

Disposal of uncollected goods

This infosheet provides information about the steps to take before selling or disposing of goods that have been left with you or on your property.

Who is the infosheet for?

This infosheet is for individuals (not businesses) who have had goods left with them or on their property and they want the owner to collect them.

What is not covered?

This infosheet does not cover situations where good are:

- left in the course of a business (for example, left for you to repair, inspect or store)
- abandoned in connection with residential tenancy
- in your possession due to a criminal offence.

This infosheet also does not cover when goods are subject to 'bailment'. This is a legal term used to describe where the owner of goods leaves them in the custody and control of another person known as a holder. The holder is responsible for the safekeeping and return of the goods. For example, a car parked in a garage, or animals lodged with a kennel.

In the following situations go to the Department of Mines, Industry Regulation and Safety website under the heading '[Consumer Protection](#)' for information.

- If you are a business, the *Disposal of Uncollected Goods Act 1970* (WA) ("the Act") sets out the steps that must be taken before you can do anything with goods left with you.
- If you are a landlord and goods have been left behind by a tenant.

- If a business leaves goods (samples of products, magazines or compact disks for example) that you did not agree to purchase or receive, these goods are unsolicited. You cannot damage them but there is no obligation for you to pay for them either and if after the recovery period (three months or one month if you notify the business) the goods have not been collected, then you can keep them.

What should I do first?

Generally, if you know the person who left the goods and how to contact them, the first step is to try and contact them and ask them to collect them.

You can ring them or contact them in writing, for example, by sending a text or email. If you ring, keep a record of the details of your conversation. You should tell them the goods you want collected and give a date that they need to collect them by, for example, within a week.

Keep a copy of all communications that you make if the goods are not collected. If you make an application to court, you may want to provide these to the court.

It is worth trying to work out an arrangement with the person who has left the goods as going to court can be costly, time consuming and stressful.

The unsuccessful person is usually ordered to pay the successful person's costs.

Do I need to get legal advice?

It is recommended that you get legal advice before starting a court case to ask for permission to dispose or sell goods.

It is helpful to get legal advice about:

- whether there is a legal basis to make an application to court
- the time limit for starting a court case
- the chances of you being successful
- the costs involved with going to court.

What do I need to do before I can start a court case?

You must tell the person you are planning to start a court case for permission to sell or dispose of the goods. This is called giving notice.

You can find the notice forms in [Schedule 2 of the Disposal of Uncollected Goods Regulations 1971 \(WA\)](#).

I know who the person is and where they are

If you know who the person is that has left the goods and where they are, you need to fill in a 'Form 6: Notice under Part VII of intention to apply to Court to dispose of goods in possession otherwise than under bailment in course of business where s. 20(b) applies'.

You will need to make sure the completed form is received by the person who has left the goods. You can:

- give it to them in person; or
- send it preferably by registered mail so that you have a record if the person received the notice that you can give to the court; or
- leave it where the person lives, or if they are a representative of a business at the usual or last known place of business.

You must also send a copy to:

- the Commissioner of Police
- any other person who may have an interest in the goods.

I do not know who the left goods or where they are

If you do not know the details of who left the goods or where they are, you need to fill in a 'Form

5: Notice under Part VII of intention to apply to Court for order to dispose of goods in possession otherwise than under bailment in course of business where s. 20(a) applies'.

You will need to send the completed Form 5 to:

- the Commissioner of Police, and
- anyone else who may have an interest in the goods.

How long do I have to wait to start a court case?

You need to wait one month after giving notice to start a case in the Magistrates Court asking for permission to sell or dispose of goods.

How to make an application to the Magistrates Court?

To make an application to the Magistrates Court for an order to sell or dispose of goods you will need to fill in a number of court documents and lodge these on the [eCourts Portal](#) of WA. If you are unable to lodge your application in this way you will need to apply for an exemption setting out your reasons.

Your application must be started as a 'general procedure claim'.

Which Magistrates Court should I select?

When you lodge your application on the eCourts Portal of WA you will need to select the Magistrates Court where you would like the case to be heard.

