



Family Court of
Western Australia

PAPERS FOR THE JUDICIAL OFFICER (GUIDE FOR PARENTING ONLY CASES)

This document is intended as a guide to help you complete the attached template. It is not legal advice. The headings set out below are used in the template. Under each heading is an explanatory note, and an example for your assistance.

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.)

Examples:

- *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 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.)

Examples:

- *Affidavit of the husband filed on 10 October 2015;*
- *Affidavit of John Smith filed 10 October 2015;*
- *Witness under subpoena:*
 - *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, or factual matters which are not in dispute.)

Examples of agreed outcomes:

- *The parties have agreed that they should have equal shared parental responsibility for the children.*
- *The parties have agreed that, regardless of which parent the children live with, the children should spend half of all school holidays with each parent, and see each parent on Christmas Day.*
- *The parties agree that the children should remain in their present schools.*

Examples of agreed factual matters:

- *The parties agree that the children are not at risk of abuse or family violence in the care of either parent.*
- *The parties agree that, prior to separation, the father worked full time and the mother was primarily responsible for the care of the children.*

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 much time the children should spend with the father” it is better to describe the issue as “whether the children should spend each alternate weekend with the father as proposed by him, or every third weekend as proposed by the mother”.)

Examples:

- *Whether the parties should have equal shared parental responsibility as proposed by the father, or whether the mother should have sole parental responsibility.*
- *Whether the children should spend every weekend with the father as proposed by him, or alternate weekends as proposed by the mother.*
- *Whether there should be orders restraining the parties from consuming alcohol while the children are in their care.*
- *Whether the arrangements for Christmas Day should involve the children spending time with both parents every Christmas Day as proposed by the husband or spend alternating Christmas Days with each parent as proposed by the wife.*
- *Whether the children are at risk of being exposed to family violence in the home of the mother, as alleged by the father.*

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 in the best interests of the children.)

The headings are taken from Section 60CC of the Family Law Act 1975 (for children of married parents) and Section 66C of the Family Court Act 1997 (for children of parents who were not married to each other).

All the headings from those sections are included in this template for your convenience. If a particular heading is irrelevant to your case (for example, because none of the parties or children are of Aboriginal or Torres Strait Islander heritage) then that heading may be deleted.

1. The benefit to the child of having a meaningful relationship with both of the child's parents.

Examples:

- *The wife agrees that the child has a meaningful relationship with his father and that it is important for that relationship to be preserved.*
- *The father says that the time he proposes the children spend with him is necessary to preserve a meaningful relationship.*
- *The father has never lived with the child or spent time with her. There is no current relationship.*

2. The need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.

Examples:

- *There is no risk of the child being exposed to harm in the care of either party.*
- *There is a risk of harm if the child lives with the mother, because of her drug use. Refer to the Form 4 Notice of Child Abuse or Family Violence filed in the proceedings.*

3. 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.

Examples:

- *Sam is 15 years old and his views should be given weight. He has consistently expressed the view that he should live with his father.*
- *Neither child has expressed any views.*
- *The child has expressed the view that she wants to live with her mother, but she is only 5 years old and her views should not carry much weight.*

- 4. The nature of the relationship of the child with:**
- (a) each of the child's parents; and**
 - (b) other persons (including any grandparent or other relative of the child).**

Examples:

- *The children have a very good relationship with both parents.*
- *The children have a poor relationship with the mother's new partner.*
- *The children have a very close relationship with their paternal grandparents.*

- 5. The extent to which each of the child's parents has taken, or failed to take, the opportunity:**

- (a) to participate in making decisions about major long-term issues in relation to the child; and**
- (b) to spend time with the child ; and**
- (c) to communicate with the child.**

Examples:

- *Both parties have participated fully in decision making for the child.*
- *The mother has not sought to see the child since the parties separated.*
- *The father has seen the children as often as he could given his employment as a FIFO worker.*

