



Parenting Orders Kit

Applicant

FAMILY COURT OF WESTERN AUSTRALIA

You need this kit if

You are thinking about asking the Family Court of Western Australia to make orders about your children.

A parenting order is a ruling by a Court that deals with parental responsibility for a child. Parental responsibility involves issues like:

- Who a child will live with;
- Who a child will spend time with; or
- Who a child will communicate with.

If you are only seeking orders concerning child support, child maintenance or contravention of a parenting order, you need to ask for a separate kit.

If you also need the Court to make a decision about financial matters you should see the brochure series 'Financial Cases in the Family Court' and read the 'Property Orders Kit'.

Do I need to go to Court?

Before you begin you should consider whether there may be a better way of approaching the problem.

There are many services in the community to help people resolve their disputes without involving the Court.

The Court will not accept your application unless you can show that you have undergone Compulsory Family Dispute Resolution, or you make an application for an exemption.

Visit a Family Relationship Centre or call the Family Relationships Advice Line on 1800 050 321 for more information about dispute resolution services. Otherwise read brochure 2 "Before you file" and the "Exemption Form Kit" for more information.

What forms will I need?

There are several forms:

- Form 1 Application for Final Orders;
AND
- Client Information Form;
AND
- Certificate from Family Dispute Resolution Practitioner OR an Exemption Form;
AND (if your case also involves financial or property issues)
- Form 13 Financial Statement.

Who can help?

Court staff can give you advice about what forms you will need to complete, and answer any questions about procedure.

The Family Court of WA offers an Indigenous Family Liaison Service. Please ask Court staff if you need the help of an Indigenous Family Liaison Officer.

How do I fill in the Form 1 and Client Information Form?

Work your way through each part of the Forms. They don't have to be typed but please print very neatly.

What orders should I ask for?

Write the orders you want in 'Part F' of the Form 1. You may need to attach an extra page to the Form. Some examples are attached to the end of this kit.

Sometimes people want the Court to make orders to deal with arrangements until the final decision is made. These are called interim orders.

If you want any interim orders you need to complete a Form 2 (Application in a Case).

If you do not ask for interim orders, no orders about the children will be made at the first hearing unless the other party agrees.

What happens after I have filled in the forms?

Make two photocopies of the forms you have just filled out. There is a coin operated photocopier on the ground floor of the Family Court of WA, opposite the registry counter.

Post or bring the forms and copies into the registry. By posting the documents you may avoid a queue. The officer who serves you will take the papers for assessment. Once they are filed the copies will be returned by post within a few days. These will show the date that your application has been listed for a Case Assessment Conference and hearing. One copy is for you and one is for the other party.

Will I need an affidavit?

After you file a Form 1, the Judicial Officer will decide at the first hearing if an affidavit needs to be filed and the issues that it is to deal with.

If you are seeking interim orders and filing a Form 2, an affidavit will not be accepted unless the Court has given permission. This will generally only happen if the matter is very urgent.

You can seek permission by providing the affidavit and a letter addressed to the Duty Registrar setting out the reasons why you want to file the affidavit.

How do I complete the affidavit?

If you have been given permission to file an affidavit, remember that the affidavit should only contain information to help the Court make the decision.

Affidavits must follow a set format:

- The affidavit must be typed, not hand written.
- It must be split into small paragraphs (no more than six lines).
- Each paragraph must be numbered.
- It must contain all the relevant facts. The matters the Court must take into account are set out on page 6 of this kit.
- It must not contain comments or arguments – it must contain only facts (things you have personally seen, heard or done).

How do I sign the affidavit?

You will need to have your Affidavit 'witnessed' by a Justice of the Peace (JP), Lawyer or Notary Public.

A Notary Public is an officer appointed by the Supreme Court of WA. Generally it is their job to draw up and authenticate documents of a quasi-public character. They are mainly used in commercial situations to authorise international documents. A Notary Public can endorse documents with an official seal, but unlike a JP they will charge for their services.

Your affidavit must be signed by yourself and the JP next to the signing clause at the end of the affidavit and at the foot of each page.

Where do I find a Justice of the Peace?

There is usually a JP at the Family Court of WA between 9:30am and 1:00pm. If a JP is not available you may find one at the Justices' Association at 25 Barrack Street, Perth. For a JP near your home, telephone the Justices' Association on 1300 657 788 or visit their web page www.justice.wa.gov.au.

Do I need to provide anything else?

If you were married to the other party you must provide a photocopy of your marriage certificate.

If you were not married, you must provide a photocopy of the children's birth certificates.

Do I need any witnesses to support my case?

