



Family Court of
Western Australia

PAPERS FOR THE JUDICIAL OFFICER (GUIDE FOR PARENTING CASES)

This document is intended as a guide to help you complete the available template for parenting cases. 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 father filed on 1 January 2015;*
- *Form 1A response of the mother filed on 1 February 2015;*
- *Amended Form 1A response of the mother filed on 6 June 2015; and*
- *Minute of Final Orders Sought at trial filed by father 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 father 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, or factual matters which are not in dispute.

Examples of agreed outcomes:

- *The parties have agreed that they should have joint decision-making 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 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 father or spend alternating Christmas Days with each parent as proposed by the mother.*
- *Whether the arrangements proposed by the mother would expose the children to family violence or neglect.*

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* (Cth) (where the parents were/are married) and Section 66C of the *Family Court Act 1975* (WA) (where the parents were never married).

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. what arrangements would promote the safety (including safety from being subjected to, or exposed to, family violence, abuse, neglect, or other harm) of:

- (i) the child; and**
- (ii) each person who has care of the child (whether or not a person has parental responsibility for the child).**

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.*
- *The mother agrees that the child is safe when spending time with the father.*
- *The father says that the mother needs to demonstrate that the children are safe at home, by providing clean drug tests and having some visits initially supervised.*
- *The mother thinks it is best if handover for visits occurs at school or a public place so everyone feels safe and the children aren't exposed to conflict between the parties.*

In considering the matters set out above, the court must include consideration of:

- (i) any history of family violence, abuse or neglect involving the child or a person caring for the child (whether or not the person had parental responsibility for the child); and**
- (ii) any family violence order that applies or has applied to the child or a member of the child's family.**

If a Family Violence Order has or does apply to the child or a member of their family, include details about:

- (a) the nature of the order, including the duration;
- (b) the circumstances in which the order was made;
- (c) any evidence admitted in proceedings for the order; and
- (d) any findings made by the court.

Examples:

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

2. Any views expressed by the child.

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 any weight.*
- *The child expressed her views to the Independent Children’s Lawyer – see annexure 2 of the father’s trial affidavit.*
- *The children spoke to the Single Expert Witness as part of their assessment.*

3. The developmental, psychological, emotional and cultural needs of the child.

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.*

4. The capacity of each person who has or is proposed to have parental responsibility for the child to provide for the child’s developmental, psychological, emotional and cultural needs.

Examples:

- *The parties have worked together in making decisions for the child, including about the child’s particular medical needs which have impacted the child’s schooling.*
- *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, however has not been able to attend regularly at school or participate in their extracurricular activities.*
- *The father has paid child support as assessed.*

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

5. The benefit to the child of being able to have a relationship with the child's parents, and other people who are significant to the child, where it is safe to do so.

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.*
- *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.*

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

(a) the child's right to enjoy their Aboriginal or Torres Strait Islander culture, by having the support, opportunity and encouragement necessary:

- **to connect with, and maintain their connection with members of their family and with their community, culture, country and language; and**
- **to explore the full extent of that culture, consistent with the child's age and developmental level and the child's views; and**
- **to develop a positive appreciation of that culture.**

(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.

7. Anything else that is relevant to the particular circumstances of the child.

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 / 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.