



**FAMILY COURT
OF
WESTERN AUSTRALIA**

**CASE MANAGEMENT
GUIDELINES**

7 May 2012

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CHAPTER 1: CASE MANAGEMENT PROCEDURES

PART A: CASE MANAGEMENT PRINCIPLES

1 Statement of Case Management Principles

- 1.1 The Court has a duty to facilitate the prompt, economical and just resolution of disputes.
- 1.2 A just resolution requires parties, their lawyers and the Court to deal with matters in a way that is proportionate to:-
 - (a) the importance of the case;
 - (b) the complexity of the issues; and
 - (c) the financial position of the parties.
- 1.3 The Court has primary responsibility for ensuring that cases progress at the appropriate pace, rather than allowing the parties or their lawyers to undertake that responsibility.
- 1.4 The Court has a duty to assist parties reach their own agreement by providing alternative dispute resolution procedures and giving parties the opportunity to be involved in informal negotiations. Parties are to be informed of the range of settlement options available and advised that there are other financial and emotional benefits in reaching agreement. Without limiting the generality of this paragraph, the court may direct any or all of the parties to confer on a “without prejudice” basis for the purpose of identifying, resolving or narrowing the points of difference between them.
- 1.5 As the overwhelming majority of cases are resolved by agreement, parties should be informed of this fact and encouraged to believe that settlement of their matter is the likely outcome. However, if parties are unable to resolve their dispute by agreement, they are entitled to a judicial determination.
- 1.6 The Court, having regard to the interests of the parties and their children, must set, monitor and enforce realistic time limits for the conduct of cases so that the parties are fully prepared to participate at each stage of the proceedings.
- 1.7 The administration of family law and of the case management system requires the commitment and co-operation of the Court, parties, lawyers, legal professional associations and other relevant agencies.
- 1.8 These Case Management Guidelines are to be:
 - (a) read in conjunction with any Rules applying to the Family Court of Western Australia from time to time (“the Rules”);

- (b) interpreted and applied so as to ensure these case management principles are maintained in all Court services; and
- (c) read on the basis that all powers and functions exercised by a Registrar may be exercised by a Magistrate or a Judge.

2 Pre-filing procedures

- 2.1 In financial cases the Court will enforce and require compliance with the pre-action procedures set out in the Rules.
- 2.2 In parenting cases where parties have applied for parenting orders after 1 July 2007, the Court will not enforce or require compliance with the pre-action procedures set out in the Rules, but rather enforce and require compliance with the procedure set out in paragraph 4 of this document.

3 Deleted

PART B: APPLICATIONS SEEKING FINAL PARENTING ORDERS

4 Filing Applications in Child-related Proceedings Without a Certificate from a Family Dispute Resolution Practitioner

- 4.1 Applications starting a case in child-related proceedings will not be accepted for filing without:
 - (a) a duly completed certificate from a Family Dispute Resolution Practitioner; or
 - (b) a Form NP1 Exemption Form.
- 4.2 If the Applicant is claiming to be exempt from filing a certificate on the grounds that:
 - (a) there has been abuse of a child by one of the parties to the anticipated proceedings; or
 - (b) there would be a risk of abuse of a child the subject of the proposed application if there was a delay in the filing of the application; or
 - (c) there has been family violence by one of the parties to the proceedings; or
 - (d) there is a risk of family violence by one of the parties to the proceedings,

the Applicant must file:

- (a) a Form 4 Notice of Child Abuse or Family Violence; and
- (b) an affidavit setting out the facts relied upon to substantiate the allegations made in the Notice.

- 4.3 The application will not be accepted for filing if the affidavit filed for the purposes of paragraph 4.2 above contains material other than the facts relied upon to substantiate the allegations made in the Notice of Child Abuse or Family Violence.
- 4.4 If the Applicant is claiming to be exempt from filing a certificate on either of the grounds set out in sub-paragraph 4.2(a) or 4.2(c) above, the Applicant must file a Form NP2 Acknowledgement Form - "Information from a Family Counsellor or Family Dispute Resolution Practitioner".
- 4.5 Court staff will have available the written information from a Family Dispute Resolution Practitioner required for the purposes of the Form NP2 Acknowledgment Form - "Information from a Family Counsellor or Family Dispute Resolution Practitioner" referred to in paragraph 4.4.
- 4.6 If the Applicant claims to be exempt from filing a certificate:
- (a) due to urgency;
 - (b) due to inability to effectively participate in family dispute resolution; or
 - (c) because the application alleges contravention of an order less than 12 months old and alleges behaviour that shows a serious disregard of obligations under the relevant order;
- the application and supporting documents will be referred to a Registrar for a decision as to whether the application may be filed without a certificate.
- 4.7 An Applicant filing a Form 4 Notice of Child Abuse or Family Violence is required to provide the Court with an extra photocopy of the Notice and the affidavit.

5 Filing of Documents Starting a Child-related Proceeding Case

- 5.1 A Form 1 or Form 1A seeking final or final and interim parenting orders other than child maintenance or child support is to be accompanied by a Form NP3 Case Information Affidavit.
- 5.2 Affidavits in support of an interim application will not be accepted for filing unless the Court gives permission.
- 5.3 Permission to file an affidavit is to be sought by providing the affidavit and a letter addressed to the Duty Registrar setting out the reasons relied upon with reference to the affidavit sought to be filed. Permission will not usually be given unless the case is listed on an ex parte basis.
- 5.4 Affidavits are not to be filed with a Form 1A seeking final and interim orders unless an affidavit has been accepted for filing in support of the Form 1 or permission to file that affidavit is given.

6 Listing Procedures

- 6.1 Applications starting a case seeking final parenting orders will be listed, if practicable, to a Child-Related Proceeding (“CRP”) List or otherwise to a General List as soon as practicable after 42 days from the date of filing.
- 6.2 A listing earlier than 42 days from the date of filing is to be sought by letter addressed to the Duty Registrar setting out the reasons relied upon. Unless the case is listed on an ex parte basis, the case will usually be listed to an urgent CRP List or otherwise to the General List.

7 CRP List

- 7.1 In a CRP List the Court may:
- (a) make consent orders;
 - (b) receive evidence from the parties and/or the Family Consultant;
 - (c) consider whether the parties have complied with pre-filing Family Dispute Resolution (FDR) procedures and/or would benefit from further FDR with an external service provider;
 - (d) determine if a case assessment conference is required and make appropriate procedural orders for that conference;
 - (e) determine if mediation or conciliation is required and make appropriate procedural orders for that mediation or conciliation;
 - (f) deleted;
 - (g) restrain the parties by injunction from filing any applications in the case without permission;
 - (h) identify and record the relevant issues in dispute between the parties;
 - (i) determine if an interim hearing is required and make appropriate procedural orders for that hearing;
 - (j) make orders regarding the filing of affidavits and the issues to be dealt with in the affidavits;
 - (k) make any appropriate orders regarding allegations of child abuse or family violence;
 - (l) appoint an Independent Children’s Lawyer;
 - (m) allocate the case to the appropriate track in accordance with paragraph 9;
 - (n) allocate a Client Administration Officer to the case; and
 - (o) allocate the next Court event.
- 7.2 Unless otherwise requested, the parties shall sit at the bar table during a CRP List hearing.
- 7.3 Unless otherwise requested, the parties and their lawyers may remain seated whilst addressing or being addressed by the Court at a CRP List hearing.

8 Case Assessment Conferences

- 8.1 Except for case assessment conferences relating to applications alleging contravention of an order affecting children, case assessment conferences will be conducted by a Family Consultant.
- 8.2 Evidence of anything said to a Family Consultant is admissible in Court.
- 8.3 At the case assessment conference the Family Consultant will:
- (a) conduct a screening and assessment of the case;
 - (b) where possible assist the parties to reach agreement on all or part of their case;
 - (c) seek to identify the relevant issues in the case; and
 - (d) consider appropriate case management options.
- 8.4 As soon as practicable after the conclusion of the case assessment conference the Family Consultant shall provide a report in writing to Court.

9 Allocation of a Child-related Case to a Track

- 9.1 A Child-related case will be allocated to the “Complex Track”, “Standard Track” or “Magistrates’ Track”.
- 9.2 A case will be allocated to the Complex Track where it appears:
- (a) the case involves international or interstate relocation of a child;
 - (b) the case involves international issues such as jurisdiction;
 - (c) the case involves familicide or homicide;
 - (d) a Magistrate does not have jurisdiction to hear the case;
 - (e) the estimated hearing time for the case is 6 days or more; or
 - (f) the case involves complicated issues of fact, law or evidentiary material which would benefit from individual case management by a Judge.
- 9.3 A case will be allocated to the Standard Track where it appears that the estimated final hearing time for the case exceeds 2 days but the case does not meet the criteria for inclusion in the Complex Track.
- 9.4 A case will be allocated to the Magistrates’ Track where it appears that the estimated final hearing time is not more than 2 days and the case does not involve complicated issues of fact, law or evidentiary material.
- 9.5 A case may be allocated to a different track at any stage by order or direction of a Judge, Magistrate or Registrar.
- 9.6 As far as practicable the Family Consultant who conducts the case assessment conference will remain allocated to that case until it ends.

