



A guide to
REPRESENTING YOURSELF
in the
FAMILY COURT
of Western Australia

CHILDREN'S CASES



Disclaimer

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3. This guide has been prepared as a general guide. It is not a substitute for obtaining professional legal advice specific to your particular circumstances.

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Please check the Family Court of Western Australia website (www.familycourt.wa.gov.au) for latest updates and /or revisions.

Foreword

Many people are unable to afford a lawyer to help them to resolve family disputes. They can be at a disadvantage because the law is complicated and court processes are sometimes difficult to understand.

This booklet is designed to help those people who do not have a lawyer to present their cases in the Family Court of Western Australia. It is not a substitute for competent legal advice, but it is hoped the information provided will make it easier for you to navigate through the court system.

Judges and Magistrates must always remain impartial and not appear to help one side of a dispute to the disadvantage of the other. Whilst the Judge or Magistrate can provide some (very limited) assistance, it is expected that each party who does not have a lawyer will have tried their best to become familiar with this booklet before coming to Court.

The Court has received much positive feedback about earlier editions of the booklet. We would appreciate hearing from you about any way you feel that future editions might be improved.

Stephen Thackray

Chief Judge
Family Court of Western Australia

Important – Do I need a lawyer?

You may be at a disadvantage if you represent yourself, especially if the other party has a lawyer. The Judicial Officer must decide a case on the evidence presented by both sides. The Judicial Officer can question you, the other party and the witnesses about evidence, but is limited in the help that he or she can provide. It is recommended that you are represented by a lawyer at trial. If that is not possible, you should at least get advice from a lawyer about your case at the earliest possible stage (see: Where do I go for advice).

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1. Introduction

What is this guide for?

This guide is intended for people representing themselves in parenting orders cases (children's matters, except child support and child maintenance). There is a separate guide available for people representing themselves in property cases.

It is intended to provide brief information about the Court process for cases which have already commenced.

If you are about to commence proceedings or are responding to an application, there are kits and brochures available from the Registry which outline how to proceed with preparing or opposing an application to the Court.

If you have not yet filed an application or been served with an application you should contact the Family Relationship Advice Line or one of the other organisations listed in *Where do I go for advice?* for advice on resolving your dispute.

This guide also contains information on the areas your evidence should cover and the matters the Court will take into account in making final orders.

**THIS GUIDE IS NOT INTENDED
TO BE A SUBSTITUTE FOR
PROFESSIONAL
LEGAL ADVICE**

A Guide to Legal Terms can be found at the end of this handbook.

Please note that it is a requirement that both parties attend an information session. You can find out where and what time they are held at the Registry.

The relevant legislation

The relevant legislation if you were married is the *Family Law Act 1975*. If you were not married, the *Family Court Act 1997* applies (with some special exceptions). The Family Court has the power to resolve all parenting disputes whether the parents were married or not.

Important sections from these Acts are set out at the back of this booklet. There are links to the full text of both Acts at the Family Court of Western Australia website. (www.familycourt.wa.gov.au)

2. About the Court

Your case will be heard in the Family Court of Western Australia by a Judge or in the Magistrates Court by a Magistrate.

How to contact the Court

You should address any correspondence to:

The Principal Registrar

Family Court of Western Australia
GPO Box 9991
Perth WA 6848

Telephone: (08) 9224 8222; 1800 199 228 (country free call)

Facsimile: (08) 9224 8360

Note: you must give the other party a copy of all correspondence you send to the Court and your correspondence must show that a copy has been sent to the other party.

Personal safety

The Court has a Family Violence policy. If you have a concern for your physical safety or the physical safety of one of your witnesses, notify the Principal Registrar in writing as soon as possible after your application or response is filed so that proper arrangements can be made. If you become concerned for your safety whilst attending Court please inform Court staff as soon as possible.

Interpreters

If you need an interpreter for yourself or a witness please contact the Court as soon as possible after your application or response is filed.

Attending by electronic communication

The Court has facilities available for people to attend Court by electronic communication, such as video-link and telephone-link. If you need to use these facilities to attend a conference, you must write to the Court **at least 7 days before the conference** to ask for permission. If you need to use these facilities at the trial, you must make an application to the Court **at least 28 days before the trial** (A letter seeking permission to file, an application in a case and an affidavit in support).

Specific information (see: *Appendix F*) must be included when seeking permission to attend by electronic communication. The Court may order that one or both of the parties pay the cost of using the facilities. For more information on the Court's facilities for electronic communication, ask at the Registry.

How does the Court contact me?

You must always let the Court know your current contact address and telephone number.

If you change your contact address and/or telephone number before your case is finished, you must file and serve a new Notice of Address for Service. If you do not let the Court know your current contact details, you may miss important communications and your next court event may proceed without you.

What should I wear to Court?

You should dress comfortably. The minimum standard of dress is neat casual, which includes appropriate footwear.

What should I take with me to Court?

- Copies of all documents that:
 - a) You have filed and served; and
 - b) You have received from the other party during the proceedings.

These should be organised so that you can find any document easily.

