.

FOR ACTIONS IN WHICH A MEMORANDUM OF APPEARANCE WAS ENTERED AFTER 30 MAY 2005

In these cases the standard timetable set by the court is as follows:

STAGE OF CASE	PERIOD AFTER FIRST DEFENCE
Entry for Trial	120 days
Commencement of Pre Trial Conference	160 days
Commencement of Listing Conference	200 days
Commencement of Trial	290 days
Judgment	360 days

If the plaintiff does not enter the case for trial on or before the date fixed in the timetable the court will issue a notice of default to all parties. If the plaintiff does not enter the case for trial on or before the date specified in the default notice the defendant is able to do so if they wish and if no party enters the action for trial the matter will be classified as inactive. Becoming inactive has the following consequences:

- a) the plaintiff may not list the action for trial without first applying to the court for leave to do so or to be excused for the default;
- b) if no such application is made within 21 days of the case becoming inactive, or an application for leave is refused any party not in default may apply for a judgment in his/her/its favour with out trial.

Milestones can be extended on the application of either party. An application for an extension should be by chambers summons supported by an affidavit. The affidavit should set out the facts relied upon to demonstrate that an extension is appropriate.

It is therefore important to understand that the court has powerful means to ensure that its timetables are adhered to and those who wish to break those timetables may lose an action as a consequence without the opportunity for the issues to be heard in court.

24. DRESS AND ETIQUETTE

Litigants in person have no particular dress requirements however they are expected to dress neatly when appearing before the court.

When appearing before the court the parties will each be given the opportunity to speak and they should speak one at a time. It is not acceptable for parties to interject and attempt to conduct the proceeding in a manner reminiscent of parliamentary debate. Each party has a turn and each party should remain quiet and allow the other party to be heard.

When addressing the court it is appropriate to stand. When a Judge or Registrar enters a court those in the court should stand and remain standing until the Registrar or Judge is seated. Judges are addressed as 'Your Honour' and Registrars are addressed as 'Sir' or 'Maam' or 'Registrar'.

The court is a very traditional and polite place. When you are representing yourself in court, always remember that you are trying to persuade a Judge or Registrar to make a decision in your favour. Therefore it is important to act, dress and speak in a way that will help to make a good impression.

Here are some suggestions to keep in mind for the court appearance:

- When you come to court, you should dress appropriately. This means clothes that are neat and tidy. You should be clean and well groomed.
- How you behave is also important. You must be respectful to everyone in court. This includes the Judge, court staff, the other party involved in your case, witnesses and people in the hallways. Always be polite with Judges and with court staff, and be prepared to provide any information they request.
- The court has a very busy schedule so you must be on time for the Judge or for any other appointment. If you are late, your case might get postponed and you could get into trouble with the Judge. Make sure you bring all the court documents you need for your appointment.
- The Judge or Registrar cannot speak to you about your case except when your case is being heard and when the other party is there. The Judge's staff will help you as far as possible. They can answer questions such as when your hearing is scheduled to be heard and/or whether the Judge has made a decision about your case. However, staff cannot give you legal advice or suggestions as to how you should run your case.
- When you represent yourself in court, get legal advice from a lawyer ahead of time to make sure you are doing the right thing. Legal advice includes deciding what option is best for you. Some lawyers provide "coaching" which is a way of teaching you to represent yourself. This is different from and cheaper than hiring a lawyer to represent you.

25. THE DISTRICT COURT AND SUPREME COURT RULES

The principal document that sets out the manner in which litigation is to proceed is the *Supreme Court Rules*. Copies of the *Supreme Court Rules* can be obtained from the State Law Publisher, 10 William Street, Perth (Ph: 9321 7688).

In addition to the *Supreme Court Rules*, the District Court has introduced a number of its own rules that either add to or modify the *Supreme Court Rules*. Copies of the *District Court Rules* can be obtained from the counter of the Perth Registry of the District Court. The court may also issue Practice Directions from time to time which regulate the manner in which litigation is conducted. An up to date set can be obtained from the Perth Registry.

The Rules (not the Practice Directions) are available on the Internet at www.districtcourt.wa.gov.au or www.slp.wa.gov.au.

