



Family Court of
Western Australia

PAPERS FOR THE JUDICIAL OFFICER (GUIDE FOR FINANCIAL CASE)

This document is intended as a guide to help you complete the relevant template. It is not legal advice.

Applications before the Court at trial:

Here you should list all applications and responses filed by either party which are to be decided at trial. If you are seeking orders at trial which are different from the orders sought in your Form 1 application or Form 1A response, you should include details of any amended application or response, or any Minute of Final Orders Sought which you have filed.

Example:

- *Form 1 application of the husband filed on 1 January 2015;*
- *Form 1A response of the wife filed on 1 February 2015;*
- *Amended Form 1A response of the wife filed on 6 June 2015; and*
- *Minute of Final Orders Sought at trial filed by the husband on 10 October 2015.*

Evidence relied upon at trial:

Here list the affidavits upon which you intend to rely at trial, including affidavits of any witnesses. Only list affidavits relied upon by you – do not list affidavits filed by the other party. NB: you are not permitted to rely on multiple affidavits sworn by you during the course of the proceedings. You may only rely on one affidavit of each witness including yourself.

If a witness has refused to swear an affidavit and is being compelled by subpoena to attend, list that witness.

Example:

- *Affidavit of the husband filed on 10 October 2015;*
- *Affidavit of John Smith filed 10 October 2015;*
- *Witness under subpoena:*
 - a. Simon Peter Burr.*

Matters not in dispute:

Here set out any matters which you have been able to agree with the other party. Those matters might be agreed outcomes for at least part of the case, the narrowing of issues, or factual matters which are not in dispute.

Example:

- *The parties have agreed that the wife will retain the home, and that each party will retain their own motor vehicles. (Outcome)*
- *While the parties have not been able to agree who should retain the home, they have agreed that regardless of who retains the home the overall net assets, liabilities and superannuation should be divided equally between them. (Outcome)*
- *The parties agree that neither of them made any significant initial financial contribution, and that they both entered into the relationship with modest assets only. (Factual)*
- *The parties agree that overall their respective contributions from the date on which they began living together until the date of separation are appropriately to be regarded as having been equal. (Narrowing of issues)*

Matters in dispute:

Here set out the issues which you say need to be determined by the Court, because you and the other party have not been able to agree. You should be as specific as possible in describing the issue to be determined. For example, rather than describing the issue as “how the property of the parties should be divided” it is better to describe the issue as “whether the husband’s contributions were significantly greater, as asserted by him, or whether the parties’ respective contributions were equal as asserted by the wife”.

Example:

- *Whether the value of the home is \$600,000 as asserted by the husband, or \$550,000 as asserted by the wife.*
- *Whether orders should be made which will enable the wife to retain the home, or whether it must be sold.*
- *Whether there should be an order splitting the husband’s superannuation as proposed by him, or whether the husband should retain the whole of his superannuation and the wife should receive a greater share of the non-superannuation assets.*
- *Whether the contributions of the parties were equal as asserted by the wife.*
- *The effect of the inheritance received by the husband two years prior to separation on the assessment of contributions overall.*

Factors to be taken into account pursuant to the legislation:

Here you should list under each heading, in point form only, a short statement of what you say are the relevant factors for the Court to take into account in deciding what is a just and equitable outcome.

The headings are taken from Section 79(4) of the *Family Law Act 1975* (for parties who are/were married to each other) and Section 205ZG(4) of the *Family Court Act 1997* (for parties who were not married to each other).

All the headings from those sections are included in the template for your convenience. If a particular heading is irrelevant to your case (for example, because no Financial Agreement has been signed) then that heading may be deleted.