- Any other documents that you want to use, such as a document to put to a witness in cross-examination.
- All your *discoverable documents* and any other documents in respect of which you received a notice to produce.
- Pens and paper.
- This guide.

Who can come to Court with me?

You may bring people to the Court to support you; however, they cannot join you when you are in a conference and they may be asked to wait outside the courtroom.

Conferences are held in a conference room and are attended only by the parties and their legal representatives and Court staff.

Hearings are open to the public unless the Judicial Officer orders otherwise. Persons under 18 years of age are not allowed to be in the courtroom without permission from the Judicial Officer. The Judicial Officer may make an order for all witnesses to be out of Court during any part of the hearing.

What time should I get to Court?

You should be ready and waiting at the Court at least 15 minutes before your listed time.

When you arrive, you should go to the reception desk on the floor where your case is listed to be held and report to the Court Officer.

How should I behave in Court?

- If you are the applicant, you sit behind the right hand microphone. The respondent sits on the left. If an Independent Children's Lawyer has been appointed in your case, they will sit at the centre.
- You should always call the Judicial Officer, "Your Honour." Otherwise, "Sir" or "Ma'am" is fine.
- If you are referring to the Judicial Officer when speaking to a witness, refer to the Judicial Officer as "His Honour" or "Her Honour".
- Do not speak when the Judicial Officer is speaking.
- Generally in children's cases, you may remain seated while speaking to the Judicial Officer. Only one of the parties should be speaking at one time.
- When you are speaking, remain behind your microphone.
- If you want to show a document to a witness or the Judicial Officer, say so and hold it out for the Court Officer to take it to them.
- Do not interrupt the other party.
- When entering or exiting a courtroom, it is a courtesy to briefly bow if the Judicial Officer is already present.
- No food or drink is allowed (including chewing gum). Water is usually provided.
- Mobile telephones and pagers must be switched off.
- A Court Officer may be able to help if you have questions about what to do, but they cannot give you legal advice.

3. The Court process

Child Related Proceedings

There are brochures available from the Registry outlining the Court procedures for Child Related Proceedings and for Case Assessment Conferences. There is also a kit available for the applicant and the respondent for Parenting Orders.

The Court's procedures in children's cases try to minimise undue legal formalities and technicalities and focus on the most appropriate way to resolve the issues regarding children.

After an application is filed, the first Court event will generally be a Case Assessment Conference conducted by a Family Consultant. You will be interviewed by the Family Consultant and then, if appropriate, both parties will continue discussions with the Family Consultant.

The aim of the conference is to conduct a preliminary screening/assessment of risk issues, identify competing proposals and issues in dispute, identify whether agreement may be possible, and formulate a case management plan. Everything that is said to the Family Consultant is reportable as evidence.

This is immediately followed by a hearing before a Magistrate, normally commencing with the Family Consultant's assessment being orally presented in Court. The Magistrate will then determine if the application will be dealt with by a Family Consultant, that Magistrate or a Judge. The Magistrate will most likely have each party sworn or affirmed so that everything they say in court forms part of the evidence. Your trial therefore starts from this hearing. In many cases the same Judicial Officer and Family Consultant will manage your case until final orders are made.

The initial hearing may be followed by a series of hearings designed to suit your case. Depending on the circumstances and the issues in dispute, your case may be listed for a trial for the Judicial Officer to make final orders to resolve your case.

If at any time an agreement is reached you can file this agreement at the Court and seek orders by consent. At all times, right up until final orders are made by the Judicial Officer, you can end the proceedings by coming to an agreement with the other party. You can file a Minute of Consent Orders.

Permission from the Court is needed to file any application, affidavit or subpoena.

Procedural orders

At each stage in the Court process, procedural orders (sometimes referred to as directions) will be made to help you proceed with your matter. Procedural orders aim to get you and the other side ready to reach an agreement or proceed to resolution of your case. For example, a procedural order may deal with what issues may be covered in an affidavit and when it has to be filed.

You must comply with all procedural orders. Your failure to comply with procedural orders may result in a disadvantage to your case. For example, a costs order may be made against you, the hearing of your case may be delayed, or your application(s) may be struck out or dismissed.

Procedural orders will be made setting the date by which you must file your documents.

The consequence for filing a document late is that the document is of no effect (as if it does not exist) and cannot be taken into account by the Court. However, a party may request permission from the Judicial Officer to have late documents taken into account.

Disclosure

You (and each party) have a duty to the Court and each other party to give full and frank disclosure of all information relevant to your case, in a timely matter.

Parts 13.1, 13.2 and 13.3 of the *Family Law Rules 2004* set out what must be done in order to comply with the duty.

There may be serious consequences if you fail to comply with the duty of disclosure.

When will my trial be held?

If your case is to be listed for a trial, the date will be set when the Judicial Officer who is handling your case is satisfied that the matter is ready to proceed. How long it takes before your trial is held will depend on, among other things, the complexity of your case, the expected length of your trial, and the availability of the Judicial Officer to hear your case.

