



Parenting Orders Kit - Respondent

FAMILY COURT OF WESTERN AUSTRALIA

You need this kit if

You are responding to a Form 1 Initiating Application. If you are responding to an application which ONLY concerns child support, child maintenance or contravention of a parenting order, you need to ask for a different kit.

Orders about children are called parenting orders and could cover:

- Who a child will live with;
- Who a child will spend time with;
- Who a child will communicate with, or;
- Who has responsibility for major decisions about children.

Do I need to go to Court?

Not if you agree with the orders being sought.

The Form 1 application that you have received will show the date for the hearing. If you agree with the parenting orders sought, either attend the hearing or write a letter to the Court saying you agree and provide a copy of the letter to the other party.

If you do not agree with the orders being sought, you must respond quickly.

The Court encourages people to find solutions outside of Court. If at any point you and the other party reach an agreement, you can apply to the Court to have it registered as a Consent Order. See the "Consent Order Kit" for more information.

What forms will I need?

There are several forms, depending on what your situation is:

- Form 1A Response to Initiating Application;
- Case Information Affidavit;
AND (if your case also involves financial or property issues)
- Form 13 Financial Statement.

Who can help?

Court staff can give you advice about what forms you will need to complete, and answer questions about procedure.

Filling in the Form 1A and the Case Information Affidavit

Work your way through each part of the Forms. They do not have to be typed but please print very neatly. You do not have to complete Parts B and C of the Form 1A unless you seek to correct information provided by the Applicant.

Write the orders you want in Part A of the Form 1A. You may need to attach an extra page to the Form. Some examples are attached to the end of this kit.

What orders should I ask for?

Sometimes people want orders to be made to deal with arrangements until the final decision is made. These are called interim orders.

If you do not ask for interim orders, it is unlikely any orders about the children will be made at the first hearing unless the other party agrees.

If you want any interim orders of your own you need to complete Part A question 5 – Interim or procedural orders sought on the Form 1A as well as question 3 – Final orders sought.

If you have been served with a Form 1 seeking interim orders you will need to complete question 4 on the Form 1A.

What happens after I have filled in the forms?

Make two photocopies of the forms you have just filled out. There is a coin operated photocopier on the ground floor of the Family Court of WA opposite the registry counter.

Post or bring the forms and copies into the registry. By posting the documents you may avoid a queue. The officer who serves you will file the forms and hand the copies back to you or they will be returned by post. One copy is for you and one is for the other party.

Will I need a further affidavit?

A Judicial Officer will decide at the first hearing if any further affidavit material needs to be filed and what it should cover.

Sometimes if you are seeking urgent interim orders in your Form 1A, you may need to file a further affidavit. You can seek permission to do so by providing the further affidavit and a letter addressed to the Duty Registrar setting out the reasons why you want to file the affidavit.

How do I complete an affidavit?

If you have been given permission to file a further affidavit, remember that the affidavit should only contain information to help the Court make the decision.

Affidavits must follow a set format:

- The affidavit must be typed, not hand written.
- It must be split into small paragraphs (no more than six lines).
- Each paragraph must be numbered.
- It must contain all the relevant facts. (The type of matters the Court must take into account are set out on page 6 of this kit.)
- It must not contain comments or arguments – it must contain only facts (things you have personally seen, heard or done).

How do I sign the an affidavit?

You will need to have your Affidavit ‘witnessed’ by a Justice of the Peace (JP), Lawyer or Notary Public. (A Notary Public is a person who has the authority to authenticate documents created overseas and unlike a JP they will charge for their services.)

Your affidavit must be signed by yourself and the witness (JP, etc) next to the signing clause at the end of the affidavit **AND** at the foot of each page.

Where do I find a Justice of the Peace?

There is usually a JP at the Family Court of WA between 9.30am and 1.00pm. If a JP is not available you may find one at the Justices' Association at 25 Barrack Street, Perth. For a JP near your home, telephone the Justices' Association on 1300 657 788 or visit their web page at www.dotag.wa.gov.au – Justices of the Peace.