Contributions:

- 1. The financial contribution (direct or indirect) made by or on behalf of each party or a child to the acquisition, conservation or improvement of any of the property of the parties or either of them, whether or not that property has ceased to be their property.**

Examples:

- *At the start of the relationship the wife owned a home in which she had equity of about \$250,000. The husband had only nominal assets.*
- *The husband worked full-time throughout the marriage and contributed all of his income to the family.*
- *Three years prior to separation, the wife inherited \$100,000 after the death of her aunt. She applied that money to reduce the mortgage on the home.*
- *The husband's parents made a financial contribution on his behalf, by providing the parties with an interest-free loan to help them acquire their first house.*

- 2. The non-financial contribution (direct or indirect) made by or on behalf of each party or a child to the acquisition, conservation or improvement of any of the property of the parties or either of them, whether or not that property has ceased to be their property.**

Examples:

- *The husband renovated the home, doing all the labour himself.*
- *The wife painted the interior of the home, and was responsible for all of the gardening and general maintenance work around the home.*

- 3. The contribution made by each party to the welfare of the family constituted by the parties and any children of the relationship, including any contribution made in the capacity of homemaker or parent.**

Examples:

- *The wife was primarily responsible for domestic tasks and for the care of the children, while the husband was employed full-time.*

- *The husband worked as a schoolteacher, and the wife worked as an accountant. By working school hours, the husband was able to take on more responsibility for the care of the children.*
- *The husband worked full-time, and acknowledges that because of that the wife was primarily responsible for the care of the children. However, the husband made a significant contribution as a homemaker and parent outside his regular work hours.*

Assessment of contributions overall:

Here you are required to state your position as to the appropriate percentage division of the net value of the assets, based only on the overall contributions of the parties.

Examples:

- *The husband asserts that the overall contributions of the parties from the commencement of the relationship through to the time of hearing are appropriately to be regarded as equal.*
- *The wife asserts that the contributions of the parties during cohabitation were equal, but that overall contributions should be assessed in the proportions of 60% to her and 40% to the husband, because of the significance of her initial financial contributions in coming to the marriage with equity in a home.*
- *The husband asserts that the contributions of the parties up to the date of separation were equal, but that overall contributions should be assessed in the proportions of 55% to him and 45% to the wife because of the inheritance which he received shortly after separation.*

Earning capacity:

4. The effect of any proposed order upon the earning capacity of either party.

Examples:

- *The proposed orders will not affect the earning capacity of either party.*
- *The proposed orders will affect the earning capacity of the husband, as it will be necessary for the business to be sold in order to equitably divide the property overall.*

Matters referred to in subsection 75(2) (and subsection 205ZD(3) for parties who were not married) in so far as they are relevant:

5. The age and state of health of each of the parties.

Examples:

- *The husband is aged 38 years and is in good health.*
- *The husband is 64 years old. While he is in good health, he is nearing retirement age.*

- *The wife is aged 42 years. She is in poor health, which affects her ability to work.*

6. The income, property and financial resources of each of the parties and the physical and mental capacity of each of them for appropriate gainful employment.

Examples:

- *On her proposals, the wife will receive property with an approximate value of \$150,000. She has no other financial resources. She is presently unemployed, and has no qualifications, but she has the physical and mental capacity for full-time employment if she can find it.*
- *The husband is presently employed full-time, earning approximately \$85,000 per annum. On his proposals, he will receive property with an approximate value of \$100,000. He has the physical and mental capacity to continue in his current employment.*
- *The husband is a beneficiary of a trust controlled by his father, and continues to receive distributions from it.*

7. Whether either party has the care or control of a child of the relationship who has not attained the age of 18 years.

Examples:

- *There are no children of the marriage still under the age of 18 years.*
- *The husband has the primary care of the two children of the marriage, who are aged 10 and seven.*
- *The husband and wife have equal shared care of their three children, who are aged four, eight and 11.*

8. Commitments of each of the parties that are necessary to enable them to support themselves and a child or any other person that the party has a duty to maintain.

Examples:

- *The wife refers to her financial statement filed for the purposes of trial. Her necessary commitments to support herself and the two children of the marriage are set out in that document. She has no duty to maintain any other person.*
- *The husband refers to his financial statement filed for the purposes of trial. His necessary commitments to support himself and his new wife are set out in that document. Apart from the children of the*

marriage and his new wife, he has no duty to maintain any other person.