Your trial may be given a 'not before' date. This means that your trial will not start before that date but it might start after that date depending on how long it takes to finish other trials. It is important that you contact the Caseflow Section by calling 9224 8398 **after 2pm on the day before the allocated trial date**, to find out when it is expected that your trial will start. If your trial does not start on the 'not before' date, it may start at short notice at any time in the following few days.

There is a limited opportunity for the Court to give fixed starting dates for trials. If you want a fixed starting date for your trial, you should request this at one of the hearings before the Judicial Officer. Generally, fixed starting dates are only given where witnesses have to travel from interstate or overseas for the trial.

Once the trial date has been set, one of the parties, usually the applicant will be required to pay the hearing fee. If you are unable to pay the hearing fee, you can obtain a form to seek an exemption/ waiver of the fee at the Registry of the Court.

Affidavits

Procedural orders will be made about the time when affidavits are filed. There is an information sheet on affidavits available from the Registry.

Your affidavit is a formal written statement setting out the facts of your case - your evidence. It is as though you have made all of the statements in your affidavit to a Judicial Officer whilst you were on oath or affirmed in the witness box in Court. The following points are important:

- You are only allowed to file affidavits with permission from the Court unless filing a notice of child abuse or family violence in which case an affidavit must be filed.
- A person under 18 years of age is not allowed to give evidence orally or by affidavit without permission from the Court.
- Only facts relevant to your case should be in your affidavit and the affidavits of your witnesses. What is relevant to the issues in dispute will be discussed during the various court proceedings. (See also 4. *The Relevant Law for Parenting Orders*). The Judicial Officer may tell you what matters can and cannot be covered in the affidavits.
- Your affidavit and the affidavits of your witnesses must be typed, each paragraph must be numbered, and each paragraph must, as far as possible, cover one particular fact or event.
- All affidavits must be sworn or affirmed before a Justice of the Peace, lawyer or Notary Public.
- Oral evidence is only allowed with the Judicial Officer’s permission. You may have to subpoena a witness to ensure that they attend the Court for a trial (see: **Getting witnesses to attend at trial.**)

4. The relevant law for parenting orders

The relevant law to be applied in applications for *parenting orders* is set out in *Part VII of the Family Law Act 1975* (“FLA”) if the children’s parents were or are married or *Part 5 of the Family Court Act 1997* (“FCA”) if they were not. Both Parts are substantially the same in effect.

- When making a parenting order the court must generally apply a presumption that it is in the best interests of a child for the parents to have equal shared parental responsibility for that child. (FLA s61DA/FCA s70A **see Appendix A**).
- This presumption does not apply if there are reasonable grounds to believe that a parent (or a person who lives with a parent) has engaged in abuse of the child (or another child who was at the time a member of the parent’s family (or that other person’s family) or has engaged in family violence. (FLA s61DA(2)/FCA s70A(2) **Appendix A**).
- This presumption can be rebutted by evidence that it would not be in the best interests of the child for the parents to have equal shared parental responsibility. (FLA s61DA (4)/ FCA s70A (4) **Appendix A**).
- If the court decides that the parents will have equal shared parental responsibility it must consider the matters in FLA s65DAA (1)/FCA s89AA (1) (**Appendix B**) to decide whether it is both practicable and in the child’s best interests that the child spend equal time with each of the parents.
- If the court decides not to make an order for the child to spend equal time with each of the parents, then it must consider the matters in FLA s65DAA (2)/ FCA s89AA (2) (**Appendix B**) to decide whether the child should spend ‘substantial and significant time’ with a parent. What constitutes ‘substantial and significant time’ is defined in paragraph (3) of that section.
- Where parents share parental responsibility, decisions about major long-term issues must be made jointly. (FLA s65DAC/FCA s89AC **Appendix C**).
- The factors the Court must consider in making a parenting order are set out in FLA s60CC/ FCA s66C (see **Appendix D**).
- Children do not express their views personally in Court. Instead they will have an interview with a Family Consultant or Expert Witness who will prepare a report for the Judicial Officer. A copy of that report will be provided to all parties to the case.

5. Preparation for trial

What orders do I want the Court to make?

It is important that you, the other side and the Judicial Officer all clearly understand the orders that you want the Court to make.

You may still want the Court to make the orders sought in your application or response. However, you may now want different orders because you have agreed some issues or some issues have changed.

If, you want to change the orders you are seeking from the Court, you can ask permission to file an amended application or response.

Whether your amendment is allowed is up to the Judicial Officer. If the other party has no objection to you changing your orders sought, the Judicial Officer will generally allow your amendment. Your chances of having the amendment allowed are better if you give the other party plenty of notice.

If you change the orders that you want at short notice, you may be ordered to pay the other party's costs. For example, if they spent money preparing for a trial in respect of orders that you no longer want.

Notice in relation to affidavit evidence

At least 14 days before the trial date, you must notify the other party, in writing of:

- Any documents you want to provide to the Court in support of the evidence in your trial affidavit; and
- Where and when any documents that you have, and that the other party has not inspected, can be inspected.

