



Taking a claim to the Industrial Magistrates Court

A guide for employees

This guide is designed to assist employees to independently make a claim to the Industrial Magistrates Court for unpaid entitlements under state laws and state awards and agreements.

Disclaimer

The Department of Mines, Industry Regulation and Safety has prepared this guide to provide information on how to take a claim to the Industrial Magistrates Court. It is provided as a general guide only and is not designed to be comprehensive or to provide legal advice. The Department does not accept liability for any claim which may arise from any person acting on, or refraining from acting on, this information.

Acknowledgement

The Private Sector Labour Relations Division of the Department of Mines, Industry Regulation and Safety (DMIRS) wishes to acknowledge and thank the Employment Law Centre WA (Inc.) (ELC) for permitting the department to use its publication, *Making a Claim for Unpaid Minimum Entitlements*, as the basis for this publication.

The ELC is a not for profit community legal centre that provides free employment law advice, education, and advocacy for vulnerable employees in Western Australia.

You can contact the ELC General Advice Line on 1300 130 956 or access its resources at www.elcwa.org.au.

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Before you make a claim

What system applies to you?

Can Labour Relations help?

What are unpaid entitlements?



Which industrial relations system applies to you?

Two different industrial relations systems operate in WA, the state system and the national 'fair work' system. Which system applies to a particular business or organisation and its employees depends on the type of business arrangement under which the employer operates.

Generally, the state system includes businesses (and their employees) that are:

- Sole traders (e.g. Jane Smith trading as Jane's Café);
- Unincorporated partnerships (e.g. Jane Smith and Bob Smith trading as Jane's Café);
- Unincorporated trust arrangements (e.g. Jane Smith and Bob Smith as trustees for the Smith Family Trust trading as Jane's Café); and
- Incorporated associations that are not trading or financial corporations and other not-for-profit organisations that are not trading or financial corporations.

The national 'fair work' system covers WA businesses that are constitutional corporations. This includes:

- Pty Ltd businesses that are trading or financial corporations (e.g. Smith Pty Ltd trading as Jane's Café);
- Partnerships where one or more of the partners is a Pty Ltd business (e.g. Jane Smith, Bob Smith and Roasted Bean Pty Ltd, trading as Janes Café);
- Incorporated trust arrangements (e.g. Roasted Bean Pty Ltd, as trustee for the Smith Family Trust, trading as Jane's Café); and
- Incorporated associations that are trading or financial corporations and other not-for-profit organisations that are trading or financial corporations.

If you are unsure which system applies to you, call Wageline on **1300 655 266**.

Please note that the **long service leave** obligations in the state *Long Service Leave Act 1958* apply to most WA businesses, including businesses covered by the national system. For more information visit the *Long service leave* page on the Wageline website at www.dmirs.wa.gov.au/longserviceleave or call Wageline.



Can DMIRS Private Sector Labour Relations help?

Private Sector Labour Relations in the Department of Mines, Industry Regulation and Safety may be able to investigate alleged underpayments of:

- WA award pay rates and leave entitlements - for state system employees;
- minimum pay rates and leave entitlements under the *Minimum Conditions of Employment Act 1993* - for state system employees;
- long service leave entitlements - for both state system employees and national system employees covered by the *Long Service Leave Act 1958*.

If you make a formal complaint to Private Sector Labour Relations, the complaint will generally be referred to conciliation. Most complaints are resolved quickly and satisfactorily through conciliation. If, however, the conciliation process is not successful, it may be referred to a formal investigation.

There are public interest guidelines that a complaint must meet before Private Sector Labour Relations may formally investigate a complaint. The public interest guidelines are set out in the **Private Sector Labour Relations Compliance and Enforcement Policy**, which can be found on the *Making a complaint about underpayment of wages or entitlements* page on the Wageline website at www.dmirs.wa.gov.au/underpaymentcomplaints.

If your claim does not meet the public interest guidelines and Private Sector Labour Relations decides not to progress your complaint, you can take your claim directly to the Industrial Magistrates Court (IMC) using the information in this publication to assist you.

To discuss the complaint process ring Wageline within Private Sector Labour Relations on **1300 655 266** or visit the *Making a complaint about underpayment of wages or entitlements* page on the Wageline website at www.dmirs.wa.gov.au/underpaymentcomplaints for more information.



What are unpaid entitlements?

Minimum entitlements under state employment laws are those contained in:

- a WA award - such as award rates of pay, annual leave, overtime, penalty rates and shift allowances;
- the *Long Service Leave Act 1958* - long service leave entitlements can apply to both state and national system employees; and
- the *Minimum Conditions of Employment Act 1993* - which relates to minimum rates of pay and leave entitlements.

This guide relates to unpaid minimum entitlements under WA awards, the *Long Service Leave Act 1958* and the *Minimum Conditions of Employment Act 1993*.

If you are seeking enforcement of pay rates above the award or legal minimum, or contractual entitlements not provided by an award or employment legislation, you may be able to make a *Denial of Contractual Benefits Claim* in the Western Australian Industrial Relations Commission (WAIRC). Visit the WAIRC's website at www.wairc.wa.gov.au for details.

You can also view the ELC Information Kits: *Making a breach of contract claim*, *Making a denial of contractual benefits claim* and *Making an Unfair Dismissal Claim for State System Employees* on the Employment Law Centre (ELC) website at www.elcwa.org.au.



Time limits apply

Claims for unpaid entitlements in the IMC must be commenced within **6 years** of the entitlement becoming payable.



What costs are involved?

Generally, you will be responsible for your own costs, including a \$40 lodgment fee, when you lodge your claim with the IMC.

Have you been underpaid?



Work out which award or law applies and check your entitlement

If you are covered by the state system and a WA award applies to your work, you can view a full copy of the award on the WAIRC website at www.wairc.wa.gov.au. You can also check the *WA award summaries* page on the Wageline website at www.dmirs.wa.gov.au/wageline to see if there is a summary of the award, although you should ensure that you have a copy of the full award when taking action in the IMC.

If you are covered by the state system but there is no WA award that applies to your work, your employment will be underpinned by the *Minimum Conditions of Employment Act 1993*, which can be viewed in full at www.legislation.wa.gov.au. The *Minimum pay rates for award free employees* page on the Wageline website at www.dmirs.wa.gov.au/wageline contains a summary of current and past minimum pay rates applicable under the *Minimum Conditions of Employment Act 1993*.

Information on long service leave (whether you are covered by the state or national system) is available on the *Long service leave* page of the Wageline website at www.dmirs.wa.gov.au/longserviceleave. For a full copy of the *Long Service Leave Act 1958* visit www.legislation.wa.gov.au.

If you are unsure which instrument you may be covered by, call Wageline on **1300 655 266**.



Calculate your underpayment or non-payment (unpaid entitlement)

Regardless of the type of minimum entitlement you are claiming, you need to calculate the amount of your unpaid entitlement by comparing the gross amount that you should have been paid (**lawful entitlement**) with the gross amount that was actually paid to you by your employer. An example and a case study has been provided below to help you work out how much of an unpaid entitlement you might be owed.