10 Filing of Subsequent Applications

- 10.1 After a case has started, a party may not file an application in that case without permission.
- 10.2 Permission to file an application is to be sought by letter addressed to the Client Administration Officer setting out the reasons relied upon together with a copy of the application sought to be filed.
- 10.3 If practicable the request for permission to file an application will be determined by the Judge or Magistrate allocated to the case or in their absence by the Duty Registrar.
- 10.4 Affidavits in support of subsequent applications will not be accepted for filing without permission. Permission will not usually be given unless permission is given for the application to be listed on an ex parte basis.

11 Applications for Child Support / Maintenance or Alleged Contravention of a Parenting Order

- 11.1 If no other child-related proceedings are pending, applications starting a case relating to:
 - (a) child maintenance (including adult child maintenance) or child support will be listed to a General List before a Magistrate for directions only as soon as practicable after 42 days from the date of filing, and paragraphs 4 to 10 inclusive do not apply to such cases;
 - (b) alleged contravention of a parenting order will be listed as soon as practicable after 21 days from the date of filing to a case assessment conference before a Registrar or otherwise to a General List for directions and paragraphs 5 to 10 inclusive do not apply to such cases.
- 11.2 At the directions hearing the Magistrate may make an order:
 - (a) for the parties to attend a case assessment conference pursuant to paragraph 11.1(b);
 - (b) for the filing of further affidavit material;
 - (c) for the issuing of subpoenas;
 - (d) in regard to disclosure; and
 - (e) fixing a time for a future hearing.
- 11.3 Where practicable the Magistrate who conducted the directions hearing will hear and determine the application.
- 11.4 At the case assessment conference referred to in paragraph 11.1(b), the Registrar may:
 - (a) assist the parties to resolve all or part of the case;

- (b) identify the issues relevant to the case;
- (c) make directions as are appropriate to ensure the matter is ready for hearing on the relevant issues;
- (d) limit the evidence to be relied upon and the time of any hearing; and
- (e) allocate a hearing for the case.

PART C: APPLICATIONS SEEKING FINAL PROPERTY ORDERS ONLY

12 Filing and Listing procedures

12.1 Applications seeking final property orders only will be listed:

- (a) if no interim orders are sought to a procedural hearing before a Registrar; or
- (b) if interim orders are sought to an interim and procedural hearing before a Magistrate,

as soon as practicable after 42 days from the date of filing.

12.2 An application seeking final or final and interim property orders is to be accompanied by an affidavit in support of the orders sought and a Form 13 Financial Statement.

12.3 After a property case has started, no application or response in a case will be accepted for filing unless the parties have conferred on a without prejudice basis for the purpose of identifying, resolving and narrowing the issues in dispute and the application or response is filed with a Form NP11 certificate stating whether the parties have conferred to try to resolve the matters giving rise to the application or response and identifying the matters that remain in issue between the parties.

12.4 The court may waive the operation of the preceding paragraph in a case of urgency or for other good reason, such reasons to be set out in a letter accompanying the application or response in a case.

13 Procedural Hearings in Property Cases

13.1 The primary purposes of a procedural hearing in property cases are:

- (a) to ensure compliance with pre-action procedures and where all parties are legally represented, to ensure that proper consideration has been given to the parties attending ADR (see paragraph 13.5);
- (b) to ensure that parties have complied with their duty of disclosure and have provided all relevant documents to each other party;
- (c) to ensure that the relief and issues between the parties are appropriately defined;

- (d) to make orders to ensure that the parties are in a position to conduct meaningful negotiations, including for the filing of Conciliation Conference Particulars pursuant to the Rules;
 - (e) to allocate the matter to a conciliation conference;
 - (f) to assign the matter to the appropriate case management track; and
 - (g) to make such orders as will ensure the case is resolved in a timely, economical and just manner.
- 13.2 The Court expects that the requirements of Rules as to service, filing of documents and any other matter will have been complied with by the first return date, although it is understood that this may not be practicable if the matter has been listed earlier than 42 days from the date of filing.
- 13.3 Unless there are special circumstances, a procedural hearing will not proceed until the parties have complied with relevant requirements in respect of the filing of documents and all other matters. If the procedural hearing does not proceed, the Court will re-list the matter in an appropriate list and may make orders as to costs.
- 13.4 At the procedural hearing the parties or their lawyers (in addition to being able to address the matters referred to in the Rules) must be able to advise the Court of the following matters:
- (a) the issues involved and those that have been resolved;
 - (b) the extent of negotiations and primary dispute resolution procedures already undertaken, whether Court-based or otherwise (see paragraph 13.5); and
 - (c) the estimated length of the trial if the matter cannot be resolved by agreement.
- 13.5 Where all parties are legally represented, the Court will require advice as to whether the parties have considered participating in alternate dispute resolution (“ADR”) including but not limited to mediation or private mediation style conferencing, and if the parties have not, or do not intend, participating in ADR, the reasons. If:
- (a) ADR has not been considered without good reason the Court will adjourn to procedural hearing without listing a conciliation conference to another date to allow such consideration to be given;
 - (b) The parties intend participating in ADR, adjourn the procedural hearing to a date after the proposed ADR;
 - (c) The parties have already participated in ADR, the Court may:
 - i. dispense with the requirement that the parties attend a conciliation conference pursuant to section 79(9) of *the Family Law Act 1975* or section 205ZG(9) of *the Family Court Act 1997*;
 - ii. Make enquiries and orders in accordance with paragraphs 17.9, 17.11 and 21.2;

- (d) If the parties have not attended ADR the Court may adjourn the proceedings without listing a conciliation conference, to enable the parties to participate in ADR.

13.6 If the Court considers that a party or lawyer has not pursued or defended the application and/or response and/or reply with due diligence, the Court may:

- (a) refer the application and/or response and/or reply to the presiding judicial officer for consideration of dismissal of the application and/or response and/or reply, or for the determination of the application or response or reply on an undefended basis;
- (b) dismiss the application or response or reply, determine the application or response or reply on an undefended basis or adjourn the application or response or reply to allow the applicant to file affidavit evidence; and/or
- (c) make such other orders as are appropriate, including an order for costs.

13.7 Unless otherwise requested, the parties shall sit at the bar table during a procedural hearing.

14 Allocation of a Property Case to a Track

14.1 In determining the case management options appropriate to each case, consideration should be given to the following factors:

- (a) what is needed to achieve a prompt and just resolution of the dispute;
- (b) the desirability of the parties being able to conduct the proceedings so far as possible on fair and equal terms;
- (c) informed participation by parties to the proceedings; and
- (d) the need to ensure that the conduct of the case does not unnecessarily impede the resolution of other matters by utilising more Court resources than the subject matter warrants.

14.2 Where practicable and appropriate, matters should be listed before a Judge or Magistrate who has previously heard matters involving the same parties and conferences should be listed before a Registrar who has previously conducted conferences between the parties.

14.3 At the procedural hearing each case dealing with only property matters will be allocated to one of the following case management tracks:

- (a) Magistrate Track - matters where the estimated hearing time is not more than 2 days and the case does not involve complicated issues of fact, law or evidentiary material;
- (b) Standard Track - matters that do not meet the criteria for allocation as either a Magistrate or Complex Track matter; or

- (c) Complex Track - matters in which the estimated hearing time is 6 days or more or matters involving complicated issues of fact, law or evidentiary material which would benefit from individual case management by a Judge.

14.4 Notwithstanding paragraph 14.3 and having regard to paragraph 15, a matter may be assigned to any track at any stage of the proceedings. If a matter has not been assigned to a track at the procedural hearing, the matter will be deemed to be allocated to the Standard Track.

15 Individual Case Management Directions

15.1 In addition to the procedures for differential case management set out above, the Court recognises that there are matters that may warrant individual attention or supervision by one Judge, Magistrate or Registrar. Such cases may possess one or more of the following features:

- (a) the potential for repeat hearings;
- (b) voluminous evidentiary material;
- (c) complicated psychological or emotional issues; and
- (d) complex social dynamics.

15.2 Identification of such matters for individual supervision may take place at any stage of the proceedings, and appropriate orders may be made assigning the matter to an individual Judge, Magistrate and/or Registrar for management and supervision.

16 Summary Financial Matters

16.1 Applications for final orders seeking only spousal maintenance (including de facto spousal maintenance) will be listed in a General List before a Magistrate for directions only, as soon as practicable 42 days after filing.

16.2 At the directions hearing the Magistrate may make an order:

- (a) for the filing of further affidavit material;
- (b) for the issuing of subpoenas;
- (c) in regard to disclosure; and
- (d) fixing a time for a future hearing.

16.3 Where practicable the Magistrate who conducted the directions hearing will hear and determine the application.

16.4 Proceedings that are normally to be heard on the first return date include:

- (a) proceedings for enforcement of money orders; and
- (b) proceedings for the enforcement of child support.