You should select the Magistrates Court which is closest to where the goods were left, or came into your possession.

Where can I find the court forms?

You can find the court forms you need to complete to ask for permission to sell or dispose of good, on

the Magistrates Court website:
www.magistratescourt.wa.gov.au.

Do I have to pay court fees?

Court fees are payable by you at various stages of the application. You can find out what fees are payable at any Magistrates Court of WA registry or on its [website under Fees](#).

You do not have to pay the fee if you are under 18 when it is payable.

When you may be eligible to pay a set reduced fee

You can apply to a registrar or the court for a direction that you are an 'eligible individual'. Ask at a court registry or go to the [Magistrates Court of WA website](#) for the form you need. If this direction is made you will only pay a set reduced fee (where applicable).

You are an 'eligible individual' if:

- you have one or more of the following cards:
 - a health care card
 - a health benefit card
 - a pensioner concession card
 - a Commonwealth seniors health card
 - a card issued by Centrelink or the Department of Veterans' Affairs card that certifies entitlement to Commonwealth health concessions

or

- if you are:
 - getting Austudy, a youth training allowance or Abstudy
 - a person who has a grant of legal aid for the proceedings.

Also, the court or a registrar may direct that you are an 'eligible individual' if satisfied that the full fee would cause you financial hardship and/or that it is in the interests of justice that you pay the set reduced fee.

What information do I need in support of my application?

It is a good idea for you to keep:

- all material in one file
- copies of all notices, letters or emails
- original documents and send copies only to others
- photos if they will help (you should take the photo yourself, sign the back and note the date)
- keep in touch with witnesses and ask them to swear or affirm statutory declarations
- dated, written records of telephone conversations.

How do I make an application?

If you know the other party or their whereabouts

An application is made on a 'Form 10 Application under Part VII for order to dispose of goods in possession otherwise than under bailment in course of business where s. 20(b) applies'.

The Form 10 application must be lodged together with a supporting affidavit.

Get legal advice.

If you do not know the other party or their whereabouts

An application is made on a 'Form 9 Application under Part VII for order to dispose of goods in possession otherwise than under bailment in course of business where s. 20(a) applies'.

The Form 9 application must be lodged together with a supporting affidavit.

Get legal advice about completing the form.

What is the next step after the application is filed?

You must serve copies of the application and supporting affidavit on the other person (if their identity and whereabouts are known) and all other persons appearing to be affected at least 14 clear days before the date fixed for hearing or within such lesser time as the court at the hearing will

allow. 'Serve' is a legal word for getting the documents to the other person.

You can arrange to serve the application yourself, or pay an extra fee for a bailiff to serve the application.

If you are having difficulty you may have to ask a bailiff to serve the application. A bailiff has wider powers for the purpose of serving documents.

If serving the application will be too expensive or too difficult get legal advice.

Generally, you can

- give it to them in person, or
- send it to the person's last known address, preferably by registered post so you have a record it is received, or
- leave it where the person lives, or if they are a representative of a business at the usual or last known place of business.

If you organise the service yourself you must provide an affidavit of service to show that the application was served. This must be lodged with the court. You can get the affidavit of service from a Magistrates Court registry or the court website.

The number of kilometres travelled to serve the application can be stated in the affidavit of service. The fee for travel can be included as part of the costs on the application.

What happens after the application is lodged?

The application will be listed for a status conference as soon as practicable after lodging the document with the court. The date of the status conference will be on the copy of the application to be served.

What can happen at a status conference?

At a status conference the magistrate may order you and the other person to go to:

- mediation
- a pre trial conference
- another status conference

- file more court documents
- take other steps to help settle the case and get it ready for trial, or

they may list the case for trial.

What if the owner does not attend the status conference?

You may get judgment entered for you without trial (called default judgment).

What happens if the case goes to a trial?

The rules of evidence apply in the court.

You don't have to have a lawyer represent you in a general procedure case but it is important that you have legal advice about how to conduct your case.

Do I have to go to the trial?

Unless the court orders otherwise, you must go to the trial in person.