9. The responsibilities of either party to support any other person.

Examples:

- *The wife has a responsibility to support the two children of the marriage. She also has a responsibility to support the older child John, who is 19 years old and studying full-time at university.*
- *The husband has a responsibility to support his new partner. He also has a responsibility to support his new partner's child, whose father is deceased.*

10. The eligibility of either party for a pension, allowance or benefit and the rate of such pension, allowance or benefit being paid.

Examples:

- *Neither party is eligible for any pension, allowance or benefit.*
- *The husband is not eligible for any pension, allowance or benefit. He understands that the wife is in receipt of government benefits, but does not know the exact amount.*
- *The husband is eligible for a UK pension in the amount of approximately \$140 per week for life.*

11. A standard of living that in all the circumstances is reasonable.

Examples:

- *During the marriage, the parties enjoyed a comfortable lifestyle. The children attended private schools, the parties regularly ate out at restaurants, and they lived in a comfortable home. They took overseas holidays once per year.*
- *During the marriage, the parties had a modest lifestyle. They lived in rental accommodation, and had little surplus income for luxuries or holidays.*

12. The extent to which the payment of maintenance would increase the earning capacity of the party receiving it, by enabling them to undertake a course of educational training, or become established in a business or otherwise to obtain an adequate income.

Examples:

- *The wife has, since separation, commenced training to qualify as a schoolteacher. She requires maintenance to enable her to*

complete her studies, which will take another two years. Once qualified, she will be able to earn a reasonable income.

13. The effect of any proposed order on the ability of a creditor of a party to recover the creditor's debt, so far as that effect is relevant.

Examples:

- *The husband's proposed orders will not affect the ability of his creditors to recover their debt.*
- *On the wife's proposal, the debts owed to the wife's creditors will be paid in full before the balance of sale proceeds is distributed to the parties.*

14. The extent to which the party whose maintenance is under consideration has contributed to the income, earning capacity, property and financial resources of the other party.

Examples:

- *The husband continues to work running the business that the parties established together many years ago. In the early years of the business, both parties worked full-time in it. After the children were born, the wife ceased working in the business and devoted herself full-time to the care of the children.*
- *The wife is now a qualified accountant. She studied full-time during the marriage to obtain her qualifications, and the husband financially supported her throughout her studies.*

15. The duration of the relationship and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration.

Examples:

- *The parties were married for 30 years. The wife has not worked in paid employment since the birth of their first child 26 years ago. The employment qualifications which she held prior to the birth of the first child are now out of date, and she holds no relevant qualifications for employment.*
- *The relationship of the parties lasted only four years. At the commencement of the relationship, the applicant was in the same job he now holds. His earning capacity has been unaffected by the duration of the relationship.*

16. The need to protect a party who wishes to continue that party's role as a parent.

Examples:

- *The wife wishes to continue in her present role as a full-time parent. The children are aged only two and four years, and it is reasonable that she do so.*
- *The children of the marriage are now 15 and 17. It is not necessary or reasonable for either party to defer paid employment to have a full-time role as a parent.*

17. If either party is cohabiting with another person, the financial circumstances relating to the cohabitation.

Examples:

- *The husband is not cohabiting with any other person.*
- *The wife has been living with her new partner for two years. The new partner earns an income in excess of \$250,000 per year.*
- *The husband has been living with his new partner for two years. The new partner is an invalid pensioner.*

18. The terms of any order made or proposed to be made under section 79 / section 205ZG in relation to:

- a) The property of the parties; or**
- b) Vested bankruptcy property in relation to a bankrupt party.**

Examples:

- *The wife proposes that the net assets of the parties be distributed 60% to her and 40% to the husband to be effected by the transfer of the wife's interest in the property to the husband, and a cash payment and superannuation split from the husband to the wife.*
- *The husband proposes that the wife retain the former family home and that she refinances the mortgage into her sole name and makes a cash payment to the husband to equate to an equal distribution of the net assets, taking into account each party's superannuation interest.*
- *The wife's trustee in bankruptcy proposes that the property be sold.*

19. Any child support under the Child Support (Assessment) Act that either party has provided, is to provide or might be liable to provide in the future.