Getting witnesses to attend at trial

Subpoena

If a person can tell the Court facts or provide documents to the Court that will help your case, but they refuse to come to the trial or provide the documents, you can ask the Court to issue a subpoena (**Form 14**).

A subpoena can require a person to:

- Give evidence;
- Bring documents; or
- Bring documents and give evidence.

The Court will not issue a subpoena unless you have first obtained permission from the Judicial Officer who is dealing with your case. The Judicial Officer may also direct the issue of a particular subpoena to ensure that proper evidence is before the Court about an important matter. If you need to subpoena a person to attend the trial, you should seek permission as soon as the trial date has been set. Your request should contain information that may assist the Court in determining whether to grant leave for the subpoena to be issued, including:

- Why the evidence is relevant to your case;
- What, if any, attempts you have made to obtain the evidence from the other party or by other means;
- Whether the person or entity that you want to subpoena has consented to the subpoena being issued.

If the Court gives permission and issues the subpoena it must be served immediately on the person you wish to subpoena. Registry staff can tell you how to do this.

You should make your request to issue a subpoena in Court, preferably when your trial date is given. Otherwise you should make your request in writing addressed to the Principal Registrar. Your request must be made at the earliest opportunity.

You have to provide the subpoenaed person with conduct money to enable them to attend Court. You may also have to pay the expenses of the person attending the trial or the cost of collecting the documents requested and bringing them to Court.

If you are serving the Department for Child Protection (formerly known as the Department for Community Development) with a subpoena you must provide them with certain information.

(For the required information see: **Appendix E**.)

Notice of intention to cross-examine

If you want to question any of the other party’s witnesses at trial, you should inform the Judicial Officer during the court proceedings prior to the trial.

Each party should confirm their intention to question witnesses by giving the other party a written notice, **at least 14 days before the trial**, stating the name(s) of the person(s) required to attend the trial for cross-examination.

Each party must ensure that all witnesses included in the notice of intention to cross-examine are at the trial. If the required witness does not come to the trial, the Court may refuse to consider that witness’s affidavit, limit the use of the affidavit or adjourn the proceedings.

Professional/ Expert Witnesses

Appropriately qualified professional witnesses may provide independent evidence to help the Judicial Officer decide a substantial issue in dispute. The Judicial Officer may make procedural orders if a report from a Single Expert is required to assist the Court. The Court will generally allow evidence from only one expert witness in relation to a specific issue. If an expert opinion is necessary in your case, it is recommended that you and the other party agree to jointly instruct a single expert witness to prepare a report for the Court. Parties are equally responsible for payment of the single expert witness’s fee.

You may have other professional witnesses, who are not classed as expert witnesses, to support your case. For example, a treating doctor or a school teacher may give evidence about their involvement with one of the parties or a child.

Professional witnesses may require you and /or the other party to pay their expenses for their time at Court. You may ask the Judicial Officer if any professional witnesses you want to give evidence can come to Court on a specific day and time to limit their waiting time at Court and, therefore, your expenses. You should make this request at the earliest opportunity.

What will the Judicial Officer want to know at trial?

The Judicial Officer will take into account all relevant evidence that is before the Court. In most cases the Judicial Officer will have told you what evidence and witnesses are needed at the trial.

The Judicial Officer will try to limit the evidence needed at the trial to those relevant issues that are in dispute between the parties.

When a Judicial Officer is making orders in relation to a child, the **best interests** of the child is the paramount consideration. In deciding what is in a child’s best interests, there are certain things that a Judicial Officer **must** consider when deciding an issue in your case under the relevant law.

(See: *The relevant law for parenting orders*, and *Appendices A, B, C and D*).

6. Papers for the Judicial Officer

You may be ordered to file “Papers for the Judge” or “Papers for the Magistrate” prior to the trial. In this booklet these papers are referred to as “Papers for the Judicial Officer”.

Papers for the Judicial Officer consist of:

- A Chronology of relevant events (if one has not already been filed, or an updated one);
- A list of affidavits you intend to rely on; and
- A list of authorities (cases already decided) you intend to rely on.

The Papers for the Judicial Officer do not need a cover sheet but should be clearly marked with your name, the other party’s name, the Court file number and the date of your trial.

You need to also file a statement in point form of the factors to be taken into account under the *Family Law Act 1975* or the *Family Court Act 1997*.

These are:

- *Section 61DA FLA (Section 70A FCA) - Presumption of Equal Shared Parental Responsibility*
- *Section 65DAA FLA (Section 89AA FCA) - Equal Time or Substantial and Significant Time*
- *Section 60CC(2) and (3) FLA (Section 66C(2) and (3) FCA) - Primary Considerations and Additional Considerations*

(See: **The relevant law for parenting orders, and Appendices A, B, C and D**). There is a brochure available from the Registry and on the website called ‘Papers for the Judicial Officer’ which outlines how to summarise these factors.

7. What happens during the trial?

What follows is an explanation of what generally happens during the trial. The Judicial Officer will direct the conduct of the trial. If at any stage during your trial you are confused or unsure how to proceed, do not be afraid to ask the Judicial Officer. The Judicial Officer may intervene to assist you, or to move the proceedings along by reminding you to focus on relevant issues.