At the first hearing the Judicial Officer may make orders about the filing of affidavits. Any adult with important information can be a witness and file an affidavit.

An affidavit from a witness must be very specific about things the witness saw, heard or did. The Judicial Officer does not want their opinion about what should happen. The affidavit should not be a character reference.

Can I bring someone to Court with me?

There is no need to bring any witnesses to the first Court event (the Case Assessment Conference). Read brochure 3 called "Case Assessment Conference: The first Court event in Parenting Cases".

The conference should only involve the parties and their lawyers (if they have one). You can bring someone for support but they cannot sit with you in the conference. During the hearing they may sit in the Court but cannot take part in the hearing unless permitted to do so by the Judicial Officer. If you need an interpreter, please contact the Court.

What if I want an urgent hearing?

If you file a Form 2 (Application in a Case) for interim orders, and you think the case should be heard sooner than 28 days, you must write a letter to the Duty Registrar. The letter should refer to the following matters:

- The reason why you want an early hearing;
- When you would prefer the case to be heard;
- The amount of time you think the hearing will take;
- Whether you intend serving the documents on the other party; and
- Whether (and why) you think that an affidavit should be filed.

This letter is used only for deciding how soon your case will be heard. The Judicial Officer who makes the decision will only read any affidavit filed if permission is granted.

Do I have to notify the other party?

Normally the Court will not hear a case unless the other party has been given notice of the hearing and has received a copy of the Court papers.

In very urgent matters the Duty Registrar will allow the case to be listed without the other side being notified. This is called an *ex parte* hearing. The Judicial Officer who hears the case may still decide to delay the hearing until the other side has been advised.

If you are told that you must serve the papers on the other party, you should ask Court staff to give you the "Service Kit" that explains how to serve the papers.

If you do not know where the other party is living, you may apply for an Order for Substituted Service or a Location Order. You should get legal advice about this before proceeding.

Are there any fees?

Effective 1 July 2008 there is a filing fee of \$204.00. Payment can be made in cash, cheque, credit card, EFTPOS or postal/money order made payable to the Family Court of WA.

If posting in your documents, a credit card authority form is available from the 'Fees' section of the Family Court of WA website www.familycourt.wa.gov.au.

Can I have the fee waived?

You may be eligible to have the fee waived. If you have a health care card, you need to complete the form "Exemption form payment of Court fees".

If you do not have a health care card, and wish to try and have the fee waived because of financial hardship, complete the form "Application for waiver of Court fees on the basis of financial hardship". Both forms are available from the registry and the website of the Family Court of WA.

What happens next?

After you file your application, your case will be listed for a Case Assessment Conference. You will be given brochures which set out the process of a parenting case in the Court. The next brochure you should read is Brochure 3 "Case Assessment Conference: The first Court event in parenting cases".

You may receive a response from the other party before the Case Assessment Conference.

Information sessions

If you start Court proceedings you will be required to attend an Information Session before the first hearing.

Information sessions are held at the Family Court of WA each Thursday at 10:00am (children's issues only) and at 11:30am (property settlement issues only).

Information sessions are provided free of charge. Allow 1 ½ hours per session.

Further information is available on the Family Court of WA website www.familycourt.wa.gov.au.

Cases involving financial issues and parenting issues

If your case involves financial and parenting issues, the Court will give instructions about how it will deal with the financial issues on the day of the Case Assessment Conference.

Seek legal advice

You should get legal advice before deciding what to do. A lawyer can help you understand your legal rights and responsibilities, and explain how the law applies to your case. A lawyer can also help you reach an agreement with the other party without going to Court.

You can get legal advice from a:

- Legal Aid Office;
- Community Legal Centre; or
- Private law firm.

**Court staff can help you with questions about Court forms
and the Court process, but cannot give you legal advice.**

Personal safety

If you have any concerns about your safety while attending Court, please call 08 9224 8222 before your Court appointment or hearing. Options for your safety at Court will be discussed and arrangements put in place. By law, people must inform a Court if there is an existing or pending family violence order involving themselves or their children.

Need more information?

For more information about Family Dispute Resolution, or to find your nearest Family Relationship Centre:

- go to www.familyrelationships.gov.au; or
- call the Family Relationship Advice Line on 1800 050 321, the line is open from 8:00am to 8:00pm Monday to Friday, and 10:00am to 4:00pm on Saturdays.

For more information about the Family Court of WA, including access to the legislation, forms or publications listed in this brochure:

- go to www.familycourt.wa.gov.au;
- call 08 9224 8222 or 1800 199 228; or
- visit the Family Court of WA registry.

Who else can help?