The general calculation is as follows:

$$\text{Unpaid entitlement} = \text{lawful entitlement} - \text{amount paid (if any)}$$

Underpayment of wages

You can calculate your unpaid entitlement several ways depending on the law or award that applies to you.

The gross amount your employer paid you should be set out in your pay slip or employment records. Your contract of employment may also set out the gross rate of pay that your employer has been paying you; although the rate of pay your employer has paid you may have changed since you started your employment.

The **Amount paid for hours worked** is calculated by multiplying the number of hours that you worked with the hourly rate of pay set out in your pay slip or employment records.

Amount paid = hours worked x hourly rate of pay

Example: = 20 hours x \$15 per hour worked
= \$300 wages paid for hours worked

The correct rate of pay for hours worked (**lawful entitlement**) is calculated by multiplying the number of hours that you worked with the lawful minimum rate of pay. If an award applies, the relevant award pay rates must be paid as a minimum.

Lawful entitlement = hours worked x minimum rate of pay

Example: = 20 hours x \$19.66 per hour (2019-20 minimum statutory rate of pay)*
= \$393.20 minimum pay for the number of hours worked
(lawful entitlement)

* Refers to the minimum rate of pay for full time and part time adult employees. Higher minimum rates apply for casual employees. If an award applies, the relevant award pay rates must be paid as a minimum. Minimum rates of pay under the *Minimum Conditions of Employment Act 1993* and rates in WA awards are adjusted in July each year.

Your **unpaid entitlement** is calculated by subtracting the amount paid to you by your employer from your lawful entitlement.

Unpaid entitlement = lawful entitlement – amount paid

Example: = \$393.20 (lawful entitlement) - \$300 (amount paid)
= \$93.20 (unpaid entitlement)

Please note that if different hourly rates applied to your work at different times (for example, penalty rates or shift allowances stipulated in an award) you will need to calculate these amounts separately.

Unpaid long service leave

To calculate an unpaid long service entitlement refer to the *Long service leave calculation guide* on the Wageline website at www.dmirs.wa.gov.au/longserviceleave.

Case Study: calculating an unpaid entitlement (underpayment of award wage)

Joseph Brown worked as a casual cleaner for a sole trader, Mr Timothy Jones trading as Jones' Cleaning, over an 8 week period commencing 1 January 2019. He worked 25 hours per week and was paid \$15.00 per hour. After contacting Wageline to find out what pay he was legally entitled to, Joseph discovered that he should have been paid \$24.26 per hour under the *Contract Cleaners Award**. To work out his unpaid entitlement Joseph performed the following calculation.

Lawful entitlement	= (25 hours x 8 weeks) x \$24.26 (award rate of pay)
	= (200 hours) x \$24.26
	= \$4,852

Amount paid	= (25 hours x 8 weeks) x \$15.00 (employer's rate of pay)
	= (200 hours) x \$15.00
	= \$3,000

Unpaid entitlement	= lawful entitlement – amount paid
	= \$4,852 - \$3,000
	= \$1,852

Based on the above calculation, Joseph believes that he is owed \$1,852 in unpaid wages by his employer.

* 2018-19 hourly rate of pay for a casual adult Cleaner under the *Contract Cleaners Award*.



Approach your employer

Taking formal legal action can be time-consuming and stressful. For this reason, it is worthwhile trying to resolve a dispute out of Court.

If you have not done so already, you should approach your employer and make them aware that you believe you have not been paid correctly.

Give your employer a copy of your calculations and provide them an opportunity to review those calculations. Your employer may agree with you and pay you the amount outstanding.

If your employer disagrees with you, or you do not feel comfortable approaching your employer in person, you may wish to put your concerns in writing:

- State that you believe you have been underpaid the amount you calculated, and ask your employer either to pay you the amount outstanding or to commence negotiations with you within a particular timeframe – for example, within 14 days from the date of the letter.
- You may also wish to state in the letter that if the payment is not made or negotiations have not begun by the date stated that you will take the claim to the Industrial Magistrates Court to recover the amount owed.

Remember to date and keep a copy of the letter for yourself. Sending a letter to your employer is an important step as it:

- may result in your employer paying you the amount owed; and
- shows that you have attempted to recover the amounts owed to you.

A sample letter is included at the end of this publication at **Attachment A**.

Case Study: send a letter to your employer

After Joseph calculated what he believed he was owed in unpaid entitlements, he wrote a letter to his employer outlining his concerns.

Dear Tim

I am writing to you in an attempt to settle my claim for outstanding entitlements that you owe me.

I was employed by you:

- Between 1 January 2019 and 25 February 2019 (8 weeks).
- On a casual basis (25 hours per week).
- As a cleaner.

I have calculated that there is an outstanding amount of \$1,852 in respect of unpaid wages under the *Contract Cleaners Award*.

I believe I have been underpaid by your business as a result of an incorrect hourly rate of pay. According to the *Contract Cleaners Award*, my hourly rate should have been \$24.26 per hour, instead of the \$15.00 per hour I received.

I understand I can make a claim in the Industrial Magistrates Court for this outstanding entitlement.

If you wish to clarify your employment obligations, you can visit the Department of Mines, Industry Regulation and Safety website at www.dmirs.wa.gov.au/wageline or contact Wageline on 1300 655 266.

I am seeking to have all money owed to me paid within 14 days of this letter.

Regards,

Joseph Brown

1 June 2019

Making a claim



Start legal action

Generally, if you are covered by one or more of the following instruments or laws, you may commence legal action in the IMC:

- a WA award;
- an industrial agreement registered in the WAIRC;
- an Employer-Employee Agreement;
- the *Long Service Leave Act 1958*; or
- the *Minimum Conditions of Employment Act 1993*.

The IMC also hears originating and small claims under the Commonwealth *Fair Work Act 2009* (FW Act), which apply to employees and businesses covered by the national industrial relations system. This guide **does not cover** how to make a claim in the IMC under the FW Act.

Time limit

There is a time limit for making a claim. This is six years from the date you were supposed to be paid your entitlements.

Onus of proof

You bear the onus of proof. This means you must be able to satisfy the Industrial Magistrate that your employer did not meet their legal obligations.

The onus of proof is on the 'balance of probabilities' – that is, what you say happened is more likely than not to be true.

Financial position of your employer

You should consider the financial position of your employer before you start legal action and whether they are able to pay you if your claim is successful.

If your employer is a company *

You may not be able to proceed with a claim against a company that:

- is under external administration;
- is being wound up, whether due to insolvency or otherwise; and
- has been deregistered.

You can find out information about a company's registration (and whether it has been deregistered or an application has been made) on the Australian Securities and Investment Commission (ASIC) website at <https://connectonline.asic.gov.au> by searching for the company's name under 'Organisation and Business Names'.

* Including a partnership where one or more of the partners is a company, or a trust where one or more of the trustees is a company.

When a company is under external administration and/or being wound up, public notices must be published and those notices can be searched on the Insolvency Notices Register at www.insolvencynotices.asic.gov.au by searching for the company name. If there is an external administrator, you should contact them directly to advise them that you have a claim for outstanding employment entitlements.