- 6. The extent to which each of the child's parents has fulfilled, or failed to fulfil, the parent's obligations to maintain the child.**

Examples:

- *The father has paid child support as assessed.*
- *The mother has failed to pay child support as assessed.*

- 7. The likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from:**

- (a) either of his or her parents; or**
- (b) any other child, or other person (including any grandparent or other relative of the child), with whom he or she has been living.**

Examples:

- *If the child moves to Port Hedland as proposed by the mother, he will spend less time with his paternal grandparents with whom he has a very close relationship.*
- *If the child lives with the father as proposed by him, she will be distressed and confused as she has lived with the mother since the parties separated.*

- 8. The practical difficulty and expense of a child spending time with and communicating 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.**

Examples:

- *If the child lives in Singapore as proposed, her ability to maintain direct contact with her father will be affected as neither party can afford the costs of travel.*
- *There are practical difficulties associated with the father's work, as he works on a FIFO roster of 2 weeks on, 1 week off.*

- 9. The capacity of:**

- (a) each of the child's parents; and
- (b) 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.

Examples:

- *The father alleges that the mother does not properly meet the child's educational needs by failing to ensure attendance at school.*
- *The mother alleges that the father is unable to meet the child's accommodation needs as he lives in a 1 bedroom flat.*
- *The father says that he is better able to meet the child's emotional needs, as the child has a closer relationship with him.*

- 10. 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.**

Examples:

- *The child is very bright and mature for his age. Academically he is doing very well, and he has mature opinions.*
- *The father is of Maori extraction and wishes to ensure that the child grows up knowing, understanding and appreciating his cultural heritage.*
- *The child is a keen horse rider, an activity supported by her mother but not by her father.*

11. If the child is an Aboriginal child or a Torres Strait Islander child:

- (a) **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**
- (b) **the likely impact any proposed parenting order under this Part will have on that right.**

Examples:

- *If the child lives with the father he will ensure that she maintains contact with extended family, including her family in the North West of Western Australia.*
- *The father is concerned that if the child lives with the mother, the mother will not facilitate the child's ongoing enjoyment of his Aboriginal culture.*

12. The attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents.

Examples:

- *The father has demonstrated an appropriate attitude to parental responsibility by involving himself in the child's sporting activities and helping with her homework.*
- *The father says that the mother has an inappropriate attitude to the child and to parenting in that she will not discipline the child, and simply allows him to make his own decisions.*

13. Any family violence involving the child or a member of the child's family.

Examples:

- *The child was exposed during the relationship to family violence between the parents.*
- *The child is afraid of his mother because of her temper when affected by alcohol.*
- *There is family violence in the father's new relationship, and the child will be exposed to that if she lives with them.*

- 14. If a family violence order applies, or has applied, to the child or a member of the child's family - any relevant inferences that can be drawn from the order, taking into account the following:**
- (a) the nature of the order;**
 - (b) the circumstances in which the order was made;**
 - (c) any evidence admitted in proceedings for the order;**
 - (d) any findings made by the court in, or in proceedings for, the order; and**
 - (e) any other relevant matter.**

Examples:

- *There is a Violence Restraining Order in place for the protection of the mother. It is exhibit 3 to her trial affidavit.*
- *There was a Violence Restraining Order in favour of the father but it is no longer in place – see paragraphs 27-30 of the father's trial affidavit.*

- 15. 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.**

Examples:

- *If orders are made as proposed by the mother, the father says that will inevitably lead to further Court proceedings.*
- *The proceedings started 3 years ago. The child is aware of the proceedings and that causes her stress.*

- 16. Any other fact or circumstance that is relevant.**

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.)

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 December 2014</i>	<i>Parties separate</i>	<i>22</i>

List of authorities:

(Here you should list any legal authorities (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:

- *Goode and Goode [2006] FamCA 1346*
- *McCall and Clark (2009) FLC 92-776*