1. Applicant makes opening address (when the Judicial Officer permits).
2. Applicant calls first witness (usually the applicant himself or herself).
3. First witness gives evidence.
4. Respondent may cross-examine that witness.
5. Applicant may re-examine that witness (only in respect of matters arising out of cross-examination).
6. Applicant calls next witness.
7. Repeat steps three to six until applicant has called all witnesses.
8. Respondent makes opening address (when the Judicial Officer permits).
9. Respondent calls first witness (usually the respondent himself or herself).
10. First witness gives evidence.
11. Applicant may cross-examine that witness.
12. Respondent may re-examine that witness (only in respect of matters arising out of cross-examination).
13. Respondent calls next witness.
14. Repeat steps 10 to 13 until respondent has called all witnesses.
15. Respondent makes closing address.
16. Applicant makes closing address.

Opening address

At the beginning of your turn in Court you may be invited by the Judicial Officer to ‘open’ or ‘make your opening address’. Although you do not have to make an opening address, you should remember that you will be making your first impression on the Judicial Officer. It would be a good idea to prepare a brief opening address.

You should briefly outline the issue(s) in your case, for example, whether the application relates to where the children are to live, or who they are to spend time with, and refer to the orders that you want. You should then indicate briefly the significant matters that you intend to establish in presenting your case and the evidence upon which you will be relying.

You may ask the Judicial Officer for an order for ‘Witnesses out of Court’. This means that all the witnesses, except you and the other party, have to stay outside the courtroom until they give their evidence. It also means that the witnesses cannot discuss the case until they have given their evidence.

How do I give my own evidence?

When it is your turn to give evidence, the Court Officer will show you to the witness stand. Take with you everything you may need, including your affidavit, paper and a pen. The Judicial Officer’s Associate will lead you through the oath or affirmation. Then the Judicial Officer will help you begin your evidence. You will have a chance to correct any errors or omissions in your affidavit.

If you want to respond to matters raised in the affidavits of the other party, you may ask the Judicial Officer for permission to give evidence in reply before you are cross-examined by the other party.

Calling witnesses and their evidence

To call a witness, state clearly that you call that witness. For example, “I call John Citizen”. The Court Officer will then go outside the courtroom and call out that name. The Court Officer will show the witness to the witness stand.

All the evidence from your witnesses should be in their affidavits. Therefore, you simply have to ask them their name and occupation, and then ask them to confirm that the content of their affidavit is true and correct. However, you may ask the Judicial Officer for permission to ask your witness further questions before they are cross-examined, if for example:

- Important evidence has been left out;
- Important events have occurred since the affidavit was filed;

- There are errors in the affidavit;
- You want your witness to give evidence about matters raised in the affidavits of the other party’s witnesses; or
- The witness refused to give an affidavit.

How do I cross-examine a witness?

When cross-examining a witness, you must only ask questions. You should plan your cross-examination, both before the trial and during the witness’s evidence. Your aim is to show the Court that the witness’s evidence should not be accepted because they are mistaken or cannot authoritatively say the things they have said. Your case is strongest if you can get the witness to admit to being mistaken or untruthful or can lead the Judicial Officer to conclude that the witness’s evidence is unreliable.

If you allege something different from a witness, it is essential that you put your version of events to the witness. For example, you could say, “My evidence is that I was the primary care giver of our son until he was three years old. That is true isn’t it?” If you do not dispute a witness’s evidence, do not cross-examine them. If you do not challenge a point that a witness has made, it is open for the Judicial Officer to conclude that you do not dispute it.

In cross-examination you can present to the witness any document that contradicts their evidence. For example, you may have school records that show that your child’s performance is not as alleged by the witness.

Your cross-examination is not limited to the evidence given by the witness, but any questions should be relevant to the matters in dispute, to the considerations that the Judicial Officer must take into account, or to the witness’s credibility.

While your own witnesses are being cross-examined, you should make notes for any re-examination.

If the trial is adjourned for any reason while a witness of yours is being cross-examined, you may not discuss their evidence with them at all. It is therefore safest to avoid talking to the witness in an adjournment during cross-examination.

How do I re-examine a witness?

Once the cross-examination is finished, the Judicial Officer will ask whether you want to re-examine the witness. Re-examination relates to matters that came up in cross-examination and is an opportunity to clarify evidence, correct obvious errors or give the witness a chance to give a full answer where they may have been cut off.

Closing address

Once you and the other party have presented the evidence, you will each have an opportunity to make a closing address. If there is important disputed evidence, you should tell the Judicial Officer why he/she should accept the evidence of your witnesses as opposed to the witnesses of the other party. You should outline the findings of fact that you want the Court to make and you should tell the Judicial Officer why he or she should make the orders that you want.

It would be useful to have the legislation in the Appendices to this guide handy (together with any cases decided on similar issues that support your case) and address each of the sections and the cases which you think are relevant. The Judicial Officer is aware, as you are not a lawyer, that you may not be able to point to the relevant cases, but you should be familiar with the relevant sections of the *Family Law Act 1975* or *Family Court Act 1997* (see: **Appendices A, B, C and D**).