It is important for litigants in person to understand that they are participating in a complex process. It is advisable to have both the *Supreme Court Rules* and the *District Court Rules* on hand when attending the court and to consult those documents carefully during the course of the litigation. A party who does not comply with the Rules or the Practice Directions can be penalised by way of a costs order being made against them.

26. ENFORCING A JUDGMENT

The law concerning the enforcement of judgements is to be found in the Civil Judgements Enforcement Act 2004 (and the regulations under that act) which came into operation on 2 May 2005. Most judgements in the District Court are for the payment of a sum of money and the means by which a judgement can be enforced are:

- (a) a time for payment order made under section 32;
- (b) an instalment order made under section 33;
- (c) an earnings appropriation order made under section 35;
- (d) a debt appropriation order made under section 49;
- (e) a property (seizure and sale) order made under section 59; or
- (f) an order made under section 86.

In order to obtain an enforcement order the person entitled to the judgement must apply to the court in an approved form and the application must state what form of order is sought. For a copy of the application form please contact the court registry.

In all cases you should contact the courts registry for full and proper assistance when considering enforcing a judgment.

27. COSTS

At various stages during litigation the court may order costs to be paid. Litigants in person are not entitled to legal fees and a costs order in favour of a litigant in person will only entitle that person to be reimbursed for some of the expenses incurred during the conduct of the litigation. In most instances it is not possible for a costs order made during the course of the litigation to be enforced until the action is over.

The amount of legal costs to which a party is entitled is either fixed by the court when ordering the costs or decided at a hearing. The hearing is called a Taxation. A Taxation is initiated by filing a document called a Bill of Costs, which sets out the various tasks undertaken during the course of the litigation and specifies a legal fee for each task, together with lists of the various other expenses incurred during the litigation. The court charges a fee for lodgement calculated on the amount claimed in the Bill when the Bill of Costs is filed. (See Fee Schedule) The Court then fixes a date for the taxation hearing. The party lodging the Bill must serve it on the other party before the hearing. The Bill then comes before a Taxing Officer (a Registrar). The Taxing Officer assesses the proper amount to be allowed for costs and signs a certificate in the amount allowed. The amount allowed by such a certificate can be enforced as if it were a judgment of the court.

28. FEES

Fees are payable when lodging certain documents and taking certain steps in proceedings. In particular, fees are payable when lodging a writ, a chamber summons and an entry for trial. **(See Annexure B)**

29. WAIVING FEES

In some cases where special reasons have been given (such as financial hardship), the court may waive or reduce the fee payable. . **An application to have the fee waived or reduced must be in the form specified in the *District Court (Fees) Regulations*, a copy of which is shown at Annexure K.**

30. FACSIMILE LODGEMENT OF DOCUMENTS

It is possible to file some types of documents with the court by facsimile. Documents that require that a fee to be paid cannot be lodged by fax. Documents that are more than 20 pages long cannot be lodged by fax.

Documents lodged by fax must be accompanied by a cover sheet showing the sender's name, postal address, document exchange number (if any), telephone number, fax number, the number of pages transmitted (including the cover sheet) and the action required by the registry staff (e.g. accept the document for filing and return a copy for service).

A party lodging documents by fax must keep the original document and the facsimile transmission report and produce them to the court upon request.

Documents received after 4.00p.m. are deemed to have been received on the next day that the court registry is open for business.

Documents which are being lodged by fax should be sent to FAX NO: 9425 2268

Documents not required to be served personally may be served by a facsimile transmission directed to the facsimile number operated at/or connected with the address for a service of the party to be served.

A

IN THE DISTRICT COURT OF WESTERN AUSTRALIA
HELD AT PERTH

No. 10000 of 2002

BETWEEN

JOHN CITIZEN
Plaintiff

And

MARY FRAUD
Defendant

WRIT OF SUMMONS

Date of Document: 11 June 2002

Filed on Behalf of: The Plaintiff

Prepared by:
John Citizen
Whose address for service is
6000 Hay Street
PERTH WA 6000

Tel:
Ref:

ELIZABETH THE SECOND, by the Grace of God, Queen of Australia and Her other
Realms and Territories, Head of the Commonwealth.