If your employer is a company that is deregistered, is subject to a deregistration application or is being wound up, you should seek legal advice on whether you can proceed with a claim, and if so how.

If your employer is a sole trader, a partnership between individuals or a trust with an individual/s as trustee

If your employer is an individual or individuals and has been declared bankrupt, your ability to take legal action against them may be limited.

You can find out if your employer has been declared bankrupt and the contact details for their trustee in bankruptcy by searching the Bankruptcy Register Search at www.afsa.gov.au/brs/search.

If your employer has been declared bankrupt, you should contact your employer's trustee in bankruptcy.

Contractual entitlements above award or minimum rates

Claims for enforcement of contractual pay rates above the award or minimum rates, or contractual entitlements not provided by an award or employment legislation, are not dealt with by the IMC.

However, you may be able to make a Denial of Contractual Benefits Claim in the Western Australian Industrial Relations Commission (WAIRC). Visit the WAIRC's website at www.wairc.wa.gov.au for further information.

You can also view the ELC Information Kit: *Making a denial of contractual benefits claim* on the ELC website at www.elcwa.org.au.



What forms to lodge?

Please note a variety of different forms must be completed as part of the IMC claims process. If at any time you are unsure of which forms to use, or how to complete a particular form, it is strongly recommended you contact the IMC Registry on 9420 4467 to obtain further information.

To initiate a claim in the IMC you will need to download and complete the following 'Originating Claim' forms from the IMC website at www.imc.wa.gov.au/index.php/appsandforms:

- **Form 1.1 - Originating Claim (Court Copy)**
- **Form 1.2 - Originating Claim (Claimant's Copy)**
- **Form 1.3 - Originating Claim (Respondent's Copy)**

You are the 'claimant' and your employer is the 'respondent' on these forms. You should include your full name on the forms.

You will also need to download the **Form 2 - Response**, as you must provide this to your employer for them to use in responding to your claim.

Check the legal name of your employer

It is very important that your employer is correctly named on the forms. Correctly naming your employer means using their legal name.

The legal name of your employer can be checked on the ASIC website at <https://connectonline.asic.gov.au>.

Your pay slips, PAYG payment summaries, and/or contract of employment may include an Australian Business Number (ABN) or an Australian Company Number (ACN) for your employer. These numbers can be used on the ASIC website to search for your employer's legal name.

If your employer is a sole trader or a partnership between individuals

If your employer is a sole trader or a partnership, use the tab titled 'search business names register' on the ASIC website. You can search using your employer's ABN if you have this.

The legal name of your employer will be their personal name/s, not the trading name of the business. If your employer is a partnership, you need to include the full name of each partner. For example, if your employers are Jane Louise Smith and Robert Luke Smith trading as Jane's Café, the legal names of your employers are Jane Louise Smith and Robert Luke Smith. It is these names that should be listed as the respondents on the forms.

If your employer is a trust

If your employer is a trust, the trustee/s of the trust is usually the legal employer. However, it is best to confirm this before completing the relevant forms. You should also include full details regarding the trust on the relevant forms, including the name/s of the trustee/s, the name of the trust, and the trading name of the business (if known). The trustee/s of the trust may be individuals, a Pty Ltd company, or both.

Example 1

Jane's Café is part of the Smith Family Trust. The trustees of the Smith Family Trust are Jane Louise Smith and Robert Luke Smith. Your employer would therefore be listed as:

Jane Louise Smith and Robert Luke Smith as trustees for the Smith Family Trust, trading as Jane's Café.

Example 2

Jane's Café is part of the Smith Family Trust. The trustee of the Smith Family Trust is Roasted Bean Pty Ltd. Your employer would therefore be listed as:

Roasted Bean Pty Ltd, as trustee for the Smith Family Trust, trading as Jane's Café.

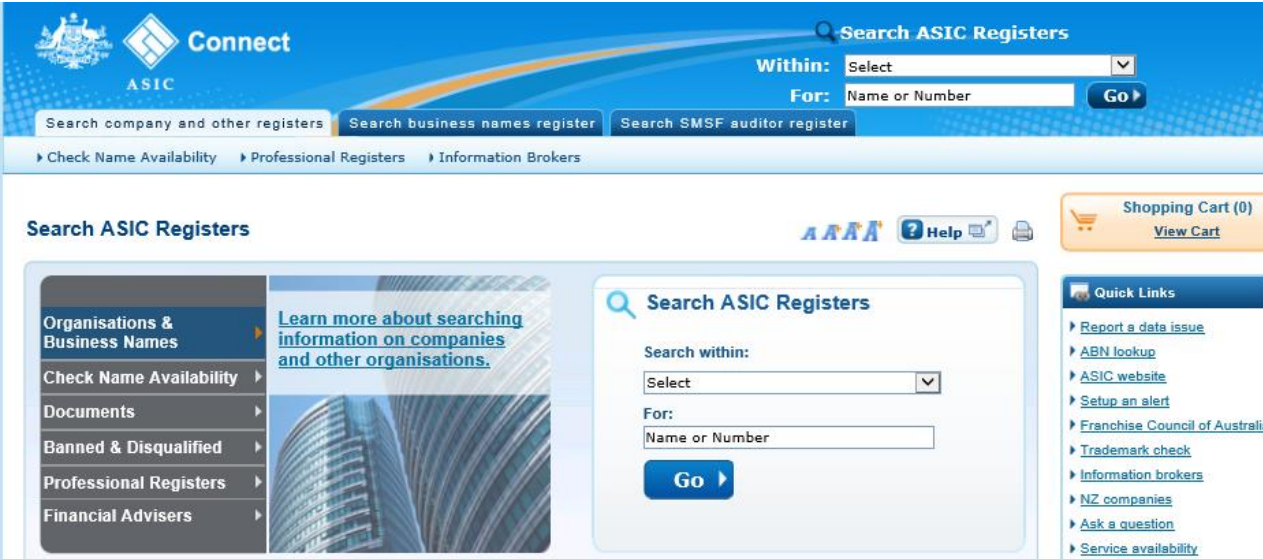
If your employer is a company

If your employer is a company, use the tab titled 'search company and other registers' on the ASIC website. You can search using your employer's ACN or ABN if you have these.

The legal name of your employer will be the company name, not the name of the director or manager or the trading name of the business that the company operates. For example, if your employer is Smith Pty Ltd trading as Jane's Café and the director of the company is Jane Smith, the legal name of your employer is Smith Pty Ltd. It is this name that should be listed as the respondent on the forms.

Case Study: correctly naming the employer

Before Joseph completed his Form 1.1, Form 1.2 and Form 1.3, he used ASIC's website to identify the legal name of his employer as Timothy Charles Jones.