If a person served with the application does not go in person or their lawyer fails to go for them, at the time and place fixed for the hearing of the application the court may make orders in their absence.

If:

- the other person was served with the application and supporting affidavit, and
- did not attend the trial, and
- default judgment was given

they may seek to have that judgment set aside.

Significant cost implications may be involved. An application to set aside default judgment must be made within 21 days after the date of judgment.

Get legal advice if this happens in your case.

Can I have a lawyer at the trial?

You can have a lawyer.

What costs are involved?

In most cases an unsuccessful person will be ordered to pay the successful party's legal costs.

These will include things like lawyer's fees, court fees and witness fees.

If the court orders the other person to pay your costs, you can make an application to the Magistrates Court to enforce this as a debt owed to you.

What orders can the court make?

The court may make an order authorising you to sell or otherwise dispose of the goods. You must remain in possession of the goods until they are entitled to be sold or otherwise disposed of according to the terms of the court order.

Get legal advice as to the type of orders needed in your case.

Additional charges you may be able to claim

You may be able to claim a reasonable charge for the storage of goods during the period beginning with the date of the order and ending with the date of sale or other disposal. You may also be able to claim for the cost of insuring the goods, or costs in connection to the sale or disposal. Get legal advice.

What if proceedings have started to recover the goods?

If legal proceedings are started to recover the goods you must not sell or otherwise dispose of the goods until the proceedings are finished.

What happens after sale or disposal of the goods?

Where you sell the goods, you are entitled to recover as a debt the amount by which the proceeds of sale fall short of:

- the amount specified in any order
- the amount of any additional ('subsidiary') charges in any order, and
- the amount of any costs awarded to you that are not otherwise recovered or

accounted for under any other provision of the Act. Recovery is against the other person, the person through whom possession was obtained. Get legal advice.

Excess money of sale

Where you sell the goods, the other person or the person through whom possession was obtained may recover any surplus as a debt.

Preparing and filing a record of sale or other disposal

Once the goods are disposed of under the terms of the order, you must, not more than 7 days after the date of sale or other disposal of the goods, prepare a record in relation to the goods.

Not more than 14 days after the date of the sale or other disposal of the goods you must lodge a copy of the record in the court in which the order was made.

A person who had, or claims to have had at the time of sale or other disposal of the goods, an interest in the goods, may inspect a copy of the record lodged in court.

It is an offence under the Act not to lodge a record. It is also an offence to prepare or lodge a false record.

Where can I get more information and the forms I need?

- Forms 5 and 6 can be found in Schedule 2 of the Disposal of Uncollected Goods Regulations 1971 (WA) at this link: https://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/wa/consol_reg/dougr1971394/sch2.html.
- You can get more information about the court process from the Magistrates Court of WA website and a copy of court notices and applications from any Magistrates Court of WA registry. Court forms are also available online at this link: Fees, Forms & Fact Sheets (magistratescourt.wa.gov.au).

LEGAL AID WA OFFICES



Infoline: 1300 650 579
Legal Yarn: 1800 319 803
(for First Nations callers)



Translating & Interpreting Service:
131 450



Website/InfoChat: www.legalaid.wa.gov.au



National Relay Service: 133 677
(for hearing and speech impaired)

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Perth, WA 6000
1300 650 579
(08) 9261 6222

Great Southern Office

Unit 3, 43-47 Duke Street,
Albany, WA 6330
(08) 9892 9700

Southwest Office

7th Floor, Bunbury Tower,
61 Victoria Street,
Bunbury, WA 6230
(08) 9721 2277

Midwest & Gascoyne Office

Unit 8, The Boardwalk,
273 Foreshore Drive,
Geraldton, WA 6530
(08) 9921 0200

Goldfields Office

Suite 3, 120 Egan Street,
Kalgoorlie, WA 6430
(08) 9025 1300

Pilbara Office

28 Throssell Road,
South Hedland, WA 6722
(08) 9172 3733

West Kimberley Office

Upper Level, Woody's Arcade,
15-17 Dampier Terrace,
Broome, WA 6725
(08) 9195 5888

East Kimberley Office

98 Konkerberry Drive,
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