TO: The Defendant

OF: 5000 Hay Street
PERTH WA 6000

WE COMMAND you that within ten (10) days after the service of this Writ on you exclusive of the day of such service you cause an appearance to be entered for you in our District Court in an action at the suit of the abovementioned Plaintiff and take notice that in default of your so doing the Plaintiff may proceed therein and judgment may be given in your absence.

Witness: HER HONOUR JUDGE ANTOINETTE KENNEDY, Chief Judge of the District Court of Western Australia the 11th day of June 2002.

NOTE: A Defendant may appear to this Writ by entering an appearance either personally or by solicitor at the Registry of the District Court at 30 St George's Terrace, PERTH.

If the Defendant enters an appearance, then unless a Summons for judgment is served on him in the meantime, he must also file a defence at the Registry of the District Court at PERTH and serve such defence on the Solicitor for the Plaintiff, within 14 days after the last day of the time limited for entering an appearance, otherwise judgment may be entered against him without notice.

This Writ may not be served later than 12 calendar months beginning with the above date unless renewed by order of the Court.

STATEMENT OF CLAIM

1. The Plaintiff was born on the 21 December 1967 and was at all material times a nurse at Princess Margaret Hospital.

2. On 12 July 2001 the Plaintiff was driving her motor vehicle on Eddystone Avenue when a motor vehicle being driven by the Defendant in the opposite direction on Eddystone Avenue crossed onto the incorrect side of the road and collided with the Plaintiff's motor vehicle ("the accident")

3. The accident was caused by the negligent driving of the Defendant. Liability for the Defendant's negligence has been admitted.

4. As a result of the accident the Plaintiff suffered injuries, loss, pain, discomfort, loss of earnings and has incurred and will in future incur medical and other expenses.

PARTICULARS OF PLAINTIFF'S INJURIES AND SYMPTONS

- (a) Headaches;

- (b) Soft tissue injury to the cervical spine;

- (c) Pain to the neck;

- (d) Pain to the shoulder;

- (e) Soft tissue injury to the thoracic spine;

- (f) Pain to the back.

PARTICULARS OF PLAINTIFF'S MEDICAL TREATMENT AS A RESULT OF THE ACCIDENT

Following the accident the Plaintiff attended her general practitioner who prescribed anti-inflammatory and analgesic medication and referred her for physiotherapy. The Plaintiff has attended consultations with her general practitioner, physiotherapist, rheumatologist and orthopaedic surgeon and has required physiotherapy, ultrasound and medication.

PARTICULARS OF PLAINTIFF'S CONTINUING AND PERMANENT DISABILITIES AS A RESULT OF THE ACCIDENT

- (a) The Plaintiff has suffered pain in the past and will do so in the future as a result of her injuries.
- (b) The Plaintiff suffers from headaches and pain to the neck, shoulders and back.
- (c) The Plaintiff's employment, social and household activities have been significantly restricted as a result of the accident.

SPECIAL DAMAGES

The Plaintiff claims the cost of past and ongoing medical treatment, travelling, physiotherapy and medication. Details in relation to amounts outstanding in this matter are obtainable from the said practitioners. Full particulars will be given prior to trial.

LOSS OF EARNINGS

As a result of the accident the Plaintiff has been rendered totally and partially incapacitated to earn. Full particulars will be given prior to trial.

AND THE PLAINTIFF CLAIMS:

- (a) Damages.

(b) Interest pursuant to Section 32 of the *Supreme Court Act 1935* as amended from the date of the accident to the date of judgment upon the whole of the damages awarded other than for future losses and detriments.

COUNSEL

This Writ was issued by the plaintiff in person who is a

And resides at _____ and whose address for service is as above.

This Writ was served by me at

On _____ (The Defendant or one of the Defendants)

On _____ the day of _____ 2002

Indorsed the _____ day of _____ 2002

(Signed).....

(Address).....