8. When is judgment given?

The Judicial Officer may give judgment and make orders at the end of the applicant's closing address. This may be after a short adjournment to give the Judicial Officer the opportunity to review the evidence or otherwise prepare the judgment. If the judgment is given in this way, you may request a written copy of the Reasons for Judgment which will be sent to you after the Judicial Officer has had an opportunity to edit them.

The Judicial Officer may reserve his or her decision to a specific date and time. Alternatively, the decision may be reserved without a specified date or time for judgment. The Court will contact you to let you know the date on which judgment will be delivered.

When the judgment is delivered, you should be present in Court as the Judicial Officer may want your input about the details of orders to be made.

9. Where do I go for advice?

Family Relationship Advice Line

If you have general questions in relation to children's issues you can phone the Family Relationships Advice Line from 8am until 8pm Monday to Friday and 10am until 4pm on Saturdays on 1800 050 321.

Family Relationships online website:
www.familyrelationships.gov.au/

Family Lawyers

If you are looking for a lawyer who specialises in family law, contact the Family Law Practitioners Association of WA.

Internet:
www.flpawa.asn.au/accredited_specialists

Or the **Law Society of Western Australia**

Telephone: (08) 9322 4911

Legal Aid Western Australia

55 St Georges Terrace, Perth

You may be eligible for representation and you can obtain limited advice over the phone.

Telephone: 1300 650 579 (toll free)

Internet: www.legalaid.wa.gov.au

Community Legal Centres

Community Legal Centres provide legal advice and offer assistance to people with low incomes. The Community Legal Centres Association (WA) can refer you to the community legal centre closest to you. There is also an information sheet on Community Legal Centres available at the Family Court Information sessions.

Community Legal Centres Association (WA)

Telephone: (08) 9221 9322

Internet: www.naclc.org.au

10. Legal information on the Internet

To access legal information over the Internet you might try the following websites:

Family Court of Western Australia

You can download Court forms and information kits from this website. You can also access the daily Court list and the Court's Case Management Guidelines.

The site also provides answers to frequently asked questions.

Internet: www.familycourt.wa.gov.au/

Family Court of Australia

This site provides some useful legal information, tips for legal research and links to other online legal resources. However, when using this site it is important to remember that there are some differences between the Family Court of Australia and the Family Court of Western Australia.

Internet: www.familycourt.gov.au/

Australian Law Online

This site is provided by the Commonwealth Attorney General's Department and gives you access to legal information and referral services.

Internet: www.law.gov.au/

Legal Aid Western Australia

Internet: www.legalaid.wa.gov.au/

Appendix A – Presumption of equal shared parental responsibility

Family Law Act 1975 (children of a marriage)/**Family Court Act 1997** (if the parents have never married). The provisions of both Acts are substantially the same.

Section 61DA FLA / Section 70A FCA (*Presumption of Equal Shared Parental Responsibility*)

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

Appendix B – equal or substantial and significant time

Family Law Act 1975 (children of a marriage)/ *Family Court Act 1997* (if the parents have never married). The provisions of both Acts are substantially the same.

Section 65DAA FLA / Section 89AA FCA (Equal or Substantial and Significant Time)

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

- (3)** For the purposes of subsection (2), a child will be taken to spend substantial and significant time with a parent only if:
- (a)** the time the child spends with the parent includes both:
 - (i) days that fall on weekends and holidays; and
 - (ii) days that do not fall on weekends and holidays; and
 - (b)** the time the child spends with the parent allows the parent to be involved in:
 - (i) the child's daily routine; and
 - (ii) occasions and events that are of particular significance to the child; and
 - (c)** the time the child spends with the parent allows the child to be involved in occasions and events that are of special significance to the parent.

Appendix C – effect of parenting order that provides for shared parental responsibility

Family Law Act 1975 (children of a marriage)/ *Family Court Act 1997* (if the parents have never married). The provisions of both Acts are substantially the same.

Section 65DAC FLA/Section 89AC FCA

- (1)** This section applies if, under a parenting order:
 - (a)** Two or more persons are to share parental responsibility for a child; and
 - (b)** the exercise of that parental responsibility involves making a decision about a major long-term issue in relation to the child.
- (2)** The order is taken to require the decision to be made jointly by those persons.
- (3)** The order is taken to require each of those persons:
 - (a)** to consult the other person in relation to the decision to be made about that issue; and
 - (b)** to make a genuine effort to come to a joint decision about that issue.
- (4)** To avoid doubt, this section does not require any other person to establish, before acting on a decision about the child communicated by one of those persons, that the decision has been made jointly.

Appendix D – best interests of the child

Family Law Act 1975 (children of a marriage)/ **Family Court Act 1997** (if the parents have never married). The provisions of both Acts are substantially the same.