- **Legal Aid WA**
www.legalaid.wa.gov.au
1300 650 579
- **Community Legal Centres Association of WA**
www.communitylaw.net
08 9221 9322
- **Law Society of Western Australia**
www.lawsocietywa.asn.au
08 9322 7877
- **Aboriginal Legal Service of Western Australia Family Law Unit**
www.als.org.au
08 9265 6666 or 1800 019 900
- **Law Council of Australia – Family Law Section**
www.familylawsection.org.au
02 6246 3788

This brochure provides general information only and is not provided as legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to the Court. The Family Court cannot provide legal advice.

The Family Court of WA respects your right to privacy and the security of your information.

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MATTERS THE COURT WILL TAKE INTO ACCOUNT

Presumption of equal shared parental responsibility when making parenting orders

- (1) When making a parenting order in relation to a child, the court must apply a presumption that it is in the best interests of the child for the child's parents to have equal shared parental responsibility for the child.
- (2) The presumption does not apply if there are reasonable grounds to believe that a parent of the child (or a person who lives with a parent of the child) has engaged in:
 - (a) abuse of the child or another child who, at the time, was a member of the parent's family (or that other person's family); or
 - (b) family violence.
- (3) When the court is making an interim order, the presumption applies unless the court considers that it would not be appropriate in the circumstances for the presumption to be applied when making that order.
- (4) The presumption may be rebutted by evidence that satisfies the court that it would not be in the best interests of the child for the child's parents to have equal shared parental responsibility for the child.

Court to consider child spending equal time or substantial and significant time with each parent in certain circumstances

Equal time

- (1) If a parenting order provides (or is to provide) that a child's parents are to have equal shared parental responsibility for the child, the court must:
 - (a) consider whether the child spending equal time with each of the parents would be in the best interests of the child; and
 - (b) consider whether the child spending equal time with each of the parents is reasonably practicable; and
 - (c) if it is, consider making an order to provide (or including a provision in the order) for the child to spend equal time with each of the parents.

Substantial and significant time

- (2) If:
 - (a) a parenting order provides (or is to provide) that a child's parents are to have equal shared parental responsibility for the child; and
 - (b) the court does not make an order (or include a provision in the order) for the child to spend equal time with each of the parents; andthe court must:
 - (c) consider whether the child spending substantial and significant time with each of the parents would be in the best interests of the child; and
 - (d) consider whether the child spending substantial and significant time with each of the parents is reasonably practicable; and
 - (e) if it is, consider making an order to provide (or including a provision in the order) for the child to spend substantial and significant time with each of the parents.

- (3) For the purposes of subsection (2), a child will be taken to spend *substantial and significant time* with a parent only if:
- (a) the time the child spends with the parent includes both:
 - (i) days that fall on weekends and holidays; and
 - (ii) days that do not fall on weekends or holidays; and
 - (b) the time the child spends with the parent allows the parent to be involved in:
 - (i) the child's daily routine; and
 - (ii) occasions and events that are of particular significance to the child; and
 - (c) the time the child spends with the parent allows the child to be involved in occasions and events that are of special significance to the parent.
- (4) Subsection (3) does not limit the other matters to which a court can have regard in determining whether the time a child spends with a parent would be substantial and significant.

Reasonable practicality

- (5) In determining for the purposes of subsections (1) and (2) whether it is reasonably practicable for a child to spend equal time, or substantial and significant time, with each of the child's parents, the court must have regard to:
- (a) how far apart the parents live from each other; and
 - (b) the parents' current and future capacity to implement an arrangement for the child spending equal time, or substantial and significant time, with each of the parents; and
 - (c) the parents' current and future capacity to communicate with each other and resolve difficulties that might arise in implementing an arrangement of that kind; and
 - (d) the impact that an arrangement of that kind would have on the child; and
 - (e) such other matters as the court considers relevant.

In deciding whether to make an order, the Court must regard the best interests of the children as the paramount consideration. In determining what is in the children's best interests it must consider 2 sets of considerations:

Primary considerations:

- (a) The benefit to the child of having a meaningful relationship with both of the child's parents; and
- (b) The need to protect the child from physical or psychological harm and from being subjected to, or exposed to, abuse, neglect or family violence.