Do I need any witnesses to support my case?

At the first hearing the Judicial Officer may make orders about the filing of affidavits. Any adult with important information can be a witness and file an affidavit.

An affidavit from a witness must be very specific about things the witness saw, heard or did. The Judicial Officer does not want their opinion about what should happen. The affidavit should not be a character reference.

Can I bring someone to Court with me?

There is no need to bring any witnesses to the first Court hearing. The hearing should only involve the parties and their lawyers (if they have one). You can bring someone for support but they cannot take part in the hearing, unless permitted to do so by the Judicial Officer. They can sit at the back of the courtroom.

If you need an interpreter, please contact the Court.

What if I want an urgent hearing?

If you believe you need a hearing in urgent circumstances to take place before the date and time allocated to the Form 1 Initiating Application, then you will need to file a Form 2 (Application in a Case) for interim orders and possibly, if permitted, an affidavit. You must in that circumstance write a letter to the Duty Registrar. The letter should refer to the following matters:

- The reason why you want an early hearing;
- When you would prefer the case to be heard;
- The amount of time you think the hearing will take;
- Whether you intend serving the documents on the other party; and
- Whether (and why) you think that an affidavit should be filed.

This letter is used only for deciding how soon your case will be heard. The Judicial Officer who makes the decision will only read any affidavit filed if permission is granted.

Do I have to notify the other party?

Normally the Court will not hear a case unless the other party has been given notice of the hearing and has received a copy of the Court papers. This is called “serving” the other party.

In very urgent matters the Duty Registrar will allow the case to be listed without the other side being served or notified. This is called an *ex parte* hearing. The Judicial Officer who hears the case may still decide to delay the hearing until the other side has been advised.

If you are told that you must serve the papers on the other party, you should ask Court staff to give you the “Service Kit” that explains how to serve the papers.

If you do not know where the other party is living, you may apply for an Order for Substituted Service or a Location Order. You should get legal advice about this before proceeding.

Are there any fees?

There is a filing fee for a Form 1A Response – see the *Court Fees* brochure. Payment can be made in cash, cheque, credit card, EFTPOS or postal/money order made payable to the Family Court of WA.

If posting in your documents, a credit card authority form is available from the 'Fees' section of the Family Court of WA website www.familycourt.wa.gov.au.

Can I have the fee reduced?

You may be eligible to have the fee reduced. If you have a government concession card, you need to complete the form "Application – reduction of payment of court fees - general".

If you do not have a government concession card, and wish to try and have the fee reduced because of financial hardship, complete the form "Application for reduction of court fees on the basis of financial hardship". Both forms are available from the registry and the website of the Family Court of WA.

What happens next?

You will be given brochures which set out the procedures involved in a parenting case in the Court.

Your case has been listed for a court hearing on the date and time shown on the top right hand corner of the Form 1 – Initiating Application. At the first Court event the Judicial Officer conducting the hearing will consider options to individually case manage your case and may make decisions about interim orders sought.

If your matter is adjourned to allow for a Case Assessment Conference to occur you should read Brochure 3 "Case Assessment Conference: The conference for parenting cases".

Information about family law

Information and Resources about family law are available for you to download from the *Online Information Session* webpage at www.familycourt.wa.gov.au in both PowerPoint and PDF formats.

Some Community Legal Centres and Family Relationship Centres conduct Information Sessions and should be contacted direct for further information.

Cases involving financial issues and parenting issues

If your case involves financial and parenting issues, the Court will give instructions about how it will deal with the financial issues on the day of the hearing and will enquire if you rely on any cross-vested jurisdiction or if your matter involves financial issues in relation to superannuation, binding financial agreements or bankruptcy/insolvency.

These are complicated legal matters and if you think your case involves these matters you should seek legal advice.

Seek legal advice

You should get legal advice before deciding what to do. A lawyer can help you understand your legal rights and responsibilities, and explain how the law applies to your case. A lawyer can also help you reach an agreement with the other party without going to Court.