In deciding what is in the best interests of the child(ren), the Court must consider the following matters:

Section 60CC FLA/Section 66C FCA

- (1)** Subject to subsection (5), in determining what is in the child's best interests, the Court must consider the matters set out in subsections (2) and (3).
- (2)** The primary considerations are:
 - (a)** the benefit to the child of having a meaningful relationship with both of the child's parents; and
 - (b)** the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.
- (3)** Additional considerations are:
 - (a)** any views expressed by the child and any factors (such as the child's maturity or level of understanding) that the Court thinks are relevant to the weight it should give to the child's views;
 - (b)** the nature of the relationship of the child with:
 - (i) each of the child's parents; and
 - (ii) other persons (including any grandparent or other relative of the child);
 - (c)** the willingness and ability of each of the child's parents to facilitate, and encourage a close and continuing relationship between the child and the other parent;
 - (d)** the likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from:
 - (i) either of his or her parents; or
 - (ii) any other child, or other person (including any grandparent or other relative of the child), with whom he or she has been living;
 - (e)** the practical difficulty and expense of a child spending time with and communicating with a parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with both parents on a regular basis;

(f) the capacity of:

(i) each of the child’s parents; and

(ii) any other person (including any grandparent or other relative of the child); to provide for the needs of the child, including emotional and intellectual needs;

(g) the maturity, sex, lifestyle and background (including lifestyle, culture and traditions) of the child and of either of the child’s parents, and any other characteristics of the child that the court thinks are relevant;

(h) if the child is an Aboriginal or a Torres Strait Islander child:

(i) the child’s right to enjoy his or her Aboriginal or Torres Strait Islander culture (including the right to enjoy that culture with other people who share that culture); and

(ii) the likely impact any proposed parenting order under this Part will have on that right;

(i) the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child’s parents;

(j) any family violence involving the child or a member of the child’s family;

(k) any family violence order that applies to the child or a member of the child’s family, if:

(i) the order is a final order; or

(ii) the making of the order was contested by a person;

(l) whether it would be preferable to make the order that would be least likely to lead to the institution of further proceedings in relation to the child;

(m) any other fact or circumstance that the court thinks is relevant.

(4) Without limiting paragraphs (3)(c) and (i), the court must consider the extent to which each of the child’s parents has fulfilled, or failed to fulfill, his or her responsibilities as a parent and, in particular, the extent to which each of the child’s parents:

(a) has taken, or failed to take, the opportunity:

(i) to participate in making decisions about major long-term issues in relation to the child;
and

(ii) to spend time with the child; and

(iii) to communicate with the child; and

- (b)** has facilitated, or failed to facilitate, the other parent:
 - (i) participating in making decisions about major long-term issues in relation to the child; and
 - (ii) spending time with the child; and
 - (iii) communicating with the child; and
- (c)** has fulfilled, or failed to fulfill, the parent's obligation to maintain the child.
- (4a)** If the child's parents have separated, the court must, in applying subsection (4), have regard, in particular, to events that have happened, and circumstances that have existed, since the separation occurred.
- (5)** If the court is considering whether to make an order with the consent of all the parties to the proceedings, the court may, but is not required to, have regard to all or any of the matters set out in subsection (2) or (3).
- (6)** For the purposes of paragraph (3) (h), an Aboriginal child's or a Torres Strait Islander child's right to enjoy his or her Aboriginal or Torres Strait Islander culture includes the right:
 - (a)** to maintain a connection with that culture; and
 - (b)** to have the support, opportunity and encouragement necessary:
 - (i) to explore the full extent of that culture, consistent with the child's age and developmental level and the child's views; and
 - (ii) to develop a positive appreciation of that culture.

Appendix E

Family Court of Western Australia - Case Management Guidelines and Directions

55.1

Subpoena to Department for Child Protection

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
- (h) A list of persons who have sworn affidavits in respect of the proceedings; and
- (i) Details of any identifying information in relation to a notifier which has already been disclosed in proceedings.

55.2

A 'notifier' for the purposes of the sub-paragraph 55.1(i) is a person who in good faith gives information, or causes information to be given, to the Chief Executive Officer of the Department for Child Protection or another officer, that raises concerns about the well-being of a child.

Appendix F - Attendance by electronic communication

For a trial there needs to be a letter seeking permission to file, an application in a case supported by an affidavit to attend by electronic communication.

It must include the following information, where relevant:

Rule 16.08(3) Family Law Rules 2004

- (a)** what the applicant seeks permission to do by electronic communication;
- (b)** the kind of electronic communication to be used;
- (c)** if the party proposes to give evidence, make a submission, or adduce evidence from a witness by electronic communication — the place from which the party proposes to give or adduce the evidence, or make the submission;
- (d)** the facilities at the place mentioned in paragraph (c) that will enable all eligible persons present in that place to see or hear each eligible person in the place where the court is sitting;
- (e)** if the applicant seeks to adduce evidence from a witness by electronic communication:
 - (i) whether an affidavit by the witness has been filed;
 - (ii) whether the applicant seeks permission for the witness to give oral evidence;
 - (iii) the relevance of the evidence to the issues;
 - (iv) whether the witness is an expert witness;
 - (v) the name, address and occupation of any person who is to be present when the evidence is given;
 - (vi) if the applicant proposes to refer the witness to a document, whether:
 - a)** the document has been filed; and
 - b)** the witness will have a copy of the document; and
 - (vii) whether an interpreter is required and, if so, what arrangements are to be made;
- (f)** the expense of using the electronic communication, including any expense to the Court, and the applicant’s proposals for paying those expenses;
- (g)** whether the other parties object to the use of electronic communication for the purpose specified in the application and, if so, the reason for the objection.
- (h)** if the application relates to evidence to be adduced from a witness in a foreign country – the matters required to be addressed under rule 16.09;