B

DISTRICT COURT FEE CHART

ITEM		NEW FEES (At 1/7/2005)	
		Personal Injury Individuals Small/Other Business	Corporate
1	Filing Writ (On filing any originating process by which a cause, matter or other proceeding in the court is commenced, other than proceedings of the kind referred to in Item 2, 3 or 8) (to include \$0.20 under <i>Suitors Fund Act</i>) (Also includes: <ul style="list-style-type: none"> • Compromises • <i>Criminal Property Confiscation Act</i>) 	436	654
2	On filing a: <p>(a) counterclaim;</p> <p>(b) a third party notice;</p> <p>(c) an application:</p> <p style="padding-left: 20px;">(i) to extend a period of time fixed by law, including an application to extend time before proceedings are commenced; (includes s 29(1) <i>Motor Vehicle (Third Party Insurance) Act</i>)</p> <p style="padding-left: 20px;">(ii) to limit a period of time within which proceedings may be taken;</p> <p style="padding-left: 20px;">(iii) for leave to serve a writ or notice of a writ out of jurisdiction</p> <p style="padding-left: 20px;">(iv) for leave to appeal;</p> <p>(d) any other application for which no fee has been provided in this schedule. (<i>This covers, for instance, Notice of Contribution</i>).</p>	436 436 164 164 164 164	654 654 218 218 218 218
3	Commencing an Appeal in the District Court (including Registrars' Appeals)	54.50	109
	Payment into Court (no payment into Court for Registrars' Appeals)	100	100
4	<i>Service & Execution of Process Act (SEPA) (applies to ARJ register)</i>	65	87
5	Enter Hearing (Entry for Trial)	436	654
6	Allocation per day (Trial/Appeal)	382	763
7	Daily hearing fee (Trial/Appeal)	382	763
8	Chamber Sms	109	164
9	Add Chamber Day (each additional day)	109	164
10a	Tax Costs Lodgment	109	164
10b	Tax Costs %	2.5%	2.5%
11	Search	22	22
12a	Production	33	33
12b	Attend per hr	55	55
13a	Photo per page document	3	3
13b	Photo Reasons for Judgment (< 10 pages)	8	8
	Add page (> 10 pages)	1	1
13c	Certification under Seal	11	11
13d	Registrar Certificate	44	44
14a	Copy of Transcript. Each page or part of a page.	4.50	4.50
14b	Copy of Transcript in Electronic format. If fee has been paid under item(a) for each day of transcript	10.50	10.50
14cd	Copy of Transcript where fee under (a) paid by applicant for copy. Each page or part of a page	1.50	1.50

C

IN THE DISTRICT COURT OF WESTERN AUSTRALIA
HELD AT PERTH

No. 10000 of 2002

BETWEEN

JOHN CITIZEN

Plaintiff

And

MARY FRAUD

Defendant

**MOTION FOR SUBSTITUTED SERVICE
OF WRIT OF SUMMONS**

Date of Document:

30 July 2002

Filed on Behalf of:

The Plaintiff

Date of Filing:

30 July 2002

Prepared by:

John Citizen

Tel:

Whose address for service is

Ref:

6000 Hay Street

PERTH WA 6000

Fax:

The Plaintiff, TO MOVE the Registrar in Chambers on the day of 2002

at o'clock in the noon at the District Court, 30 St. George's
Terrace, Perth for orders that:

1. Personal service of the Writ of Summons on the Defendant be effected by:

Be deemed good and sufficient service of the Writ on the Defendant.

2. The time for appearance be
- 3 Costs in the cause.

D

IN THE DISTRICT COURT OF WESTERN AUSTRALIA
HELD AT PERTH

No. 10000 of 2002

BETWEEN

JOHN CITIZEN

Plaintiff

And

MARY FRAUD

Defendant

**AFFIDAVIT OF
IN SUPPORT OF MOTION FOR SUBSTITUTED SERVICE
SWORN THE DAY OF 2002**

Date of document: 30 July 2002
Filed on Behalf of : The Plaintiff

Date of Filing: 30 July 2002

Prepared by:
John Citizen Tel:
Whose address for service is Ref:
6000 Hay Street
PERTH WA 6000 Fax:

1.	Affidavit of In Support of Motion for Substituted Service Sworn the day of 2002	1-3
1.	Exhibit "A"	4
2.	Exhibit "B"	5
3.	Exhibit "C"	6
4.	Exhibit "D"	7

I, John Citizen of 6000 Hay St Perth in the State of Western Australia being duly sworn MAKE OATH AND SAY as follows

1. I am the plaintiff in this action.

2. My claim is for damages for personal injury arising from a motor vehicle accident that occurred on the 31 March 1999. I filed a Writ Of Summons on 11 June 2002

3. .On the 2 October 1996 I instructed _____, Process Server _____ of _____ to serve the Writ of Summons personally on the Defendant. Exhibited hereto and marked with the letter “A” is a true copy of the letter of instructions.