The screenshot shows the ASIC Connect website's search interface. At the top, there is a navigation bar with the ASIC logo and 'Connect' text. Below this, there are three search tabs: 'Search company and other registers', 'Search business names register', and 'Search SMSF auditor register'. A search box is present with a 'Search ASIC Registers' button. The search parameters are set to 'Within: Select' and 'For: Name or Number'. Below the search bar, there are links for 'Check Name Availability', 'Professional Registers', and 'Information Brokers'. The main content area features a 'Search ASIC Registers' section with a search box and a 'Go' button. To the left of the search box is a sidebar with a list of categories: 'Organisations & Business Names', 'Check Name Availability', 'Documents', 'Banned & Disqualified', 'Professional Registers', and 'Financial Advisers'. To the right of the search box is a 'Quick Links' section with various links like 'Report a data issue', 'ABN lookup', 'ASIC website', 'Setup an alert', 'Franchise Council of Australia', 'Trademark check', 'Information brokers', 'NZ companies', 'Ask a question', and 'Service availability'. At the top right, there is a 'Shopping Cart (0)' with a 'View Cart' link.

As his employer is a sole trader, the legal name for his employer is the employer's full name – Timothy Charles Jones – and not the name of his employer's cleaning business (Jones' Cleaning).

Completing the claim forms

When you are completing the claim forms, you should provide enough details about your claim so that both the IMC and your employer know what is being claimed. The details of your claim (the 'grounds') can be included in a statement on a separate piece of paper attached to each of the forms (Form 1.1, Form 1.2 and Form 1.3).

It is best to number each paragraph in your statement. If you have completed calculations of what you claim you are owed, these should be attached to your statement and marked as 'Attachment A'.

Under the section titled 'Act', you will need to tick the relevant box to indicate which legislation you are making your claim under. As WA awards are made under the *Industrial Relations Act 1979*, you would tick this box if you are enforcing an award.

If you want to claim interest from your employer on the monies you claim they owe you, you need to indicate this on your forms under the 'orders sought' section. The relevant check box is called 'pay pre-judgment interest'. If your claim is successful, the IMC may order your employer to pay you interest on the owed monies, calculated from the date the monies were owed to you to the date of the Court's decision.

Case Study: explaining the claim

Joseph completed his claim forms by:

- ticking the 'Act' box titled '*Industrial Relations Act 1979 (WA)*'
- ticking the 'grounds' box titled 'failed to comply with an award, agreement, instrument or order' and specifying the award as the *Contract Cleaners Award*
- ticking the 'orders sought' box titled 'pay the amount of' and specifying the amount owed as \$1,852

Grounds <i>Attach statement giving details</i>	This claim is made because the respondent has: <i>(tick the appropriate box)</i> <input checked="" type="checkbox"/> Failed to comply with an award, agreement, instrument or order (specify name): Contract Cleaners Award <input type="checkbox"/> Contravened or failed to comply with another written law (specify): <input type="checkbox"/> Done or failed to do something else (specify): as detailed in the attached statement.
Orders Sought <i>Attach statement to particularise claim, including calculations.</i>	That the respondent: <i>(tick the appropriate box)</i> <input checked="" type="checkbox"/> Pay the amount of \$1,852 <input type="checkbox"/> Pay pre-judgment interest. <input type="checkbox"/> Pay a penalty. <input type="checkbox"/> Do something else (specify):

He also attached a statement to the three Originating Claim forms which set out the details of his claim as follows:

1. The Respondent is Timothy Charles Jones.
2. Mr Jones is a sole trader who operates a cleaning business called Jones' Cleaning.
3. I started working for Mr Jones on 1 January 2019.
4. I was employed as a cleaner.
5. I was employed on a casual basis working 25 hours per week.
6. Mr Jones paid me \$15.00 per hour for all the hours I worked.
7. Under the *Contract Cleaners Award*, I should have been paid \$24.26 per hour.
8. My employment with Mr Jones ended on 25 February 2019.
9. I worked a total of 200 hours for Mr Jones.
10. Mr Jones owes me \$1,852. A copy of my calculations is provided in Attachment A.

Lodging the forms

Once you have completed the Form 1.1, Form 1.2, and Form 1.3 and downloaded the Form 2, they should be lodged with the IMC Registry located at level 17, 111 St Georges Terrace, Perth either:

- in person; or
- by pre-paid post to:
Industrial Magistrates Court Registry
Locked Bag 1
Cloisters Square
PERTH WA 6850

The filing fee is \$40. If you are lodging by post, the IMC Registry will contact you after they have received the forms to obtain your credit card details and take payment for the filing fee. Alternatively, you can send a cheque or money order for \$40 with your forms.

The IMC Court Registry will stamp the Form 1.1, Form 1.2 and Form 1.3 and keep the Form 1.1 for its records. You should keep the stamped Form 1.2 and you must serve the stamped Form 1.3 with the blank Form 2 on your employer.



Serving the claim form

Once you have lodged your claim forms with the IMC Registry, you have **30 days** to deliver the stamped **Form 1.3 - Originating Claim (Respondent's Copy)** and blank **Form 2 - Response** to your employer (the forms may be delivered within 60 days but only if the Clerk of the Court approves this). Delivering the forms is called “serving” your employer.

The IMC does not inform your employer about your claim – this is your responsibility.

If your employer is a sole trader or a partnership

If your employer is a sole trader or a partnership between individuals, the stamped Form 1.3 and blank Form 2 can be served by delivering them to your employer personally (although that person does not have to be you). You can deliver the documents by leaving them at:

- your employer’s usual or last known place of business with the person who, on reasonable grounds, is believed to be in charge of the business; or
- your employer’s usual or last known place of residence with a person who, on reasonable grounds, is believed to be over the age of 16 years.

If your employer is a partnership, the stamped Form 1.3 and blank Form 2 must be served on each partner listed as a respondent on the forms. You can photocopy the stamped Form 1.3 and any attachments to serve on each partner.

If one or more of the partners is a corporation, you can deliver the documents to that partner/s in the same manner as for a corporation.

If your employer is a trust

If your employer is a trust, the stamped Form 1.3 and blank Form 2 should be served on the trustee/s of the trust (assuming this trustee/s is the legal employer). If there is more than one trustee, the forms must be served on each trustee.

For trustees that are individuals, you can deliver the documents in the same manner as for a sole trader.

For trustees that are a corporation, you can deliver the documents in the same manner as for a corporation.

If your employer is a corporation

If your employer is a corporation (including an incorporated association), the stamped Form 1.3 and blank Form 2 should be served on the director, manager or the secretary of the corporation, or a person believed to be a director, manager or secretary of the corporation. This can be done by delivering the forms to a person who, on reasonable grounds, is believed to be a director, manager or secretary of the corporation.

If, after reasonable inquiry, a director, manager or secretary cannot be found, the forms may be served by leaving them at the corporation’s principal place of business or registered office in Western Australia with a person believed to be over the age of 16 years and employed by the corporation. To find the corporation’s registered office, you can conduct a search on the ASIC website at <https://connectonline.asic.gov.au>.

Case Study: serving the employer

After Joseph lodged his Form 1.1, Form 1.2 and Form 1.3, the IMC Registry stamped all three forms and kept Form 1.1.

Joseph then served his stamped Form 1.3 and blank Form 2 by personally hand delivering the documents to his employer’s usual place of business.