17 Conciliation Conference

- 17.1 Subject to paragraph 13.5, in cases involving property orders only or parenting and property orders, the Court will allocate a date for a conciliation conference and make such orders as are necessary to ensure that the parties are able to conduct meaningful negotiations at the conference.
- 17.2 In appropriate cases the Court may request the List Judge to determine whether or not the conciliation conference should be conducted by a Judge.
- 17.3 A conciliation conference provides the parties with an opportunity to resolve their dispute. Parties are required to make a bona fide endeavour to reach agreement.
- 17.4 At the conciliation conference the Registrar will monitor compliance with previous procedural orders made, including checking the:
- (a) costs notification letter; and
 - (b) any other documents required.
- 17.5 Ordinarily there will be only one conciliation conference and parties are therefore required to prepare properly for the conference and comply with all orders and directions made at the procedural hearing. Second and subsequent conferences will generally only be convened in the event that a Registrar determines there is a reasonable prospect that the matter will settle if a further conference is convened.
- 17.6 If it is not practicable for one or both of the parties or their legal representatives to attend for reasons such as distance or physical disability, directions may be made for the conference to take place by telephone.
- 17.7 Orders excusing a party or legal representative from personal attendance at a conciliation conference should ordinarily be sought at the procedural hearing but may also be sought from a Registrar in Chambers, on written request, no later than seven days prior to the conciliation conference date.
- 17.8 An appointment for a conciliation conference may be varied, on one occasion, to another date with the consent of all parties. The date for a conciliation conference may not be varied within 14 days of the appointed time unless with the approval of a Registrar. An appointment for a conciliation conference may not be varied without the fixing of a date for a further conciliation conference or procedural conference unless the dispute has been resolved by the making of consent orders or otherwise.
- 17.9 At a conciliation conference, the Registrar may make orders:

- (a) allocating the case to the Magistrate Track and/or adding the proceedings to the presiding Magistrate's Defended List to await the allocation of a trial date; and referring the case to the presiding Magistrate for the making of trial directions;
- (b) allocating the case to the Standard Track or Complex Track and/or adding the proceedings to the Judges' Defended List to await the allocation of a readiness hearing;
- (c) specifying the steps that need to be taken prior to the readiness hearing or trial including:
 1. the filing of evidence of the parties and witnesses;
 2. the procedures to be followed in the event of default in the filing of evidence;
 3. consideration of the filing of a chronology that shall not exceed four pages unless there are special circumstances;
 4. the disclosure and inspection of documents;
 5. the issuing of subpoenas for the production of documents;
 6. the convening of a conference of experts; and
 7. requiring the parties to confer to settle a joint trial plan.

17.10 In the event that the matter is not resolved by the making of consent orders the Registrar shall note on the record:

- (a) whether the conference formally convened in the presence of the parties;
- (b) whether the parties have complied with the costs notification requirements of the Rules; and
- (c) whether each self-represented litigant has received a booklet in a form prescribed by the Chief Judge concerning preparation of the matter for trial.

17.11 In the event that a case is not resolved by the making of consent orders the Registrar, where practicable and appropriate (and with the consent of all parties), shall also note the following matters on the record:

- (a) any significant issues that are agreed;
- (b) the valuations that are agreed;
- (c) the significant issues that remain in dispute; and
- (d) the valuations that are not agreed.

17.12 Where the requirements of the Rules, orders or directions have not been sufficiently complied with, or if for any other reason realistic negotiations are unable to be held, the Registrar may:

- (a) list the matter in an appropriate list for further orders or for consideration of dismissal of the application and/or response and/or reply or orders in default;
- (b) request that an explanation be provided; and/or
- (c) make an order as to costs.

17.13 If a party is represented by a lawyer at the conciliation conference the lawyer shall provide a copy of the Conference File Note to his or her client promptly following receipt of same from the Court unless the matter was settled and final orders made.

17.14 A Registrar who has conducted a conciliation conference should not thereafter as a Magistrate hear and determine substantive matters, but may do so with the consent of all parties.

PART D: APPLICATIONS SEEKING BOTH FINAL PARENTING AND PROPERTY ORDERS

18 Listing Procedures

18.1 Applications seeking both final parenting and property orders will be listed, if practicable, to a CRP List or otherwise to a General List as soon as practicable after 42 days from the date of filing.

18.2 A listing earlier than 42 days from the date of filing is to be sought by letter addressed to the Duty Registrar setting out the reasons relied upon. Unless the case is listed on an ex parte basis, the case will usually be listed to an urgent CRP List or otherwise to the General List.

19 Procedural Hearings

19.1 At the CRP List or General List hearing the presiding judicial officer may conduct a procedural hearing in relation to the property orders sought in accordance with paragraph 13 or refer the case to a Registrar for a procedural hearing to be conducted.

20 Allocation of a Parenting and Property case to a Track.

20.1 At the procedural hearing the case will be allocated to the “Complex Track”, the Standard Track” or the “Magistrates’ Track”, applying the criteria in paragraph 9.

21 The Conciliation Conference

21.1 Paragraph 17 applies to a case involving parenting and property orders.

21.2 At a conciliation conference in a case involving parenting and property orders the Registrar will:

- (a) ascertain whether the parties consent to any outstanding property issues being dealt with as child-related proceedings. If parties elect to have property aspects dealt with as child-related proceedings they must file a Form NP4 “Consent to Conduct Proceedings as Child-related Proceedings” Form; and.
- (b) assign or re-assign the case to the appropriate Track.

21.3 If there is a hearing listed before a managing Magistrate of a child-related proceeding subsequent to the conciliation conference and the Registrar assigns the case to the Complex Track, unless the Registrar determines otherwise, he/she shall vacate the hearing before the Magistrate and make arrangements for the case to be listed before the managing Judge.

PART E: MANAGEMENT AND LISTING OF CASES

22 Complex Track

22.1 When a case is allocated to the Complex Track:

- (a) The Caseflow Manager shall refer the case to the List Judge for the allocation of a managing Judge.
- (b) If practicable, the managing Judge will remain allocated to and will manage the case, with the assistance of a Magistrate or Registrar if appropriate.
- (c) The managing Judge will list the case for a procedural hearing before himself or herself as soon as practicable after being allocated.
- (d) The managing Judge, with the assistance of a Magistrate or Registrar if appropriate, is responsible for the progress of a case, including:
 - 1. determining which of the primary dispute resolution options are appropriate;
 - 2. listing and hearing interim or procedural applications;
 - 3. in applications seeking final parenting orders and applications seeking both final parenting and property orders, deeming the entry of the case into the Judges' Defended List as at the date of the first court event or on such other date as the Judge determines;
 - 4. in applications seeking final property orders only, deeming the entry of the case into the Judges' Defended List in accordance with paragraph 17.9;
 - 5. making such orders from time to time as are necessary for the case to proceed to a readiness hearing;
 - 6. conducting the readiness hearing or directing that another Judge or Registrar conduct the readiness hearing.

23 Standard Track

23.1 When a case is allocated to the Standard Track involving parenting orders or parenting and property orders:

- (a) If practicable, the Magistrate who conducted the first court event will remain allocated to and will manage the case until the allocation of a trial Judge.

- (b) The managing Magistrate is responsible for the progress of a case, including:
 - 1. determining which of the primary dispute resolution options are appropriate;
 - 2. listing and hearing interim or procedural applications;
 - 3. deeming the entry of the case into the Judges' Defended List as at the date of the first court event or such other date as the Magistrate determines;
 - 4. making such orders from time to time as are necessary for the case to proceed to a readiness hearing before a Registrar.

23.2 When a case is allocated to the Standard Track involving property orders only:

- (a) where practicable and appropriate, interim or procedural matters should be listed before a Judge or Magistrate who has previously heard matters involving the same parties and conferences should be listed before a Registrar who has previously conducted conferences between the parties,
- (b) the matter will be listed for trial in accordance with paragraph 17.9.

24 Magistrates' Track

24.1 When a case is allocated to the Magistrates' Track:

- (a) If practicable, the Magistrate who conducted the first court event will remain allocated to and will manage the case until its ends.
- (b) The managing Magistrate is responsible for the progress of the case including:
 - 1. determining which of the primary dispute resolution options are appropriate;
 - 2. hearing interim or procedural applications;
 - 3. in applications seeking final parenting orders and applications seeking both final parenting and property orders, deeming the entry of the case into the Magistrate's Defended List as at the date of the first court event or on such other date as the Magistrate determines;
 - 4. in applications seeking final property orders only, deeming the entry of the case into the Magistrate's Defended List in accordance with paragraph 17.9.
 - 5. making such orders from time to time as are necessary to ensure that the case is ready to proceed to trial;
 - 6. listing a trial date before himself or herself with such priority as the Magistrate determines.

25 Requests for abridgement of time

- 25.1 A request in writing must be made to the Duty Registrar if a hearing is sought prior to the hearing date that would otherwise be given in accordance with the Rules or these Case Management Guidelines. Such request must set out:
- (a) the reasons for the necessity of an early hearing;
 - (b) the estimated hearing time;
 - (c) whether the application will be served prior to the hearing; and
 - (d) any other relevant matter.

