

IF THEY DON'T PAY

What happens if court/tribunal orders are not paid?

There are a number of different orders that you can seek to enforce a court or tribunal decision in your favour

Consumer/Trader Claims or Residential Tenancy Applications in the Magistrates Court

A consumer/trader claim is one between a consumer and a trader where there has been a dispute over the sale, supply or hire of goods or services up to \$50,000 in value.

Either a consumer or trader may start a **minor case** (for claims up to \$7,500) or a **general procedure** (for claims up to \$50,000) consumer/trader claim.

A residential tenancy application is where either an owner or a tenant, who is party to a residential tenancy agreement, wants to enforce certain conditions of the agreement or to claim monies under the agreement, which does not exceed \$10,000.

If your claim is successful, and the court has issued a judgement in your favour (in most cases the judgement will require an amount of money to be paid to you), you become what the court refers to as the 'judgement creditor'.

The person who must pay you this money is the 'judgement debtor'.

Enforcement of the Order

If a magistrate has found in your favour and required the other person to repay the debt, what happens next?

To an extent this is up to you.

The quickest way to recover the debt is to seek a **property (seizure and sale) order**, which authorises a bailiff to seize and sell as much of the judgement debtor's real or personal property as necessary to satisfy the judgement debt wholly or partially.

But what if the judgement debtor does not have sufficient property to satisfy your claim against them?

If you are unsure, you can make an application to the court for a **means inquiry**, which will determine the judgement debtor's ability to pay the debt.

A means inquiry must be held if you are seeking a **time for payment order** or an **instalment order**.

A time for payment order requires the judgement debtor to pay the debt in full immediately, or on or before a date set by the court.

An instalment order requires the judgement debtor to pay the debt by regular instalments as set by the court.

There are times when the judgement you have sought from the court requires the return of property of some kind to you, most frequently in relation to tenancy disputes.

To enforce this type of judgement you would apply for a **property (seizure & delivery) order**.

This authorises a bailiff to seize any real property (including for matters relating to the *Residential Tenancies Act 1987*) or personal property of an 'obligated person' for delivery to the applicant.

What Happens Next?

Of the two kinds of order that place responsibility for payment directly upon the person or party you are claiming against, (ie a time for payment order or an instalment order), if the judgement debtor does not make payment as required you can make an application to the court for a **default inquiry**.

If the court is satisfied that the judgement debtor has disobeyed an instalment order or a time payment order, the judgement debtor will be guilty of a **contempt of court**, and can be imprisoned for this.

There are also orders that can seek payment from third parties (such as banks holding) or for the judgement debtor's employer to make regular payments from his or her wages. Please discuss these options with the magistrates' court registry.

Decisions of the Building Disputes Tribunal

The Tribunal cannot enforce its own orders.

If you have not been paid as required by such an order, you need to request in writing a certified copy of the order from the Tribunal.

You then use this to make an application to the Magistrates Court for the enforcement of the order.

Contact the nearest Magistrates Court to you for more information about your options in such a situation and how to go about making your claim.

Please note however, if the Tribunal order is for more than \$50,000 you will need to go to a higher court.

Does This Mean You'll Get Your Money?

Unfortunately, the answer is 'not necessarily'.

If the other party does not have the resources, financial or otherwise, to pay the debt, there is not really much more that you can do.

Consumer Protection would advise you to consider things such as the reputation of the trader and their likely ability to meet any possible claims before you decide to purchase goods or services from them.

The Magistrates Court Civil Registry

The Magistrates Court is divided into civil and criminal registries, and the types of claim that have been discussed here fall within its civil jurisdiction.

The Perth civil registry is at:

May Holman Centre
Level 3, 32 St Georges Terrace
PERTH WA 6000

Telephone: (08) 9425 2247
Facsimile: (08) 9421 1075

Enquiries and applications can be made at any courthouse in Western Australia.

The Department of the Attorney General web pages can also provide useful information. Court & Tribunal Services can be contacted on (08) 9264 1538 or <http://www.justice.wa.gov.au>