Examples:

- *The wife is employed on a salary and pays child support as assessed in the sum of \$150 per week.*

- *The wife has the full-time care of the children. The husband is self-employed and arranges his affairs so as to minimise his child support liability. The wife presently receives no child support.*

20. Any fact or circumstance which the justice of the case requires to be taken into account.

Examples:

- *Since separation, the wife has removed \$100,000 from the joint bank account and failed to account for it.*
- *Immediately prior to separation, the husband removed \$50,000 from a bank account. He alleges that he gave that money to his sister and that it has subsequently been spent.*

21. The terms of any financial agreement that is binding on the parties.

Examples:

- *The parties have entered into a financial agreement to terminate the right of either of them to seek spousal maintenance.*

Adjustment to contributions based entitlement:

Here you are required to state what adjustment, if any, should be made to what would otherwise be the contributions-based entitlement of each party, because of the various factors listed above. The adjustment must be expressed in terms of a percentage of the net value of the assets.

Examples:

- *The husband asserts that no adjustment to the contributions based entitlement of the parties should be made. Both parties earn similar incomes, neither has re-partnered, and they share equally in the care of the children.*
- *The wife asserts that an adjustment to the contributions based entitlement of the parties should be made in her favour, in an amount equal to 10% of the net value of the assets. She has primary care of the children, is in poor health, and earns an income significantly less than that of the husband.*

Chronology:

You should include in your Papers for the Judicial Officer, or attach as a separate document if more convenient, a chronology of the events which you say are important for the Judicial Officer to understand your case. You do not need to include each and every event that has happened – only those which you say are significant.

Your chronology is not evidence. Any event listed in the chronology, therefore, must be an event about which you have given evidence in your trial affidavits. For that reason, the template chronology includes a column for you to cross reference the event to the relevant paragraph of your trial affidavit.

If you and the other party are able to agree a chronology, it is helpful for a joint chronology to be filed.

The template includes a table similar to the one set out below. Once you download the template, you can insert details into the table, and add extra lines as required.

Example:

Date:	Event:	Paragraph number in trial affidavit:
<i>29 January 1960</i>	<i>Father born</i>	<i>2</i>
<i>24 April 1965</i>	<i>Mother born</i>	<i>4</i>
<i>28 September 1988</i>	<i>Parties married</i>	<i>5</i>
<i>11 September 1996</i>	<i>Parties' son Joshua Samuel Smith born</i>	<i>7</i>
<i>29 January 1997</i>	<i>Parties purchase first home at 21 Smith Street for \$400,000, using wife's inheritance of \$100,000 as deposit.</i>	<i>33</i>
<i>12 August 2011</i>	<i>Husband made redundant. Receives lump sum payment of \$85,000.</i>	<i>42</i>
<i>29 December 2014</i>	<i>Parties separate</i>	<i>22</i>

List of authorities:

Here you should list any legal authorities / precedents (decided cases) to which you want to refer in your submissions to the Court.

You are only required to list authorities in your Papers for the Judicial Officer if you intend to refer in your submissions to specific decided cases. It is not compulsory to do so.

Examples:

- *Bevan and Bevan (2013) FLC 93*
- *Gollings and Scott (2007) FamCA 397*

Table of assets, liabilities and resources:

Here you are required to include in the document, or attach, a table setting out the assets, liabilities and resources held by each of the parties as at the date of the hearing, together with the values attributed by both parties.

The table should clearly identify those values which have been agreed between the parties.

The table should also clearly identify your proposed division of each asset and liability, and any superannuation.

[example of a properly completed table](#)

The table accessible through the template can be downloaded by you and completed and printed.

Additional columns and lines can also be added once you have downloaded the document.