PART F: READINESS HEARING AND TRIAL

26 The Readiness Hearing

- 26.1 The Judge, Magistrate or Registrar pursuant to Part E, or the Caseflow Manager, will appoint a time for a readiness hearing. Where practicable, parties will be given at least eight weeks' notice of the date of the readiness hearing.
- 26.2 Subject to any order or direction to the contrary, all cases placed in the Judges' Defended List will be allocated a readiness hearing by the Caseflow Manager in the order in which they were added to the list.
- 26.3 In the event that a party fails to comply with orders or directions requiring the filing of documents in preparation for a readiness hearing, the other party may request the listing of the matter for orders before the next available Duty Judge or Magistrate.
- 26.4 Where it appears to a Registrar that a party has not complied with orders relating to the preparation of a case for a readiness hearing, the Registrar may vacate the readiness hearing on his or her own motion, list the case in the next available Duty Judge list and provide written notification to the parties or their legal representatives of such.
- 26.5 In the event that a listing is allocated pursuant to either of the two preceding paragraphs the party in default and, if represented, their lawyer shall attend the hearing before the Duty Judge unless excused in writing by a Registrar or by the Duty Judge.
- 26.6 Subject to paragraph 26.7, an appointment for a readiness hearing may be varied on one occasion only to another date with the consent of all parties. Requests for variation of dates should be made as far in advance as possible so as to allow the time to be allocated to another matter.
- 26.7 The date for a readiness hearing may not be varied within 21 days of the appointed time without the written approval of a Registrar.

26.8 In the event that the parties seek the variation of a readiness hearing date on more than one occasion, the Caseflow Manager shall list the matter for a procedural conference before a Registrar to determine the further conduct of the matter. Save in exceptional circumstances, the Registrar shall direct that the matter be returned to the end of, or be removed from, the Judges' Defended List.

26.9 At the readiness hearing:

- (a) the case may be entered into the list of matters awaiting callover and further orders made to ensure that the case is ready to proceed to trial, including the filing of a Form NP12 callover certificate;
- (b) a callover date may be allocated and further orders made to ensure that the matter is ready to proceed to trial, including the filing of a callover certificate;
- (c) the parties, or if represented, their lawyers should be able to satisfy the Registrar as to the following:
 - 1. the issues of fact and law;
 - 2. whether any amendment to an application is anticipated or required, including the consolidation of applications;
 - 3. compliance with the Rules, and any previous directions or orders of the Court;
 - 4. completion of all necessary interlocutory matters, including disclosure and inspection;
 - 5. which of the other party's witnesses will not be required for cross-examination;
 - 6. the availability of counsel and of each witness;
 - 7. whether the matter requires a fixed date for trial;
 - 8. the time likely to be taken in examination of any witness who has refused to swear an affidavit and the time likely to be taken in cross-examination of each other witness with a view to making an accurate estimate of the likely length of the trial;
 - 9. whether interpreters are required;
 - 10. whether video / telephone link up facilities are required; and
 - 11. whether a bring up order is required.

26.10 If the readiness hearing is not able to proceed for any reason, the Registrar may:

- (a) make further procedural orders;
- (b) list the matter in the first available Duty Judge list for further directions or for consideration of dismissal of the application or orders in default;
- (c) request that an explanation be provided;
- (d) make an order as to costs;
- (e) return the case to the end of the Judges' Defended List.

- 26.11 Save in exceptional circumstances, in the event that both parties have failed to comply with orders or directions requiring the filing of documents in readiness for a readiness hearing, and the hearing proceeds, the Registrar conducting the hearing shall direct that the matter be returned to the end of, or be removed from, the Judges' Defended List.
- 26.12 The Registrar may list the case to a settlement conference before a Registrar or request the List Judge to consider listing the case to a settlement conference before a Judge, if satisfied as to the following:
- (a) the estimated hearing time of the matter exceeds 4 days; and
 - (b) the conference is likely to assist in reducing the issues for trial and / or the length of the trial.
- 26.13 Unless ordered otherwise, if the chronology is not agreed upon, the Registrar shall direct the respondent to file and serve a Schedule within 14 days identifying those matters in the chronology with which the respondent does not agree and specifying any additional matters that the respondent considers should be included in the chronology.
- 26.14 If appropriate, the Registrar shall direct the parties to file not later than two clear days before the commencement of the trial, a joint schedule of assets, liabilities and resources vouched to a common date, such schedule to identify the areas where the parties agree or disagree.
- 26.15 If a case is allocated to a callover or to the list of matters awaiting callover at the conclusion of the readiness hearing, the Registrar shall also note the following matters on the record:
- (a) the significant issues that remain in dispute;
 - (b) the estimated hearing time of the matter;
 - (c) whether a fixed trial date is requested and the reasons why;
 - (d) the availability of the witnesses;
 - (e) who will arrange for any interpreter required at trial;
 - (f) who will arrange for any video or telephone link up facilities required at trial; and
 - (g) who will arrange for any bring up order required for trial.

27 Listing for Trial

- 27.1 If practicable, a callover date will be allocated at the conclusion of the readiness hearing or otherwise the case will be entered into the list of matters awaiting callover if the Registrar determines that the matter is ready to proceed to trial. Generally a callover date will not be allocated unless:
- (a) both parties have filed all of the evidence upon which they intend to rely at trial; and
 - (b) a conference of experts has been convened in relation to any dispute on matters involving expert opinion.

- 27.2 The date allocated for the trial will ordinarily be about 4 to 6 weeks after the callover but earlier or later dates may be allocated at the discretion of the callover Judge in order to suit the convenience of parties, witnesses, lawyers or the Court.
- 27.3 Trial dates will be allocated on the basis of a rolling list and matters will therefore usually be given "not before" starting times. Every effort will be made to ensure that the trial commences on the allocated date; however, the nature of a rolling list is such that there may be a delay in the commencement of the trial.
- 27.4 Trials will be assigned to individual Judges; however, in order to ensure that a case commences as close as practicable to the date allocated, it may be re-assigned to another Judge.
- 27.5 Trial dates for cases in the Complex Track will be allocated by the List Judge after consultation with the managing Judge and where practicable will be given a fixed starting date.
- 27.6 These Case Management Guidelines do not apply to trial listings for country circuits. Trial dates in country circuits will be allocated in accordance with directions made from time to time by the List Judge.

28 Settlement Conferences

- 28.1 Judges and Registrars of the Family Court of Western Australia may be assigned to conduct "without prejudice" settlement conferences other than conciliation conferences.
- 28.2 In order to assist the Judge or Registrar, the parties and legal representatives to prepare for the settlement conference pursuant to this paragraph, all parties are required to file and exchange the following documents no later than seven days prior to the conference:-
- (a) An up-to-date chronology of significant events, which should not ordinarily exceed four pages;
 - (b) A list of documents the Judge or Registrar will ideally have read prior to the conference;
 - (c) A minute of the orders being sought;
 - (d) A summary of the issues in dispute, which should not ordinarily exceed two pages; and
 - (e) In matters involving property :-
 - 1. A joint schedule of assets, liabilities and resources vouched to a common date, such schedule to identify the areas where the parties agree or disagree; and
 - 2. A schedule setting out the percentage division sought by reference to contributions, any adjustments for s 79(4)(e) / s 205ZG(4)(e) factors and the proposed distribution of the

assets, liabilities and resources held by or on behalf of each party to effect the percentage division sought.

- 28.3 A Judge or Registrar who has conducted a settlement conference should not thereafter as a Judicial Officer hear and determine substantive matters, but may do so with the consent of all parties.

29 Reserved Judgments

- 29.1 Judgments will normally be delivered no later than three months from the date on which they are reserved. If a party wishes to enquire about the delivery of a judgment, the request should be made by letter to the Chief Judge in relation to the decision of a Judge or the Principal Registrar, or the Principal Registrar in relation to the decision of a Magistrate or a Registrar.

CHAPTER 2: DOCUMENTS AND ADMINISTRATIVE PROCEDURES

30 Files

- 30.1 Flat files are in use in the Registry. Any cover sheet required should be on the front of the document. Documents filed should be securely stapled in the top left-hand corner, without additional binding.

31 File numbers

- 31.1 All proceedings between the same parties will retain the original file number. When filing a further application in the proceedings, the application and supporting documents should bear the file number previously allocated.
- 31.2 Proceedings in relation to costs between solicitors and clients will be placed on a separate court file and allocated a new file number.

32 File Identification Codes

- 32.1 Practitioners whose firm is seeking to file documents must obtain a client identification code from the Executive Manager.
- 32.2 Any document filed must contain all information required by the prescribed form, together with the client identification code where applicable.
- 32.3 Firms changing name or address must advise the Executive Manager accordingly as soon as practicable in order that a new client identification code may be provided. Documents will not be accepted for filing unless they are endorsed with the current code.

33 Lodgement of Documents for Filing

- 33.1 Documents may be lodged for filing either by post, by personal attendance at the Registry of the Family Court between 9.00 am and 4.00 pm or by facsimile pursuant to the Rules.
- 33.2 If a document does not appear to be in order for filing in accordance with the Rules, Regulations or these Case Management Guidelines, requisitions may be issued drawing attention to the apparent discrepancy. On compliance with the requisitions, the document will be accepted for filing.
- 33.3 A document may be accepted for filing notwithstanding that it does not comply with the Rules, Regulations or these Case Management Guidelines, provided that the party seeking to file the document specifies in writing the nature of the non-compliance and the reason why it is considered appropriate that the document be filed. Documents so filed will be endorsed as having been filed at the request of the party.
- 33.4 The acceptance of documents for filing does not in any way constitute the granting of the leave or approval of the Court for late filing or other non-compliance with the relevant statute, Rules or Regulations, Court orders or directions of a Registrar.
- 33.5 Solicitors may "bulk file" documents for later collection of service copies. Where practicable (unless requested to the contrary), applications filed by solicitors in bulk, or simultaneously, will be listed for the same date.
- 33.6 Notwithstanding the Rules, electronic lodgement or filing of documents is available in accordance with any Information Note issued by the Chief Judge from time to time.