Affidavit of Service

After serving the Form 1.3 and blank Form 2 on your employer, you or the person who served the forms must file an affidavit of service as evidence your employer has been served (i.e. received) the claim. The person who served the forms must complete the affidavit of service.

The relevant affidavit of service form can be downloaded from the IMC website at www.imc.wa.gov.au/index.php/appsandforms.

If your employer is a sole trader

If your employer is a sole trader, you must complete:

- **Form 3 – Affidavit of Service on a Person**

If your employer is a partnership

If your employer is a partnership involving only natural persons, you must complete a separate **Form 3 – Affidavit of Service on a Person** for each partner.

If your employer is a partnership involving one or more Corporations or Companies, you must complete:

- **Form 3 – Affidavit of Service on a Person** – for each partner that is a natural person; and/or
- **Form 5 – Affidavit of Service on a Corporation** – for each partner that is a Corporation

If your employer is a trust

If your employer is a trust, you must complete:

- **Form 3 – Affidavit of Service on a Person** – for each trustee that is a natural person; and/or
- **Form 5 – Affidavit of Service on a Corporation** – for each trustee that is a Corporation

If your employer is a Corporation or a Company

If your employer is a Corporation or a Company, you must complete:

- **Form 5 – Affidavit of Service on a Corporation**

Affidavits

You or the person who served the forms should complete the applicable affidavit of service form/s as soon as possible after serving the stamped Form 1.3 and blank Form 2 on your employer and then lodge it with the IMC Registry. You or the person who served the forms must sign the affidavit/s in the presence of an authorised witness. The following people can witness an affidavit:

- A Justice of the Peace;
- An experienced lawyer, unless they participated in any way in preparing the affidavit or are involved in your claim;
- A general public notary or a district public notary appointed under the *Public Notaries Act 1979*; or
- A registrar or clerk of a court and any mining registrar appointed under the *Mining Act 1978*.

Finding a Justice of the Peace (JP) is often the easiest way to find a witness. Details of where to find your closest JP can be found on the Department of Justice website - www.courts.justice.wa.gov.au.

In the affidavit, you or the person who served the forms needs to state:

- that you/they served your employer with the Originating Claim Form and the Response Form (and any other documents, if relevant); and
- the time and place of service and the manner in which you/they served the forms, as set out in the form.

Case Study: signing an affidavit of service

After Joseph delivered his stamped Form 1.3 and blank Form 2 to his employer, he downloaded and completed the Form 3 (Affidavit of Service on a Person) from the IMC website. He found a local JP on the Department of Justice website. Joseph then swore / affirmed the affidavit and the JP witnessed him signing the Form 3.

Joseph then delivered the Form 3 to the IMC Registry.



Employer's response to your claim

After receiving your stamped Form 1.3 and blank Form 2, your employer must complete the Form 2. In their Form 2 response, your employer can wholly deny the claim, admit part of the claim or wholly admit the claim.

If your employer wholly admits the claim, they may agree to the IMC making the final orders that you are seeking in your claim. If your employer does this, you do not need to appear before the IMC. The IMC will make the orders in your absence and your claim will be finalised.

If your employer does not wholly admit the claim, your employer must lodge the Form 2 response with the IMC Registry explaining why they disagree with your claim or parts of your claim.

The time in which your employer must lodge a response with the IMC depends on your employer's address for service. If your employer's address for service is:

- less than 1,000 km from Perth, your employer has 21 days in which to lodge the Form 2 response; or
- more than 1,000 km from Perth, your employer has 28 days in which to lodge the Form 2 response.

Your employer then has a further 14 days after lodging their response to serve the Form 2 response on you.

Upon lodgment of the Form 2 response not wholly admitting the claim, the Clerk of the Court will list the matter for a pre-trial conference. The Clerk of the Court will advise you in writing of the date and time of the conference.

The Clerk may request additional information in respect of your claim. If this happens, any information you provide will need to be served on your employer and you will need to file another affidavit of service with the IMC Registry. This is generally done in the same way as for the original application.

Employer response and the pre-trial conference



If your employer does not lodge and serve on you a response to your claim within the required timeframe, you can apply to the Court for a 'default judgment' in your favour against your employer.



Default judgment

Default judgment is where the Court makes a judgment order without the parties going through the full trial process. To make an application for default judgment, download and complete a Form 6 – Application and Form 7 – Affidavit from the IMC website (www.imc.wa.gov.au/index.php/appsandforms). The Form 7 must be sworn/affirmed and signed in the presence of an authorised witness.

A Form 6 – Application asks you to outline details of the application you are making, which in this case would be an application for default judgment. A Form 7 – Affidavit is used to outline the grounds for making the application, and this is where you would state the reasons for seeking default judgment (i.e. that your employer has not lodged and served a response to your claim within the required timeframe).

The Form 6 and Form 7 are lodged the same way as your Form 1.1, Form 1.2 and Form 1.3 and are also served on your employer in the same way. The lodgment fee is \$10.

Once you have served the stamped Form 6 and Form 7 on your employer, you must complete an affidavit of service. You must swear / affirm and sign the affidavit of service in the presence of an authorised witness, and the affidavit must then be lodged with the IMC Registry.

When you lodge your Form 6 – Application and Form 7 – Affidavit with the Court, you will be provided with a hearing date on the Form 6. On the day of the hearing, the Industrial Magistrate will consider your application and whether they are satisfied you have complied with the *Industrial Magistrates Court (General Jurisdiction) Regulations 2005* with regard to service, and may then make a judgment in your favour for the amount you have claimed. If default judgment is not ordered, the Industrial Magistrate may make other orders to further progress and determine your claim. If you do not attend your hearing date, orders may be made in your absence, including dismissal of your default judgment application.

Your employer can, within 14 days of the default judgment decision, apply to the IMC to have the default judgment order set aside. If the IMC sets aside the order, it must list the case for a pre-trial conference and notify the parties in writing.

Enforcement of default judgment

Enforcement of default judgment orders is generally done in the Magistrates Court, which is a different court to the Industrial Magistrates Court.

If your employer does not apply to have the default judgment order set aside and does not pay you when required, after 21 days of the default judgment being made you may seek to have it enforced. To commence enforcement proceedings in the Magistrates Court, you will need to take a certified copy of the order to the Magistrates Court, together with an affidavit stating to what extent the order has not been complied with. The affidavit form you use will be the Magistrates Court affidavit, not the Form 7 used for the IMC.

For information on enforcing default judgment, see the Magistrates Court at www.magistratescourt.wa.gov.au.

It is recommended that you seek legal advice if you wish to enforce an order of the IMC.



Pre-trial conference

If your employer lodges a response to your claim and does not wholly admit your claim the Clerk will set a date and time for a pre-trial conference. The purpose of the pre-trial conference is to allow you and your employer to sit down together with the Clerk of the Court to discuss the claim and to try to resolve it without the need for a hearing. The pre-trial conference is confidential. A pre-trial conference is compulsory; both parties must attend even though a lawyer or agent may represent them.