Additional considerations:

- (a) Any views expressed by the child and any factors (such as the child's maturity or level of understanding) that the court thinks are relevant to the weight it should give to the child's views;
- (b) The nature of the relationship of the child with:
 - (i) each of the child's parents; and
 - (ii) other persons (including any grandparent or other relative of the child);
- (c) The willingness and ability of each of the child's parents to facilitate, and encourage, a close and continuing relationship between the child and the other parent;

- (d) The likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from:
 - (i) either of his or her parents; or
 - (ii) any other child, or other person (including any grandparent or other relative of the child), with whom he or she has been living;
- (e) The practical difficulty and expense of a child having contact with a parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with both parents on a regular basis;
- (f) The capacity of:
 - (i) each of the child's parents; and
 - (ii) any other person (including any grandparent or other relative of the child);
 to provide for the needs of the child, including emotional and intellectual needs;
- (g) The maturity, sex, lifestyle and background (including lifestyle, culture and traditions) of the child and of either of the child's parents, and any other characteristics of the child that the court thinks are relevant;
- (h) If the child is an Aboriginal child or a Torres Strait Islander child:
 - (i) the child's right to enjoy his or her Aboriginal or Torres Strait Islander culture (including the right to enjoy that culture with other people who share that culture); and
 - (ii) the likely impact any proposed parenting order under this Part will have on that right;
- (i) The attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents;
- (j) Any family violence involving the child or a member of the child's family;
- (k) Any family violence order that applies to the child or a member of the child's family, if:
 - (i) the order is a final order; or
 - (ii) the making of the order was contested by a person;
- (l) whether it would be preferable to make the order that would be least likely to lead to the institution of further proceedings in relation to the child;
- (m) any other fact or circumstance that the court thinks is relevant.

In addition the Court must consider the extent to which each of the child's parents has fulfilled, or failed to fulfil, his or her responsibilities as a parent and, in particular, the extent to which each of the child's parents:

- (a) has taken, or failed to take, the opportunity:
 - (i) to participate in making decisions about major long-term issues in relation to the child; and
 - (ii) to spend time with the child; and
 - (iii) to communicate with the child; and
- (b) has facilitated, or failed to facilitate, the other parent:
 - (i) participating in making decisions about major long-term issues in relation to the child; and
 - (ii) spending time with the child; and
 - (iii) communicating with the child; and
- (c) has fulfilled, or failed to fulfil, the parent's obligation to maintain the child.

PARENTING ORDERS EXAMPLES

*These are general examples only.
You should take legal advice before seeking orders.*

- 1 The children Jack Smith born on 25 January 2004 and Jill Smith born on 8 April 2006 live with the wife/husband/mother/father.
- 2 The husband and the wife/The father and the mother have equal shared parental responsibility for the children; or

The wife/husband/mother/father have sole parental responsibility for the children.
- 3 The wife/husband/mother/father spend time with the children as agreed between the parties.

OR

Defined times

Note – These are not recommended times. They are examples and will only be appropriate for some families. There is no need to specify times if you feel you can work these out with the other party. In this example the children live with the husband and spend time with the wife.

- 4 The children Jack Smith born on 25 January 2004 and Jill Smith born on 8 April 2006 spend time with the wife as follows:
 - (a) Each alternate weekend from 9am on Saturday until 5pm on Sunday, extending to 5pm on Monday if the weekend is a long weekend.
 - (b) The weekend time described in paragraph (a) be suspended during school holiday periods.
 - (c) Each year from 5pm on the Saturday until 5pm on the Sunday of the Mothers' Day weekend, if that time is not already provided for under this order.
 - (d) The weekend time described in paragraph (a) be suspended on the weekend of Fathers' Day each year from 5pm on the Saturday until 5pm on the Sunday.
 - (e) One half of each of the school holiday periods at the conclusion of Terms 1, 2 and 3 each year, commencing at 5pm on the Friday of the last week of term.
 - (f) The expression "school holiday period" in this order means the period from 5pm on the last day of the school term to 5pm on the day immediately before the start of the next term.
 - (g) Three weeks during the Christmas school holidays each year, commencing at 9am on the first Saturday in January.
 - (h) Each alternate Christmas from 5pm on 24 December until 10am on 26 December, commencing in 2006.
 - (i) Each intervening Christmas from 10am on 26 December until 10am on 28 December, commencing in 2007.

- (j) Each alternate Easter from 5pm on Thursday until 5pm on Monday, commencing in 2008. If Easter falls during the school holidays at the conclusion of Term 1, the time shall form part of the wife's time for that holiday.
- (k) On the children's birthdays each year from 9am to 2pm, provided the birthday does not fall on a school day.
- (l) Telephone calls for up to 15 minutes on each of the children's birthdays if the birthday falls on a school day.
- (m) Telephone calls for up to 15 minutes each Wednesday, with the mother to initiate the call between 6pm and 7pm.
- (n) The wife collect the children from the husband's residence at the start of these times and return them to his residence at the end of these times.