34 Parenting Order Applications During Christmas School Holidays

- 34.1 The Rules provide that applications regarding time to be spent with children during Christmas school holiday periods are to be filed before 4.00pm on the second Friday in the November prior to the relevant school holiday.
- 34.2 Parties should be aware that applications filed prior to this date are not necessarily guaranteed to be listed or determined prior to the commencement of the relevant school holiday period. Such applications should be filed as early as practicable to ensure an appropriate listing date.

35 Affidavits

- 35.1 Handwritten affidavits will generally only be accepted for filing in circumstances of urgency, usually involving some immediate threat of harm to a child.

35.2 Where there are five or more annexures or exhibits to an affidavit, each must be clearly identified by tabbing or by numbering pages and making reference to the page number in the body of the affidavit.

35.3 If the signature of the person before whom an affidavit is sworn/ affirmed is not legible, it must be identified by means of a rubber stamp, or by the printing of the name of the witness below the signature.

36 Prior Orders of Other Courts

36.1 Certified copies of orders of Courts other than the Family Court of Western Australia or Magistrates Court, 150 Terrace Road, Perth, must be registered when applying for further orders relating to those orders.

37 Electronic Recordings of Proceedings

37.1 The electronic recordings of all proceedings will be retained for five years from the date on which the recording is made, but may not be available beyond that time, unless a Judge, Magistrate or Registrar has directed the retention of the recording.

37.2 A person requesting a transcript should therefore ensure that the request is made within the five year period.

37.3 A person may apply for permission to inspect the electronic recording within the precincts of the court.

38 Transcripts

38.1 Copies of transcripts ordered by a Judge or Magistrate will not be distributed free of charge to parties or their lawyers unless the Judge or Magistrate so directs.

38.2 Subject to the following paragraph, a party may order a transcript through the Registry provided the transcript is paid for. Upon the transcript being supplied, one copy will be retained for the Court file. The Court will provide a copy to each party to the proceedings.

38.3 Transcripts of proceedings are not provided free of charge for inclusion in appeal books. Requests for transcripts for use in appeals to the Full Court must be made to the Court Recording Contractor directly.

CHAPTER 3: LISTING PROCEDURES

39 List Judge

39.1 The Chief Judge, or a Judge nominated by the Chief Judge, will carry out the duties allocated to the List Judge.

39.2 The List Judge will be responsible for:

- (a) the dissemination of guidelines to be observed by Registrars and the Caseflow Manager in the allocation and vacation of trial dates including matters being heard in country circuits;
- (b) the supervision of the listing of trial dates by Registrars and the Caseflow Manager;
- (c) the allocation of trial dates for matters in the Complex Track;
- (d) monitoring and re-assigning matters after a trial date has been allocated with a view to making the best possible use of Judicial resources and minimising inconvenience to the parties; and
- (e) such other matters as determined by the Chief Judge from time to time.

40 Duty Judge

40.1 The Chief Judge will from time to time nominate a Judge to act as Duty Judge.

40.2 The Duty Judge will hear duty matters, applications under the Hague Convention on the Civil Aspects of International Child Abduction and such other matters as listed by a Judge, Magistrate or Registrar.

40.3 The Duty Judge will also be available to hear such urgent matters as cannot be heard by a Magistrate. Such listings are to be authorised by the Duty Registrar in consultation with the Duty Judge.

40.4 Appeals or applications for leave to appeal that may be heard by a single Judge of the Family Court of Western Australia will be listed before the Duty Judge within 14 days from the date of filing. Generally, appeals will be listed for directions only and service copies of notices of appeal will be noted accordingly.

41 Duty Registrars

41.1 A Registrar will be shown in the daily court list as "Duty Registrar". Subject to commitments that may arise, it is intended that this Duty Registrar is the Registrar who is generally available to:

- (a) attend to more difficult enquiries from lawyers and parties as to practice and procedure;
- (b) attend to requests for urgent hearing;
- (c) consider applications for waiver of filing and hearing fees as may be referred; and
- (d) deal with any other matter that arises and pursuant to the Rules or Regulations requires determination by a Registrar and can conveniently be dealt with in Chambers.

42 Magistrate Duty Weeks

- 42.1 In Perth only, a Magistrate will be listed as Duty Magistrate each week and will conduct general lists and CRP lists as required during that week.
- 42.2 Subject to a case being allocated to be heard by a Judge in accordance with these Guidelines, that Magistrate shall be responsible for the management and final determination of all cases listed before the Magistrate that week and all cases listed that week before a Registrar pursuant to paragraph 12.1(a) of these Guidelines.

43 Listing of Enforcement Applications

- 43.1 The Principal Registrar may from time to time create separate lists for the hearing of:
- (a) Applications for enforcement of child support; and
 - (b) Applications alleging contravention of an order not affecting children or for enforcement of such an order.

44 Listing of Applications for Review of Decisions of Registrars

- 44.1 Applications for review of decisions made by Registrars will be listed before the Duty Judge, or dealt with in Chambers by a Judge, within 14 days from the date of filing.

CHAPTER 4: PROCEDURES ON MAKING CERTAIN APPLICATIONS

45 Applications for Costs

- 45.1 Parties should generally expect in cases where interim proceedings are heard before Magistrates that applications for costs will be heard by the Magistrate and will not be reserved to the trial Judge.

46 Applications for Orders to Compel Compliance

- 46.1 Applications arising out of the failure of a party to comply with a Rule, direction or order requiring the filing of a document or the taking of a procedural step will, where practicable, be listed for hearing within 14 days in the General List.
- 46.2 An affidavit need not be filed in support of such an application, provided the application specifies the Rule, direction or order that has not been complied with.

46.3 Notwithstanding paragraph 46.2, the Court hearing the application may require evidence to be adduced by affidavit or otherwise before determining the application.

47 Applications Pursuant to Liberty to Apply

47.1 Subject to paragraph 5, a party seeking to re-list an application pursuant to liberty previously given shall

- (a) seek such re-listing by letter setting out the reasons for the re-listing and the parts of the application sought to be re-listed;
- (b) in the event that the relief sought is not specified, then file an amended application or Minute of Orders Sought; and,
- (c) if appropriate, file an affidavit setting out the further evidence upon which the party intends to rely.

48 Applications under section 106A of the Family Law Act 1975 or section 221 of the Family Court Act 1997

48.1 Parties seeking an order pursuant to section 106A of the *Family Law Act* 1975 or section 221 of the *Family Court Act* 1997 for the appointment of the Principal Registrar to execute documents should also seek an order permitting any other Registrar of the Court to perform that function on his or her behalf.

48.2 A consent order should not provide for the appointment of either the Principal Registrar or a Registrar to sign documents on behalf of a party, unless there is consent of the Principal Registrar to such appointment. Requests for such consent should be made only in exceptional circumstances.

CHAPTER 5: APPLICATIONS FOR DIVORCE

49 Arrangements for Children

49.1 Where the arrangements or proposed arrangements for children have changed materially since the filing of the application for divorce, an affidavit setting out the varied arrangements and proposed arrangements is to be filed by not later than four clear days before the date of hearing. Service of the affidavit should usually be effected on the other party.

49.2 Where there has been no change in either the arrangements or proposed arrangements for the children, the applicant or his or her lawyer should be in a position to state to the Court that there has been no such change.

50 Resumption of Cohabitation

50.1 An applicant (or his or her lawyer) should be in a position to advise the Court on the date of hearing of the application for divorce whether or not

there has been any resumption of cohabitation at any time between the date of filing of the application and date of hearing.

51 Parties Living under the Same Roof

51.1 In cases where it is claimed that parties have lived separately and apart under the same roof during any part of the period of twelve months immediately preceding the date of filing of the application for divorce the Court will ordinarily require corroboration of the claim by the filing of an affidavit by an independent witness, in addition to an affidavit by the applicant/s. The witness should attend the hearing in case further evidence is deemed necessary.

51.2 Such applications must be listed for hearing in open Court and the applicant(s) should attend the hearing, notwithstanding that the parties may otherwise be entitled to have the matter determined in their absence.

52 Proof of Citizenship

52.1 Where an applicant wishes to rely on the Australian citizenship of one party to the marriage as the basis for jurisdiction:

- (a) if seeking to establish that a party to a marriage is an Australian citizen by birth, the birth certificate of that party should be filed with the application unless the marriage certificate that has been filed contains details of the place of birth; or
- (b) if seeking to establish citizenship by naturalisation of a party to a marriage, documentary evidence such as a naturalisation certificate should be filed with the application.