To prepare for the pre-trial conference, please note the following:

- carefully consider any evidence you have to support your claim and your employer's response before attending the pre-trial conference. Evidence can include but is not limited to pay slips, text messages and bank statements;
- you will need to be able to briefly explain your claim to the Clerk and your employer;
- your employer will then explain their response to your claim; and
- the Clerk will try to assist you and your employer in reaching an agreement.

If the dispute cannot be resolved at the pre-trial conference, it will be listed for a hearing before an Industrial Magistrate.

If the matter is listed for a hearing, the Clerk will prepare the matter for a hearing and outline the process to the parties. The Clerk will contact you and your employer to request:

- dates you are unavailable;
- the estimated time required for the hearing (most hearings only take 1 day); and
- how many witnesses you will have and their unavailable dates.

You will be sent a notice of when your matter is to be heard and in which hearing room at the IMC.

The Clerk of the Court may also issue Programming Orders to prepare the claim for trial. This will require the parties to lodge and serve witness statements, all of the documents you want to rely on as evidence in the trial, and possibly an outline of submissions.

If an outline of submissions (also known as a case outline) is required, you will need to complete:

- a Form 8.1 – Case Outline / Further and Better Particulars of Case Outline (this is a covering form that includes details of your case); and
- a Form 8.2 – Schedule – Case Outline / Further and Better Particulars of Case Outline (this is where you include your outline of submissions).

The outline of submissions in Form 8.2 should be in numbered paragraphs, with each paragraph dealing with only one issue. The outline should specify:

- your identity and occupation;
- the basis on which you are making the claim;
- the identity of the respondent;
- the business, and/or industry of the respondent;
- the nature of the relationship between you and the respondent (e.g. employee and employer) and the commencement and (if applicable) cessation dates of employment;
- the relevant award, agreement or Act applying to your employment;
- where necessary, the basis upon which it is asserted that the relevant award, agreement or Act applies;
- the provisions of the award, agreement or Act alleged to have been breached and how; and
- the particular circumstances occurring at the time of the alleged failure to comply.

Case Study: pre-trial conference

Joseph's employer responded to his claim by completing and lodging the Form 2 with the IMC Registry and serving the Form 2 response on Joseph. His employer did not agree that he owed any unpaid wages to Joseph.

The Clerk of the Court scheduled a pre-trial conference for both Joseph and his employer to attend to discuss the claim and to try to reach an agreement before it headed to a hearing.

Before the pre-trial conference, Joseph prepared by gathering together:

- his pay slips from his employer;
- his employment contract;
- his calculations to show that he was underpaid;
- the letter he initially sent to his employer with his complaint;
- his copy of the IMC claim form (Form 1.2); and
- a copy of the *Contract Cleaners Award*.

At the pre-trial conference, Joseph explained his claim calmly and went through his calculations and the information that his employment was likely to be covered by the *Contract Cleaners Award*.

His employer argued that Joseph had signed an employment contract that stated the hourly rate of pay was \$15.00 per hour. He argued that as Joseph had signed this contract he had agreed to this rate of pay and therefore he was not entitled to receive any further payments.

As both Joseph and his employer were unable to reach an agreement during the pre-trial conference, the Clerk listed the matter for a hearing before an Industrial Magistrate.



Your witness statement

You may be required to file your own witness statement prior to your hearing. A witness statement must be written and attached to a Form 29 – Multipurpose Form (www.imc.wa.gov.au/index.php/appsandforms) under the heading “Witness Statement” and then lodged with the IMC Registry.

The witness statement must:

- be written in numbered paragraphs;
- at the beginning of the statement, identify who you are and your relationship to the other parties;
- detail the evidence that you will give at the hearing; and
- have attached copies of any documents referred to in the statement (e.g. pay slips) that are in your possession or control.

Case Study: witness statement example

Joseph Brown Witness Statement

1. My name is Joseph Brown.
2. My date of birth is 5 June 1984.
3. I currently live in Fremantle, Western Australia.

Getting the Job

4. A friend of mine, James Todd, told me about a cleaning job that was available in the Fremantle area for two months. James gave me the employer's name (Tim Jones) and contact phone number.
5. I called Mr Jones on 9 December 2018 and arranged to meet him.
6. After meeting the following day to discuss the job and the terms of employment, Mr Jones agreed to employ me.

Contract of employment

7. Mr Jones gave me a contract of employment to sign.
8. The contract said that I would be cleaning a supermarket for 5 hours per day, for 5 days a week, over an 8 week period from 1 January 2019 to 25 February 2019.
9. The contract said that I would be paid \$15.00 per hour. We both signed the contract. Attached at Attachment A is a copy of my signed contract.
10. My duties included cleaning floors and dusting shelves in the supermarket.
11. I was paid \$15.00 per hour. Attached at Attachment B are my eight pay slips showing payment of \$15.00 per hour.
12. Mr Jones paid me weekly into my bank account. Attached at Attachment C is my bank statement for this period showing the net amounts Mr Jones paid me.

Underpayment

13. When talking about my job with a friend, I mentioned my hourly rate of \$15.00 per hour.
14. My friend told me that he thought it was too low and that I should find out what I should be paid.
15. I contacted Wageline on 25 March 2019.
16. Wageline told me that I was employed under the *Contract Cleaners Award* and my hourly rate of pay should be \$24.26.
17. I wrote to Mr Jones on 1 June 2019 asking to be paid the amount of wages I was underpaid.

Signed: (Joseph's signature) Date:



Using other witnesses to support your claim

If you have witnesses to support your claim (for example, a co-worker) they will need to attend Court on the day of the hearing.

Your witnesses will also need to file a witness statement before the hearing. As with the witness statement made by you, their statement must be written and attached to a Form 29 under the heading “Witness Statement” and then lodged with the IMC Registry.

Their witness statement must:

- be written in numbered paragraphs;
- identify at the beginning of the statement the identity of the person making the statement and the nature of that person’s relationship to you or your employer;
- detail the evidence to be given by the maker of the statement at the hearing; and
- have attached copies of any documents referred to in the statement that are in possession or control of the person making the statement.

If you want a person to give evidence or to produce evidentiary materials as a witness at the hearing, you must lodge and serve a witness summons on the witness at least 14 days before the hearing. You do this by completing Form 22.1 – Summons to Witness and Form 22.2 – Summons to Witness Proof of Service Copy (www.imc.wa.gov.au/index.php/appsandforms).

If you are summoning a witness, you should arrange for three copies of both the Form 22.1 and Form 22.2 to be lodged with the IMC Registry. The IMC will stamp all of the copies, and will keep one copy of both forms for its own records. The other two copies of the forms will be returned to you (or the person lodging them). One copy of the Form 22.1 and 22.2 should be kept for your records, and you must arrange to have the third copy of **only Form 22.1** served personally on the witness.

The person serving the summons (which may or may not be you) will then need to complete the ‘service details’ on the **third copy of the Form 22.2**, as well as a Form 3 – Affidavit of Service on a Person (which must be signed by an authorised witness for Affidavits). The third copy of Form 22.2 and the Form 3 must then be filed together with the IMC, and together they form ‘proof of service’ of the witness summons. There is a filing fee of \$6.00 per witness summons filed.