(i) if the application relates to evidence to making a submission, giving evidence or adducting evidence from New Zealand – the facilities that enable evidence to be given or a submission to be made, as required by Part 4 of the *Evidence and Procedure (New Zealand) Act 1994*.

Guide to legal terms

Affidavit

A formal written statement that you have sworn or affirmed, setting out the facts of your case (your evidence).

Applicant

The person who begins the process by filing an application.

Asking Permission

Asking the Court for permission to do something, such as file an affidavit out of time.

Case Assessment Conference

This conference is the first Court event in applications for final orders. In parenting cases the conference is conducted by a Family Consultant and immediately followed by a hearing with a Magistrate at which procedural orders may be made. The purpose is to conduct a preliminary screening/assessment of risk issues, identify competing proposals and issues in dispute, identify whether agreement may be possible, and to make decisions about the future conduct of the case.

Case Assessment hearing

In parenting cases the case assessment hearing immediately follows the case assessment conference and is conducted by a Magistrate (usually in Court). The purpose of a case assessment hearing is to make orders for the future conduct of the case.

Case Management Guidelines

These are directions issued by the Court about practices and procedures to be followed in all cases.

Chronology

A list of significant events and the dates on which they occurred, in date order.

Conduct money

When a subpoena is served, the person serving it must provide the subpoenaed person with sufficient money for return travel between that person's residence or employment (whichever is appropriate) and the Court, for example bus or train fares.

Costs order

When the Court orders that one party must pay all or part of the other party's costs of preparing and /or presenting their case.

Discoverable documents

Documents that you have in your possession, custody or control that are relevant to your case. 'Possession, custody and control' is a legal term which covers more than documents in your physical possession. If you have questions about this term seek legal advice.

Disclosure

A process where one side provides to the other party a list of documents in their possession, custody or control which are relevant to the case. 'Possession, custody and control' is a legal term which covers more than documents in your physical possession. If you have questions about this term seek legal advice.

Exemption / Waiver of the fees

If you hold certain Centrelink cards or can show financial hardship you may not have to pay certain fees. You can get the form to apply for an exemption/waiver of the fees at the registry of the Court.

Expert Witness

An expert or single expert is an independent person who has relevant specialised knowledge, based on their training, study and/or experience. An expert witness is an expert who has been instructed, in writing, to provide their opinion about a substantial issue in dispute. Important rules about expert evidence are contained in *Part 15.5 of the Family Law Rules 2004*.

File

To lodge a document in the registry of the Court and have it accepted for filing by the Court.

Judicial Officer

Either a judge or a magistrate who is listed to hear your case. A judge usually deals with longer or more complex cases.

Leave of the Court

Permission obtained from the Court to do a particular thing, which would not be allowed otherwise.

Minute of orders sought

A document setting out the orders that you want the Court to make.

Notice of Address for Service

A Court form which tells the Court and the other party the address where documents can be served on you. You can get this form from the registry of the Court or from the Court's website.

Notice to produce

The other party may have served this notice on you. It requires you to bring certain documents to your trial. You may also serve a notice to produce on the other party.

Parenting Order

A parenting order is one that deals with parental responsibility for a child including the person or persons a child is to live with, spend time with or communicate with.

Party /Parties

A person involved in an application. (Applicant and Respondent) You and the other party are parties to the proceedings.

Procedural orders

These are instructions (sometimes referred to as directions) from the Court about what each party must do and when. The purpose of these orders is to ensure that the case is properly prepared for each stage of the Court process, so that the case is resolved as quickly and cheaply as possible. Standard procedural orders are made at each stage of the Court process. Other procedural orders may be made at the request of a party in a case. If procedural orders are made, you must comply with them.

Registry

Located on Level 1, 150 Terrace Road, Perth the main office of the Court that files Court documents or accepts Court documents for filing.

Respondent

The person against whom an order has been sought in an application to the Court.

Serve

To formally provide documents to the other party. You can ask at the registry of the Court about serving documents.

Submissions

Arguments presented to the Court to persuade the Court to make the orders you want.

Subpoena

A document issued by the Court that requires a person to come to Court to give evidence and/or bring documents or other things to Court.

Sworn or affirmed

When you have made a solemn promise confirming the truth of your evidence. An affidavit must be sworn or affirmed before a justice of the peace, a notary public or a lawyer.

Trial

The final hearing of a matter before a Judicial Officer. Having considered all the evidence presented, the Judicial Officer will make orders to finalise the matter.