4. _____ made several attempts to serve the Defendant at _____ and he was informed by the Defendant’s brother-in-law that the Defendant no longer resided at that address and her present address was unknown. Annexed hereto and marked with the letter B is a true copy of the Process Server’s report setting out his efforts to locate and to serve the defendant.

5. . On the _____ I conducted an Electoral Roll search but the Defendant was not listed.

6. .On the _____ I conducted a search of the Perth White Pages but the Defendant is not listed.

7. I swear this affidavit in support of the Motion for Substituted Service.

Sworn by the Deponent at)
North Perth in the State of Western)
Australia on the day)
of 2002)

Before me:

Commissioner of the Supreme Court
Of Western Australia for taking Affidavits

E

IN THE DISTRICT COURT OF WESTERN AUSTRALIA
HELD AT PERTH

No 10000 of 2002

BETWEEN

JOHN CITIZEN

Plaintiff

And

MARY FRAUD

Defendant

MEMORANDUM OF APPEARANCE

Date of Document:
Filed on Behalf of:

15 August 2002
The Defendant

Prepared by:
Mary Fraud
Whose address for service is
5000 Hay Street
PERTH WA 6000

Tel:
Ref:
Fax:

ENTER AN APPEARANCE for the abovenamed Defendant whose address for service is 5000 Hay Street, Perth

The Defendant

G

IN THE DISTRICT COURT OF WESTERN AUSTRALIA
HELD AT PERTH

No. 10000 of 2002

BETWEEN

JOHN CITIZEN

Plaintiff

And

MARY FRAUD

Defendant

**AFFIDAVIT OF SERVICE OF WRIT OF SUMMONS SWORN BY
ON THE 1ST DAY OF AUGUST 2002**

Date of Document:

1st August 2002

Filed on Behalf of:

The Plaintiff

Prepared by:

John Citizen
6000 Hay Street
PERTH WA 6000

Tel:
Ref:
Fax:

I, _____
Western Australia,
as follows:

of _____

in the State of _____

MAKE OATH AND SAY

1. I did on the _____ day of _____ 2002 at _____ in the
said State, personally serve _____ the _____ first named Defendant, with
a true copy of the Writ of Summons in this action which appeared to me to have been
regularly issued out of the Principal Registry of the District Court of Western Australia at Perth
against the abovenamed Defendant at the suit of the above named Plaintiff, and which was
dated the _____ day of _____ 2002.

2. At the time of the said service the said Writ and the copy thereof were subscribed in the manner and form prescribed by the Rules of the Court.

3. I did at the time and place of such service produce and show to the said Defendant the original Writ issued under the seal of the Court.

4. I did on the _____ day of _____ 2002 indorse on the said Writ the day of the week and date on which it was served, where it was served and the person on whom it was served.

5. In order to effect service on the said Defendant I had necessarily to travel a distance of _____ kilometres.

Sworn at _____)
In the State of Western Australia)
On the _____ day of _____)
19 _____)

Before me:

Justice of the Peace

H

IN THE DISTRICT COURT OF WESTERN AUSTRALIA
HELD AT PERTH

No. 10000 of 2002

BETWEEN

JOHN CITIZEN

Plaintiff

and

MARY FRAUD

Defendant

**AFFIDAVIT OF
VERIFYING LIST OF DOCUMENTS OF DEFENDANT
SWORN ON THE 10TH DAY OF OCTOBER 2002**

Date of Document: 10 October 2002

Filed on Behalf of: The Defendant

Date of Filing: 10 October 2002

Prepared by:

Mary Fraud

Tel:

Whose address for service is

Ref:

5000 Hay Street

PERTH WA 6000

Fax:

INDEX

- | | | | | |
|----|---|--------|------|-------|
| 1. | Affidavit of
Verifying List of Documents of Defendant
Sworn the | day of | 2002 | 1 – 2 |
| 2. | Annexure “A” | | | 3 - 6 |
-

I, _____ of care of _____ in the State of Western
Australia _____ of _____ being duly sworn MAKE OATH AND
SAY as follows:

1. I am the General Manager – Finance & Administration of the Defendant and I have the conduct of this matter and am authorised to swear this affidavit on behalf of the Defendant.
2. The statements made by me in paragraphs 1,3, and 4 of the List of Documents annexed hereto and marked with the letter “A” are true.
3. The statements of fact made by me in paragraph 2 of the said List are true.
4. The statements made by me in paragraph 5 of the said List are true to the best of my knowledge information and belief.

Sworn by _____)
At _____ in the State of _____)
Western Australia on the _____ day _____)
of _____ 2002 _____) _____

Before me:

Justice of the Peace

“A”

IN THE DISTRICT COURT OF WESTERN AUSTRALIA
HELD AT PERTH

No. 1000 of 2002

BEWTEEN

JOHN CITIZEN

Plaintiff

and

MARY FRAUD

Defendant

LIST OF DOCUMENTS OF DEFENDANT

Date of Document: 10 October 2002

Filed on Behalf of: The Defendant

Date of Filing: 10 October 2002

Prepared by:

Mary Fraud
Whose address for service is
5000 Hay Street
PERTH WA 6000

Tel:
Ref:
Fax:

The following is a List of Documents relating to the matters in question in this action which are or have been in the possession, custody or power of the abovenamed Defendant and which is served in compliance with Plaintiff's Notice of Request for Discovery of Documents and Notice to Produce dated .

1. The Defendant has in its possession custody of power the documents relating to the matters in question in this action enumerated in Part 1 of the First Schedule hereto.

2. The Defendant objects to producing the documents enumerated in Part 2 of the said First Schedule on the ground that they are privileged.

3. The Defendant has had but does not now have in its possession custody or power the documents relating to the matters in question in this action enumerated in the Second Schedule hereto.

4. The documents referred to in the Second Schedule, insofar as they consist of original correspondence, were last in the possession, custody or power of the Defendant on or about the dates thereof and are now believed to be in the possession of the respective addressees.

5. Neither the Defendant nor any other person on their behalf have now or ever had had in their possession, custody or power any document of any description whatever relating to any matter in question in this action other than the documents enumerated in the First and Second Schedules hereto.

FIRST SCHEDULE

PART 1

No.	Description of Document	Date
1.	Letter Plaintiff to Defendant	
2.	Letter Plaintiff to Defendant	
3.	incident report	
4.	purchase order No to	
5.	purchase order No. to	
6.	Correspondence and copy correspondence passing between the Plaintiff and the for the Defendant.	Various
7.	Copy court documents in Perth District Court Action No. common to both parties	Various

PART 2

1.	Correspondence and records of conversation passing passing between the Defendant and	Various
2.	Investigator's report from	Various
3.	Notes and memoranda of evidence and information made or obtained by the Defendant or in the course of this action.	Various

SECOND SCHEDULE

1. The original of all letters written by the Defendant to other parties which were last in the possession of the Defendant on or about the date of such letter.
2. The originals of pleadings and other documents filed in court by the Defendant which were last in the possession of the Defendant on or about the date of such documents.

NOTICE TO INSPECT

TAKE NOTICE that the documents in the above List, other than those listed in Part 2 of the First Schedule and in the Second Schedule, may be inspected at the offices of

Between the hours of 9.00am and 5.00pm Monday to Friday inclusive.

TO: The Plaintiff

IN THE DISTRICT OF WESTERN AUSTRALIA

HELD AT PERTH

No 10000 of 2002

BETWEEN

JOHN CITIZEN

Plaintiff

And

MARY FRAUD

Defendant

CERTIFICATE OF DISCOVERY

DATE OF CERTIFICATE

15 October 2002

PARTY CERTIFYING

The Plaintiff

FILED BY:

John Citizen
Whose address for service is
6000 Hay Street
PERTH WA 6000

Tel:
Ref:
Fax:

The above party certifies that it has provided discovery and inspection of documents to all other parties to this action as require by Order 2, Rule 1 of the *Rules of the District Court*.