You must also pay the witness’s reasonable expenses of attending Court, or make arrangements to enable the witness to attend Court. Details of how this has been done are recorded on the Form 22.2.

When your witness appears in Court to give their evidence they will need to swear an oath or affirmation that what they are going to say is the truth.

If you are calling more than one witness, you will need to follow the above processes for each witness.

Note: it is a criminal offence to deliberately give false evidence in Court

Your employer may ask a witness questions about their evidence at the hearing (a ‘cross-examination’) and then you will get a chance to clarify the answers given in cross-examination in the ‘re-examination’ which comes after the cross-examination.



Can you discontinue your claim?

Yes, you can discontinue your claim at any time before a judgment is given. If you want to discontinue the whole of your claim, download, complete and lodge a Form 18 (Notice of Discontinuance – Whole of Claim) from the IMC website at www.imc.wa.gov.au/index.php/appsandforms.

If you want to discontinue only part of your claim, download, complete and lodge a Form 19 (Notice of Discontinuance – Part of Claim).



Settlement of a claim

Settlement before the hearing

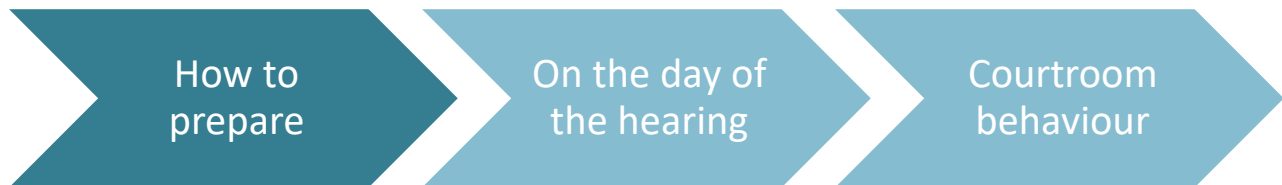
You and your employer can agree to settle part or all of your claim at any time before the hearing. If you do settle your claim before the hearing, you must notify the IMC as soon as possible by filing a Form 18 (Notice of Discontinuance – Whole of Claim) or Form 19 (Notice of Discontinuance – Part of Claim) with the IMC Registry.

Settlement on the day of the hearing

If you and your employer settle your claim on the day of the hearing, you must tell the Industrial Magistrate that the matter is settled. The Industrial Magistrate may then issue:

- an order dismissing the matter; or
- a consent order (the terms of which you and your employer agree together).

Preparing for the hearing



How to prepare for your hearing

Before the hearing

- collate all the documents you have lodged with the IMC Registry and all documents served on you by your employer;
- collate and make copies of any evidence and documents that you intend to provide to the Industrial Magistrate. You will need **three copies** of each document – one to give to the Industrial Magistrate, one to give to your employer and one for yourself. If you are bringing witnesses, make sure you also have additional copies of documents for them;
- make notes of all the facts of your claim to remind yourself what you need to say – this should include times, dates, places and names of any people involved;
- prepare a summary of what you want to say to the Industrial Magistrate;
- practise at home with a friend or family member;
- contact your witnesses to let them know the date, time and location of the hearing. You should let them know as soon as you can so they can arrange time off work (if necessary); and
- prepare any questions you want to ask witnesses, including your employer if they give evidence from the witness box.

What if I can't make the date of the hearing?

If you cannot attend the Court on the day of your hearing, you will need to contact the IMC Registry as soon as possible.

You will need to provide a good reason for the date to be changed and you will need to put this in writing to the IMC Registry. The IMC Registry will decide whether or not the trial hearing will be adjourned to another day.

On the day of the hearing

Where will the hearing be?

Your claim will be heard in a hearing room allocated by the Court. If your hearing is at the Perth Court, the hearing room will usually be located on **level 18** of 111 St Georges Terrace.

How long will the hearing take?

Hearings can be quick or may take a few hours. However, you should be prepared to spend a whole day at the Court.

What should I wear?

A minimum standard of neat casual dress with appropriate footwear applies. Business dress is the preferred attire.

What should I take with me to Court?

You should take with you:

- copies of all documents you have lodged with the IMC Registry and all documents served on you by your employer;
- three copies of each document that you intend showing the Industrial Magistrate;
- notes of all of the facts of your claim and a summary of your claim to remind yourself what you need to say; and
- pens, paper and calculator.

Who can come to Court with me?

Court hearings are open to the public. You may bring friends and relatives with you for support. They will need to sit in the public seating at the back of the courtroom.

What time should I get to Court?

You should be ready and waiting outside the hearing room at least 15 minutes before the hearing. You should report to a Judicial Support Officer to advise that you have arrived.

If the hearing is at the Perth Court, there are computer screens on level 17 and 18 that list each matter being heard that day and the room in which it is being heard. There are also waiting rooms on level 18.

If you are running late, you should telephone the IMC Registry as soon as possible. If you are late, the hearing may start without you or the Industrial Magistrate may dismiss your application.

How is the courtroom set up?

The Industrial Magistrate sits at a high bench at the front of the room. In front of the Industrial Magistrate is a long table at which the Judicial Support Officer/s sits.

In front of the Judicial Support Officer's table is a long table with microphones. You should sit on the right hand side (behind the microphone) and your employer will sit on the left hand side.

When they are called to give evidence, witnesses will sit at a witness box at either the left or right hand side of the room. The Industrial Magistrate may order witnesses out of the Court (except for you and your employer). The witnesses will then sit outside the Court until called to give their evidence.

The public seating is at the back of the courtroom.



Courtroom behaviour

How should I behave in Court?

The IMC is designed to be less formal than some courts; however, you still need to ensure that you behave respectfully and courteously to the Industrial Magistrate, the IMC staff, your employer and the witnesses:

- when the Industrial Magistrate enters or leaves the courtroom, you must stand up and remain standing until the Industrial Magistrate sits down or has left the courtroom. You should bow your head when the Industrial Magistrate sits down or leaves;
- you should always address the Industrial Magistrate as “Your Honour”;
- do not speak when the Industrial Magistrate is speaking;

- you should never interrupt someone else who is talking in the courtroom, even if your employer is saying something that you disagree with. Make a note of things said by your employer – including things you do not agree with – so you can mention these when it is your turn to speak;
- you should stand up when you are speaking to the Industrial Magistrate or the Industrial Magistrate is speaking to you, or you are questioning any witnesses;
- when you are speaking, remain behind the microphone;
- you should be seated when your employer is speaking;
- remain calm when explaining your claim or responding to issues raised by your employer;
- no food or drink is allowed in the courtroom, nor is chewing gum permitted. Water will be provided to you;
- mobile phones and pagers must be switched off;
- the Judicial Support Officers can help you with administration matters but they cannot give you legal advice or recommendations on what you should do. The Industrial Magistrate also cannot give you legal advice or recommendations; and
- the Industrial Magistrate cannot speak with you about your case except when your case is being heard and your employer is present.

Conduct of the hearing

The Industrial Magistrate will ask you to speak first and explain your claim. Your employer will also have a chance to speak and explain their response to your claim. This is known as ‘opening submissions’.