53 Corroboration of Service

53.1 Further evidence by way of corroboration of service of an application for divorce will usually be required if there is not already corroboration by:

- (a) the respondent appearing at the hearing;
- (b) a Form 8 Notice of Address for Service having been filed by or on behalf of the respondent;
- (c) the respondent being represented at the hearing by a lawyer who has filed a Form 8 Notice of Address for Service on behalf of the respondent (or who gives a suitable undertaking to file a Form 8); or
- (d) an affidavit having been filed by or on behalf of the respondent setting out to the satisfaction of the Court that the respondent has been served.

53.2 The requirement of corroboration may be satisfied by an affidavit of the applicant or other person who is able to verify the signature on the Form 6 Acknowledgement of Service as being the signature of the respondent.

53.3 If the respondent has declined to sign a Form 6 Acknowledgement of Service or if evidence of proof of signature is not available, corroboration will usually be required by other means (eg. evidence from the process server that the person served was the person in a photograph and evidence from the applicant that the photograph is of the respondent).

54 Applications where Response Filed

54.1 In the event that a response to an application for divorce opposes the application on the basis that the grounds for divorce have not been established, the Court shall adjourn the application to a Magistrate in the General List.

CHAPTER 6: PROCEDURES FOR THE ASSISTANCE OF THE COURT

55 Correspondence with the Court

55.1 All correspondence sent to the Court concerning proceedings should be addressed to the Principal Registrar but may be marked for the attention of a particular member of the Court staff. Correspondence concerning proceedings must not be addressed to, nor marked for, the attention of a Judge or Magistrate.

55.2 Copies of all correspondence (including electronic correspondence) sent to the Court concerning proceedings (other than requests for ex parte listings) must be contemporaneously sent to the other party or that party's lawyer and the original correspondence must show that this has been done. The request for an ex parte listing is to be served upon the respondent at the same time as service of the filed documents if an order for service is made.

55.3 Failure to comply with the requirements of the preceding paragraph will generally result in the correspondence being returned to sender with advice that the correspondence will be answered upon compliance with those requirements.

56 Advice of Appearance

56.1 Lawyers and parties must advise the floor officer of their attendance prior to the commencement of a hearing or the Court Officer once the Court is sitting.

56.2 Lawyers must announce their name and the firm by which they are instructed at the commencement of the hearing even if their identity is known to the presiding Judicial Officer.

57 Advance Notification of Settlements

- 57.1 In cases where a hearing is imminent and where the matter has been settled or is considered likely to settle, the parties have agreed to apply for an adjournment, or where only some of the matters apparently in issue are to be argued, the parties shall advise the Court forthwith.
- 57.2 Where the identity of the Judicial Officer who is to have the conduct of the hearing is known, the advice shall be provided direct by telephone to his or her Associate. If the identity of the Judicial Officer is not known the advice shall be given by telephoning the Caseflow Section [(08) 9224 8398].

58 Interim Property Hearings in Complex Track

- 58.1 Unless excused by the Judge, the parties shall, not later than two days prior to the hearing date of an interim property application in the Complex Track, file and serve:
- (a) a chronology which includes the dates of events during the course of the proceedings that are considered to be significant to the matter to be determined;
 - (b) an outline of submissions, not longer than six pages; and
 - (c) a list of authorities.
- 58.2 The time taken in oral submissions by counsel for each party on the hearing of such an application shall not exceed 30 minutes without leave of the Court.

59 Papers for the Judicial Officer

- 59.1 Unless excused by a Registrar or the presiding Judicial Officer, no later than fourteen clear days before trial, all parties must file and exchange the documents set out in paragraphs 59.2 to 59.4 ("Papers for the Judicial Officer").
- 59.2 In matters involving children:
- (a) A statement of the issues for determination;
 - (b) A statement in point form of the factors to be taken into account pursuant to Section 60CC of the *Family Law Act 1975* or Section 66C of the *Family Court Act 1997*. The statement should not ordinarily exceed four pages.
- 59.3 In matters involving property:
- (a) A table setting out the assets, liabilities and resources held by each of the parties as at the date of hearing, together with the values attributed by both parties. (In the event that there is a

material change in the value of any asset since the date of separation, the table shall also identify the values of the asset attributed by the parties as at the date of separation);

- (b) A statement in point form identifying the respective contributions alleged under section 79(4)(a), (b) and (c) of the *Family Law Act* 1975 or section 205ZG(4)(a), (b) and (c) of the *Family Court Act* 1997. (The statement should identify the contributions made by each party and, in addition, express such contribution as a percentage of the net value of the assets from the commencement of cohabitation to the date of final separation and to the date of hearing.);
- (c) A statement in point form of the factors under section 79(4)(e) of the *Family Law Act* 1975 or section 205ZG(4)(e) of the *Family Court Act* 1997 to be taken into account. (The statement should identify the factors as they relate to each party);
- (d) A statement of the adjustment, if any, expressed on a percentage basis, of the net value of the assets of the parties to be made to the contribution-based entitlement alleged, having regard to the factors in section 79(4)(d), (e), (f) and (g) of the *Family Law Act* 1975 or section 205ZG(4)(d), (e), (f) and (g) of the *Family Court Act* 1997; and
- (e) A statement in point form, preferably signed jointly by the parties (or if applicable their legal representatives), setting out a summary of the issues for determination and those issues which are agreed, relating to (but not limited to) the following:
 - 1. contributions;
 - 2. valuation of assets;
 - 3. existence and/or extent of liabilities;
 - 4. characterisation of assets, eg: property or financial resources;
 - 5. disposition of assets; and/or
 - 6. disclosure.

59.4 In all matters:

- (a) A list of all affidavits upon which they seek to rely at the hearing which, subject to any order of the judicial officer, will constitute the evidence being led by the parties;
- (b) A list of authorities; and
- (c) A chronology of significant events relating to the matters in issue, unless a chronology has been filed pursuant to paragraph 17.9 (The chronology should not ordinarily exceed four pages and in the event that the chronology is agreed, a joint chronology may be filed.)

- 59.5 In the event that the Papers for the Judicial Officer are not filed within two days of the due date, the case may be listed before the judicial officer, for further directions and for the making of an order for costs.
- 59.6 In the event that the Chief Judge prescribes a format for Papers for the Judicial Officer, they are to be provided in that (or a substantially similar) format.
- 59.7 Cover sheets need not be affixed to Papers for the Judicial Officer, provided they clearly show the relevant names and file number of the proceedings, and the date of hearing. All documents should be signed by the parties or, if applicable, their legal representatives.

60 Lists of Authorities

- 60.1 Subject to paragraph 59, lists of authorities which counsel intend to cite to the Court during the presentation of any argument should be filed and served not later than two days prior to the hearing.
- 60.2 A copy of any unreported decision in the list of authorities should be provided to the Court and the other party at the time the list is filed.
- 60.3 Lists of authorities should:
- (a) identify the issue in relation to which each authority is to be cited; and
 - (b) indicate those cases from which counsel intends to read to the Court (as distinct from those to which counsel proposes merely to refer) and the numbers of the pages of passages to be cited.

CHAPTER 7: MINUTES AND ORDERS

61 Usual Form of Orders and Undertakings

- 61.1 Where an order is made or an undertaking is given “in usual form”, the full terms of the order or undertaking will be as set out in the Schedule.
- 61.2 Where parties file a handwritten minute of consent orders containing reference to an order or undertaking “in usual form”, the full terms of the order or undertaking are to be incorporated in any typed copy of the minute provided pursuant to paragraph 64.

62 Extraction of Orders

- 62.1 Orders will be extracted by Registry staff and parties are therefore not required to provide front sheets for orders.
- 62.2 Orders marked for “urgent extraction” where practicable will be available on the same day and orders marked for “prompt extraction” where

practicable will be available within two working days of the date on which the order was made.

63 Minutes of Consent Orders

- 63.1 Minutes of consent orders should be legible and, where practicable, typewritten. If the minute is typewritten, two copies must be provided along with a further copy for any additional parties to the proceedings.
- 63.2 The front sheet of the minute should show the next date of hearing. The preamble to the minute should identify the application(s) and response(s) pursuant to which the orders are to be made.
- 63.3 Where appropriate, the minute should dismiss outstanding applications, vacate any future listings that are no longer required and remove the matter from the Defended List.
- 63.4 If an undertaking is being given, a written undertaking must be filed with the minute.
- 63.5 If a hearing date is imminent, the minute of consent orders should be accompanied by a letter requesting that the matter be referred to a Judge or Registrar as a matter of urgency.
- 63.6 In the event that the party filing the minute does not wish the matter to be dealt with in Chambers, the minute should be accompanied by a letter requesting that the minute be dealt with on the next date of hearing. In all other instances the minute will be referred to a Registrar for orders to be made in Chambers unless the party filing the minute requests that it be referred to a Judge or Magistrate for orders to be made in Chambers.
- 63.7 Leave should generally not be sought to tender a minute in Court unless it would not have been practicable for the minute to have been filed earlier.
- 63.8 The party lodging the typed copy of the minute should provide a copy to each other party at the same time as the minute is provided to the Court.