The Plaintiff

J

IN THE DISTRICT COURT OF WESTERN AUSTRALIA
HELD AT PERTH

No 10000 of 2002

BETWEEN

JOHN CITIZEN

Plaintiff

And

MARY FRAUD

Defendant

ENTRY FOR TRIAL

Date of Document:

20 November 2002

Filed on Behalf of:

The Plaintiff

Prepared by:

John Citizen
Whose address for service is
6000 Hay Street
PERTH WA 6000

Tel:

Ref:

Fax:

Pursuant to Order of the *District Court Rules* the abovenamed party enters this action for trial at the District Court of Western Australia held at Perth.

The Plaintiff

The unsuitable dates for a pre-trial conference for all parties are:

SEPTEMBER: 29 & 30

OCTOBER 1,2,5,6,7,9,12,14,15,16,21,23,28 & 30

NOVEMBER 3,4,6,9,13,16,17,18,19,20 & 27

K

FORM 2

APPLICATION TO REMIT FEES

In the District Court of Western Australia

No. /

Plaintiff:

Defendant:

Applicant:

Address:

.....

.....

/ /

Date of Birth

MDL No.

The following reasons are the special reasons for applying to have the fees in relation to the above matter waived/ reduced/ refunded/ deferred*.

.....

.....

.....

.....

.....

* *Strike out those that are not applicable.*

If the special reason include that an important right or obligation affecting the community or a significant part of the community will be determined, what is the right or obligation? *[Give details of each right or obligation, and explain why it effects the community or a significant part of the community.]*

.....

.....

.....

.....

If the special reasons include the development of the law generally will be effected so as to reduce the need for further litigation, what law will be developed generally? [Give details of how a determination to that law will reduce the need for further litigation.]

.....

.....

.....

.....

If the special reasons include financial hardship the information required in the following part of this form must be provided by the applicant if the applicant is a natural person.

I am employed as a by

* Their business address is

I am unemployed/ a pensioner* and registered with the Department of Social Security at

I am single/ married/ separated.*

I have/ do not have* a dependant wife/ husband/de facto partner* and dependant children.

My weekly/ fortnightly* income and expenditure is as follows (in whole dollars) -

Income		Expenditure	
Wage/salary/benefit (net)		Rent/board	\$
Self	\$	Mortgage payment	\$
Spouse	\$	Maintenance for dependants	\$
De facto partner	\$	Food	\$
Total	\$	Electricity/gas	\$
Money in bank or other financial institution		Telephone	\$
Self	\$	Water	\$
Spouse	\$	Rates and taxes	\$
De facto partner	\$	Court orders	\$

Total	\$	Lease or other (give details)	\$
.....		
.....		
Income from investments	\$	Other debts owing (give details)	\$
.....		
.....		
Other income	\$		
Money owed to me	\$		
TOTAL	\$	TOTAL	\$

ASSETS **VALUE**

My assets and liabilities are as follows -

House or other real property (give addresses)

.....	\$
.....	\$
TOTAL	\$

Motor vehicles (car, utility, motor cycle, truck, etc.)

Make and model	Reg. No.	
.....	\$
.....	\$
TOTAL		\$

Home contents

Television	yes / no	\$	Video recorder	yes / no	\$
Stereo system	yes / no	\$	Furniture	yes / no	\$
Dishwasher	yes / no	\$	Microwave oven	yes / no	\$
Collection of coins, stamps, etc.		\$			
Other collectables		\$			
Interest in business or company		\$			
Other assets		\$			

TOTAL

\$

LIABILITIES

Mortgage to for \$
Other to for \$
Time to pay order for \$
TOTAL \$

If the special reasons include financial hardship the information required in the following part of this form must be provided by the applicant if the applicant is a corporation or incorporated association.

INCOME \$
LIABILITIES \$
ASSETS (VALUE) \$

Signature of applicant: **Date:** / /

* *Strike out words that are not applicable.*

Note: It is an offence under regulation 7(4) of the District Court (Fees) Regulations 2002 for a person to make a statement or representation in this application that the person knows or has reason to believe is false or misleading in a material particular. The maximum fine is \$1 000.