If you have physical evidence to provide, give copies to the Judicial Support Officer who will pass a copy each to the Industrial Magistrate, your employer and the witness (if applicable).

The Industrial Magistrate may ask you to give your evidence from the witness box. If this happens, you will be required to swear an oath or affirmation to speak the truth. Your employer is able to ask you questions (‘cross examine’ you) whilst you are in the witness box. They may also cross-examine any other witness you call whilst they are in the witness box. You must tell the truth at all times when you are giving evidence. If you do not know the answer to a question, say that you don’t know rather than guess. After cross-examination, there will be ‘re-examination’. Re-examination allows you to expand on your answers in cross-examination. In cross-examination, you are only allowed to answer the question from your employer, you are not allowed to argue or explain the reason behind the answer until re-examination.

Your employer will then have their opportunity to respond to what you have said.

If you have anything you want to add in response to what your employer says, you can ask permission from the Industrial Magistrate to speak again after your employer has finished speaking.

The Industrial Magistrate will ask you and your employer questions.

After all the evidence has been given, the Industrial Magistrate will give the parties a chance to make ‘closing submissions’. Closing submissions summarise your argument and incorporate the evidence provided by the witnesses. After closing submissions, the hearing will be concluded and the Industrial Magistrate will make a decision on your claim.

The Industrial Magistrate’s decision will be a court order. It is common, however, for the Industrial Magistrate to want to have more time to consider their decision so they may postpone making their decision until a later date (this is called ‘reserving’ their decision). The hearing may therefore end without a decision being made. If this occurs, you should leave the Court after the Industrial Magistrate has left. The IMC Registry will contact you on a later date to advise when the Industrial Magistrate’s decision is ready.

Case Study: courtroom hearing

Before the hearing, Joseph gathered all his papers together. He also brought along a note pad and a pen to take notes during the hearing, and a calculator.

On the day of the hearing, Joseph arrived 15 minutes early to the IMC and prepared himself to present his claim.

When entering the hearing room, Joseph sat down on the right hand side of a long table facing the raised Industrial Magistrate's bench.

Before the Industrial Magistrate entered the room, the Judicial Support Officer said, "silence in the Court, please rise." Joseph and his employer stood up, bowed when the Industrial Magistrate faced the courtroom, and sat down after the Industrial Magistrate was seated.

The Industrial Magistrate requested Joseph to detail his claim against his employer. Joseph stood up and calmly and briefly explained his claim to the Industrial Magistrate.

The Industrial Magistrate then asked Joseph's employer to respond. Joseph sat quietly listening to his employer.

The Industrial Magistrate directed Joseph to give evidence from the witness box. The Industrial Magistrate asked Joseph questions, then Joseph was cross-examined by his employer and he was able to explain his answers in re-examination. Joseph answered his questions confidently, trying to include all information that might be important. The Industrial Magistrate then asked the same from his employer. Joseph was allowed to ask his employer questions in cross-examination.

After all of the evidence had been given, the Industrial Magistrate invited Joseph to give closing submissions first, followed by his employer.

The Industrial Magistrate's decision

If you are
successful

If you are
unsuccessful



If you are successful

If you are successful, the Industrial Magistrate will make an order in your favour requiring your employer to pay you an amount of money. This may include an amount for interest if you have claimed this.

The Industrial Magistrate's decision is usually for immediate payment (although the order may require payment in instalments). In some cases, however, the Industrial Magistrate may give the employer a set period of time by which to pay the amount ordered.

Enforcing a civil judgment in the Magistrates Court

If your employer does not comply with the order and pay you when required, after 21 days from the date of the order you may seek to have it enforced. Enforcement is generally done in the Magistrates Court, which is a different Court to the Industrial Magistrates Court. This is called 'enforcing a civil judgment'.

To commence enforcement proceedings in the Magistrates Court, contact the IMC Registry and ask for a certified copy of the Industrial Magistrate's order if you have not already received one. Take the certified copy of the order to the Magistrates Court, together with an affidavit stating to what extent the orders have not been complied with. The affidavit form you use will be the Magistrates Court affidavit, not the Form 7 used in the IMC.

For information on enforcing a civil judgment, see the Magistrates Court at www.magistratescourt.wa.gov.au. It is recommended that you seek legal advice if you wish to enforce an order of the IMC.



If you are unsuccessful

If you are unsuccessful in the IMC, you may be able to appeal the decision to the Full Bench of the WA Industrial Relations Commission. You need to lodge an appeal within 21 days of the date of the Industrial Magistrate's decision.

For information on lodging an appeal, contact the WA Industrial Relations Commission at www.wairc.wa.gov.au or 9420 4444. It is recommended that you seek legal advice if you wish to appeal the Industrial Magistrate's decision.

Case Study: the Industrial Magistrate's decision

After the courtroom hearing was completed, the Industrial Magistrate took a short break and then delivered the decision.

The Industrial Magistrate handed down Reasons for Decision for finding Joseph's claim proven and issued an order for his employer to pay the unpaid wages of \$1,852.

More information

Wageline

Wageline 1300 655 266
Web www.dmirs.wa.gov.au/wageline

The Employment Law Centre of WA (Inc.)

Advice Line 1300 130 956 or 08 9227 0111
Web www.elcwa.org.au

Industrial Magistrates Court

Address Level 17, 111 St Georges Terrace, Perth WA 6000
Phone 9420 4467
Web www.imc.wa.gov.au

Attachment A - Sample letter

Contacting your employer about a possible underpayment of wages or employment entitlements

- This document contains a sample letter that you can use to write a letter to your employer to request payment of unpaid or underpaid employment entitlements.
- The *italicised* words in the sample letter indicate where you need to enter information about your concerns.
- Any other relevant information that supports the claim should be included with the letter – this includes the relevant WA award or any other documentation that will verify your claim.
- When you have finished preparing your letter, print the following page only.

**COMPLETE AND PRINT
THE FOLLOWING PAGE ONLY**

[Insert: Employer's Name]

[Insert: Employer's address]

Dear [Insert: Employer's Name]

I am writing to you in an attempt to settle my claim for outstanding entitlements that you owe me.

I was employed by you:

- Between *enter dates*.
- On a (*full time, part time or casual*) basis.
- As a *trade or job title*.

I have calculated that there is an outstanding amount of \$..... in respect of [Insert whichever is applicable: *unpaid wages, annual leave / long service leave*].

I believe I have been underpaid as a result of

[Specify the details of your claim for example:

- *non-payment of pro rata long service when I resigned last month.*
- *non-payment of double time rates for my shifts each Sunday in July.*

I understand I can make a claim in the Industrial Magistrates Court for this outstanding entitlement.

If you wish to clarify your employment obligations, you can visit the Department of Mines, Industry Regulation and Safety website at www.dmirs.wa.gov.au/wageline or contact Wageline on 1300 655 266.

I am seeking to have all money owed to me paid within 14 days of this letter.

Yours sincerely

[Insert: Your signature]

[Insert: Your name]

[Insert: Your address]

[Insert: Date signed]