64 Extraction of Consent Orders

- 64.1 Parties filing handwritten minutes of consent orders should provide to the Court within seven days of the orders being made, a clean typed copy of the minute, together with a copy for each party to the proceedings.
- 64.2 In the event such a request is made, the typed copy need not be signed by all parties provided that its content corresponds with the signed copy and is certified by a party or their solicitor as follows:-

“I,, certify this to be a true and correct copy of the handwritten minute filed on”.

65 Consent Parenting Orders and Allegations of Abuse

- 65.1 The Rules require certain draft consent orders to have an annexure:
- (a) identifying various documents that allege abuse of a child the subject of proceedings; and
 - (b) containing an explanation as to how the order attempts to deal with the allegations.
- 65.2 The Court will not require strict compliance with this Rule. It will be deemed sufficient compliance if the draft consent order contains a Form NP5 “Consent Order Annexure” setting out the allegations of abuse that have arisen in the proceedings (without reference to specific documents in which the allegations are contained); and either:
- (a) an explanation as to how the order attempts to deal with the allegations; or
 - (b) an explanation if the orders do not specifically deal with the allegations.

CHAPTER 8: SUBPOENAS

66 Request to issue subpoena

- 66.1 A party seeking the issue of a subpoena should, at the time of the request, advise the Court by letter as to whether the subpoena is in relation to property issues, child-related issues or other issues.
- 66.2 In the event that a party seeks to issue a subpoena in relation to child-related issues, then the letter should indicate whether leave to issue the subpoena has already been granted and if not, the reasons why leave should be granted.

67 Notice to witnesses

- 67.1 A witness should be given as much notice as possible that his or her appearance will be required before the Court. A party should not therefore request the issue of a subpoena to a witness unless the time between issue of subpoena and hearing date (allowing time for service) would permit reasonable notice.
- 67.2 Whilst there should be very few occasions when as little as only one or two weeks’ notice can be given to witnesses, any subpoena which will not allow at least seven days’ notice after service (in the case of a subpoena to give evidence) and at least 14 days’ notice after service (in the case of a subpoena requiring production of documents) will be treated prima facie as unreasonable. In these circumstances, a request for the issue of a subpoena is to be supported by a letter setting out such information as will

permit a Registrar or Judicial Officer to exercise discretion whether to issue the subpoena notwithstanding the short notice.

68 Subpoenas to Department for Child Protection for Interim Hearings

68.1 Unless a Court or Registrar otherwise orders, subpoenas to produce documents shall not be issued to the Department for Child Protection for the production of documents for an interim hearing when a Form 4 Notice of Risk of Abuse or Family Violence has been filed and the Department has provided, or will provide, a written reply to that Notice.

69 Subpoenas for the Production of Documents at Trial

69.1 In the event that a party intends to issue subpoenas for the production of documents at trial, permission should be sought at the conciliation conference for such subpoenas to issue and the documents should be inspected prior to the readiness hearing.

69.2 Subpoenas for the production of documents may only be filed after the readiness hearing with leave of the Judicial Officer allocated to the trial or in his/her absence by a Registrar. Requests for the issue of subpoenas for the production of documents filed after the readiness hearing must indicate why the subpoena was not issued prior to the readiness hearing.

69.3 If leave is granted the subpoenas shall generally be made returnable before the Judicial Officer. If it is not practicable for such subpoenas to be made returnable before the Judicial Officer they are to be made returnable before a Registrar in a subpoena list.

69.4 Save in exceptional circumstances, the commencement of the trial will not be delayed to permit inspection of documents that could have been inspected earlier.

70 Inspection and Copying of Documents

70.1 Subject to paragraph 70.4, documents produced pursuant to subpoena will remain in the possession of the Subpoena Officer on the day of the hearing unless a Judge, Magistrate or Registrar directs that the documents be produced in Court.

70.2 Documents produced pursuant to subpoena may only be inspected in the designated rooms in the Registry or in such manner as may be directed by a Judge, Magistrate or Registrar who gave leave for the documents to be inspected, or otherwise in accordance with the Rules.

70.3 A party wishing to inspect documents on the return date may do so after first obtaining leave of the presiding Judge, Magistrate or Registrar and upon production to the Subpoena Officer of the prescribed Subpoena Sheet appropriately endorsed by a Judge, Magistrate or Registrar or their Associate or Secretary, provided that a viewing appointment is available.

- 70.4 Inspection of documents produced pursuant to subpoena will be arranged by appointment with the Subpoena Officer. Priority will be given to those cases stood down for hearing that day. A party wishing to tender a document in evidence on the day of inspection must request the Subpoena Officer to arrange for the material to be taken into Court.
- 70.5 Unless express permission is given by the Judge, Magistrate or Registrar who authorised inspection, parties and their representatives may not copy documents produced pursuant to subpoena by:
- (a) the Department for Child Protection or any other Department or agency with responsibility for investigation of matters relating to the welfare of children;
 - (b) WA Police or any other agency with responsibility for investigation of crime and the maintenance of criminal records;
 - (c) hospitals or medical practitioners.
- 70.6 A party intending to seek leave to copy documents produced pursuant to subpoena by any of the agencies or persons mentioned in the preceding paragraph shall give written notice to that effect to the agency or person.

71 Management of Documents

- 71.1 The party who issues a subpoena for the production of documents shall on the return date seek an order or direction from the presiding Judge, Magistrate or Registrar concerning the retention of the documents. Unless an order or direction to the contrary is made, the Subpoena Officer shall cause the documents to be returned to their source at the expiration of one month from the date of the hearing.
- 71.2 Parties should generally not seek the retention of documents produced by the agencies or persons mentioned in paragraph 70.5 for a period longer than 30 days unless the documents to be produced are photocopies.
- 71.3 Documents produced pursuant to subpoena may be returned to the source by the Subpoena Officer at any time, even though required for a later hearing, on the undertaking of the agency or person who produced the documents to deliver them to the Court when requested (provided that the approval of the Duty Registrar is first obtained if an order or direction has previously been made for the documents to be retained).
- 71.4 A party who causes a subpoena to be served for the production of documents should not represent to the person served that the documents may be provided to the party in lieu of production to the Court. If documents are produced direct to the party they should be promptly delivered to the Subpoena Officer.

71A Management of Documents in Regional Circuits

71A.1 A party seeking the issue of a subpoena for the production of documents relating to proceedings in a regional circuit should, at the time of the request, advise the Court by letter of the relevant regional circuit and the date and time of the next hearing in that regional circuit.

71A.2 All subpoenas issued for the production of documents for regional circuits will be listed in Perth.

71A.3 Documents produced pursuant to a subpoena in proceedings in a regional circuit will be taken to the regional circuit specified in the letter referred to in paragraph 71A.1 and will otherwise be held in Perth.

71A.4 Parties may request the court in writing not less than 7 days prior to the commencement of a subsequent regional circuit that the subpoenaed documents be made available for inspection again during that subsequent regional circuit.

71A.5 All subpoenaed documents will be returned to the Perth Registry at the conclusion of the regional circuit unless the court makes an order that they be retained in the regional circuit courthouse until the following regional circuit or as otherwise specified.

72 Subpoena to Department for Child Protection

72.1 A party serving a subpoena seeking the production of a Department for Child Protection file or any part thereof shall provide to the Chief Executive Officer of the Department the following information with the service copy of the subpoena:

- (a) the full names of the parties to the proceedings and the full name of any children the subject of the proceedings, including any former names or aliases;
- (b) if the parties and child(ren) are legally represented, the names and contact details of the lawyers;
- (c) information as to whether the parties were or are married;
- (d) the current address of each of the parties and the child(ren);
- (e) the name of the person(s) with whom the child(ren) is (are) living at the time the subpoena is issued;
- (f) information about the knowledge each party has regarding the current address of the other party and the child(ren);
- (g) information regarding the existence of any restraining orders or family violence orders in respect of any of the parties or the child(ren) which are relevant to the proceedings; and
- (h) a list of persons who have sworn affidavits in respect of the proceedings.

Requests by Self-Represented Litigants for the Issue of Subpoenas

- 72.2 Requests by self-represented litigants for the issue of subpoenas must be made in writing directed to the Duty Registrar and contain the following information:
- (a) the relevance of the evidence sought to be obtained by subpoena including a brief description of the nature of the case and the issues in dispute in the case;
 - (b) the attempts, if any, made to obtain this evidence from the other party or by other means;
 - (c) whether the person or entity sought to be subpoenaed has consented to the issue of the subpoena; and
 - (d) any other matter which may assist in determining whether to grant leave for the issue of the subpoena.

CHAPTER 9: ATTENDANCES UPON AND REPORTS BY FAMILY CONSULTANTS

73 Attendances upon Family Consultants by Telephone Link

- 73.1 Where attendance by telephone on Family Consultants has been ordered the parties or their solicitors must promptly advise the Family Court Counselling and Consultancy Service of the telephone numbers of the parties.
- 73.2 Save in exceptional circumstances, attendances by telephone link will not take place by mobile telephone.

74 Cross examination of Family Consultants

- 74.1 A party who wishes to cross-examine a Family Consultant must give notice in writing to the Director of the Family Court Counselling and Consultancy Service as soon as practicable but in any event not less than fourteen days prior to the hearing.
- 74.2 In the event that a party who gave notice no longer requires the attendance of the Family Consultant for cross-examination, they are to give notice to the Director of the Family Court Counselling and Consultancy Service as soon as practicable.

CHAPTER 10: COSTS AND FEES

75 Notification as to Costs

75.1 Copies of costs notifications provided pursuant to the Rules should not be sent to the Court unless in accordance with a specific order or direction.

76 Setting Down Fees and Hearing Fees

76.1 A Judge, Magistrate or Registrar listing a matter for trial shall direct:

- (a) who is to pay the setting down fee and the hearing fee or make an application for exemption or waiver; and
- (b) the time within which the application for exemption or waiver or payment of the fee is to be made.

76.2 If a fee is not paid within the time directed or an application for exemption or waiver of the fee has not been approved, the Caseflow Manager shall refer the file to a Judge or Magistrate for the making of such directions as may be appropriate pursuant to the Regulations, including the vacation of the hearing date.

77 Application for Reduction of Filing, Setting Down or Hearing Fees

77.1 Applications for the reduction of filing, setting down or hearing fees shall be made in the form prescribed from time to time by the Principal Registrar.

78 Refund of Fees

78.1 Requests for the refund of filing, setting down and hearing fees pursuant to the Regulations must be made on the form prescribed from time to time by the Principal Registrar. The form should be submitted to the Principal Registrar with the original receipt of payment and, if appropriate, an Application for reduction of court fees form.

CHAPTER 11: FORMS

79 Approved Forms

79.1 The forms set out in "Schedule B - List of Prescribed Forms" are the forms approved for use in Western Australia by the Chief Judge and may be designated by the corresponding form number.

79.2 The forms set out in "Schedule B – List of Non Prescribed Forms" are the non prescribed forms approved for use in Western Australia by the Principal Registrar and may be designated by the corresponding form number.

SCHEDULE A

USUAL FORM OF ORDERS AND UNDERTAKINGS

1. Independent Children’s Lawyer

The child / children be independently represented at the further hearing of these proceedings and the Director of Legal Aid Western Australia (“LAWA”) be requested to arrange such representation.

Within 14 days from the date of this order, the parties or their lawyers, provide copies of all documents filed in these proceedings to the Solicitor in Charge, Assignments Section, LAWA, except the documents the Client Administration Officer is to provide pursuant to these orders.

Within 14 days from the date of this order, each party file a Financial Statement and provide a copy to LAWA.

The Client Administration Officer cause a copy of this order to be forwarded to LAWA together with copies of the following documents:

.....
.....

The question of contribution by the parties to the costs of the Independent Children’s Lawyer be reserved.

2. Non-molestation order

The be restrained and an injunction is hereby granted restraining from molesting, harassing or abusing the and from interfering with manner of living or attempting so to do.

3. Injunction for the personal protection of a party

The.....be restrained and an injunction is granted restrainingfrom causing or threatening to cause bodily harm to the

NOTICE TO: All Police Officers of the Australian Federal Police
All Police Officers of the State and Territory Police Forces of Australia
All Police Officers of the Western Australia Police

This injunction is for the personal protection of a party. To give effect to the injunction you are authorised to use the powers of arrest pursuant to section 114AA (1) of the *Family Law Act 1975* and/or section 236 of the *Family Court Act 1997* (WA).

4. Dispensation of consent for issue of a passport

The have liberty to remove the child (ren) from the Commonwealth of Australia for the period the day of..... 20 .. until the day of 20 .. and to that end, the necessity for the consent of the to the issue of a passport to the said child (ren) be dispensed with. Subject to any other requirements of the Department of Foreign Affairs and Trade, passports be issued to the said child (ren) to enable them to leave Australia.

5. Parentage testing

The Applicant, NAME OF APPLICANT, the Respondent, NAME OF RESPONDENT, and the children, NAME(S) and birthdate(s), undergo parentage testing procedures in accordance with the procedures set out in the *Family Law Act 1975 / Family Court Act 1997* and the Family Law Regulations 1984 / Family Court Regulations 1998.

6. Conciliation conferences involving financial issues

The parties attend a conciliation conference, with their counsel or solicitors if they are legally represented, on the day of 20 at in the presence of a Registrar of the Family Court of Western Australia.

Not later than 14 days before the conference each party shall complete and deliver to the Registry and to each other party a Form NP6 Conciliation Conference Particulars.

7. Party excused from attending conference

The be excused from personally attending the said conference provided that appears in lieu by counsel fully instructed to make a bona fide endeavour to resolve the matters in issue.

8. Conference of experts

If there is a dispute involving expert evidence, the experts shall confer by no later than 14 days before the Conference. Each party must provide to any expert they have instructed a copy of the document entitled "Experts' Conferences – Guidelines for expert witnesses and those instructing them in the Family Court of Western Australia".

The experts shall prepare and provide to the parties a joint statement setting out the issues that are agreed and not agreed, identifying the reasons for disagreement on any issue and identifying what action (if any) may be taken to resolve any outstanding issues. The report may be tendered to the Court as evidence of matters agreed upon and to identify the issues on which evidence will be called.

9. Undertaking as to damages

And on the undertaking of the given this day through that will pay to any person such compensation as the Court may in its discretion consider in the circumstances to be just, such compensation to be assessed by the Court or in accordance with such directions as the Court may make and to be paid in a manner directed by the Court.

10. Form of notice for publication in newspaper (substituted service)

Personal service upon the Respondent of the Application for Divorce filed by the Applicant be and is hereby dispensed with on the condition that within 14 days from the date hereof a notice of the application, in a form approved by the Principal Registrar of the Family Court of Western Australia (see attached), be published in one edition of "Name of Newspaper" newspaper. The Respondent has 28 days from the date of publication of the notice in which to file a response.

Instructions:

Arrange for the notice to be published in the public notice section of one issue of the newspaper specified by the Court (see Form of Notice below).

If the order requires publication in "The West Australian" newspaper, you may wish to arrange for publication on a weekday edition as this will be cheaper than publication in a Saturday edition.

If the order requires publication in “The Australian” newspaper, you should ask for the item to be included in the Legal Notices section as this is cheaper than publication in the Public Notices section.

When the notice is published, obtain the entire page of the newspaper in which the notice appears. File an affidavit at the Court confirming the notice was published, attaching as an attachment the relevant page of the newspaper.

Form of Notice

TO: Name of Party

TAKE NOTICE: Your husband/wife has applied to the Family Court of Western Australia for divorce.

Unless you file an answer within 28 days the application may proceed.

A copy of the application is available from the Principal Registrar, 150 Terrace Road, Perth, Western Australia.

11. Parenting Finalisation Order

- (a) All interlocutory proceedings be otherwise dismissed.
- (b) All subpoenaed documents be returned to source.
- (c) Unless a party or the Independent Children’s Lawyer requests in writing on or beforethat the preceding orders not be made “final orders” and requests that the proceedings be relisted before the presiding Judicial Officer, then the Client Administration Officer shall refer the matter to that Judicial Officer for final orders to be made without further notice to the parties in the terms of the preceding interim orders and that the proceedings shall otherwise be dismissed.

12. Family Dispute Resolution Orders

- (a) Pursuant to section 13C of the *Family Law Act 1975* / section 65K of the *Family Court Act 1997* the parties attend family dispute resolution.
- (b) The proceedings otherwise be adjourned generally and with liberty to both parties to apply in writing to relist the matter upon the filing a certificate from a Family Dispute Resolution Practitioner.

SCHEDULE B

LIST OF PRESCRIBED FORMS:

Form 1	Initiating Application
Form 1A	Response to Initiating Application
Form 1B	Reply to Initiating Application
Form 2	Application in a Case
Form 2A	Response to an Application in a Case
Form 3	Application for Divorce
Form 3A	Response to an Application for Divorce
Form 4	Notice of Child Abuse or Family Violence
Form 5	Notice of Intervention by Person Entitled to Intervene
Form 6	Acknowledgment of Service
Form 7	Affidavit of Service
Form 8	Notice of Address for Service
Form 9	Notice of Ceasing to Act
Form 10	Notice of Discontinuance
Form 11	Application for Consent Orders
Form 12	Notice of Non-Party Production of Documents
Form 13	Financial Statement
Form 14	Subpoena
Form 15	Notice Disputing Itemised Costs Account
Form 16	Enforcement Warrant – Seizure and Sale of Property
Form 17	Third Party Debt Notice
Form 18	Application – Contravention
Form 19	Application – Contempt
Form 20	Notice of Appeal

LIST OF NON PRESCRIBED FORMS

Form NP1	Exemption Form
Form NP2	Acknowledgement Form -“Information from a Family Counsellor or Family Dispute Resolution Practitioner”
Form NP3	Case Information Affidavit
Form NP4	“Consent to Conduct Proceedings as Child-related Proceedings” Form
Form NP5	“Consent Order Annexure” Form
Form NP6	Conciliation Conference Particulars
Form NP7	Application – Reduction of payment of court fees - general
Form NP8	Application for Reduction of court fees on the basis of financial hardship
Form NP9	Payment of court fees – Request for deferral
Form NP10	Payment of court fees – Request for refund
Form NP11	Certificate of Conferral
Form NP12	Callover certificate