You can get legal advice from a:

- Legal Aid Office;
- Community Legal Centre; or
- Private law firm.

Court staff can help you with questions about Court forms and the Court process, but cannot give you legal advice.

Need more information?

For more information about Family Dispute Resolution, or to find your nearest Family Relationship Centre:

- go to www.familyrelationships.gov.au; or
- call the Family Relationship Advice Line on 1800 050 321, the line is open from 8:00am to 8:00pm Monday to Friday, and 10:00am to 4:00pm on Saturdays.

For more information about the Family Court of WA, including access to the legislation, forms or publications listed in this brochure:

- go to www.familycourt.wa.gov.au;
- call 08 9224 8222 or 1800 199 228; or
- visit the Family Court of WA registry.

Personal safety

If you have any concerns about your safety while attending Court, please call 08 9224 8222 before your Court appointment or hearing. Options for your safety at Court will be discussed and arrangements put in place. By law, people must inform a Court if there is an existing or pending family violence order involving themselves or their children.

Who else can help?

- **Legal Aid WA**
www.legalaid.wa.gov.au
1300 650 579
- **Community Legal Centres Association of WA**
www.communitylaw.net
08 9221 9322
- **Law Society of Western Australia**
www.lawsocietywa.asn.au
08 9322 7877
- **Aboriginal Legal Service of Western Australia
Family Law Unit**
www.als.org.au
08 9265 6666 or 1800 019 900
- **Law Council of Australia – Family Law Section**
www.familylawsection.org.au
02 6246 3788

MATTERS THE COURT WILL TAKE INTO ACCOUNT

In deciding whether to make an order, the Court must regard the best interests of the children as the paramount consideration. In determining what is in the children's best interests it must consider 2 sets of considerations:

Primary considerations:

- (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 and from being subjected to, or exposed to, abuse, neglect or family violence.

Additional considerations:

- (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 having contact 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 child 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 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.

In addition the Court must consider the extent to which each of the child's parents has fulfilled, or failed to fulfil, 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 fulfil, the parent's obligation to maintain the child.

PARENTING ORDERS EXAMPLES

*These are general examples only.
You should take legal advice before seeking orders.*

- 1 The children Jack Smith born on 25 January 2004 and Jill Smith born on 8 April 2006 live with the wife/husband/mother/father.
- 2 The husband and the wife/The father and the mother have equal shared parental responsibility for the children; or

The wife/husband/mother/father have sole parental responsibility for the children.
- 3 The wife/husband/mother/father spend time with the children as agreed between the parties.

OR

Defined times

Note – These are not recommended times. They are examples and will only be appropriate for some families. There is no need to specify times if you feel you can work these out with the other party. In this example the children live with the husband and spend time with the wife.

- 4 The children Jack Smith born on 25 January 2004 and Jill Smith born on 8 April 2006 spend time with the wife as follows:
 - (a) Each alternate weekend from 9am on Saturday until 5pm on Sunday, extending to 5pm on Monday if the weekend is a long weekend.
 - (b) The weekend time described in paragraph (a) be suspended during school holiday periods.
 - (c) Each year from 5pm on the Saturday until 5pm on the Sunday of the Mothers' Day weekend, if that time is not already provided for under this order.
 - (d) The weekend time described in paragraph (a) be suspended on the weekend of Fathers' Day each year from 5pm on the Saturday until 5pm on the Sunday.
 - (e) One half of each of the school holiday periods at the conclusion of Terms 1, 2 and 3 each year, commencing at 5pm on the Friday of the last week of term.
 - (f) The expression "school holiday period" in this order means the period from 5pm on the last day of the school term to 5pm on the day immediately before the start of the next term.
 - (g) Three weeks during the Christmas school holidays each year, commencing at 9am on the first Saturday in January.
 - (h) Each alternate Christmas from 5pm on 24 December until 10am on 26 December, commencing in 2006.

- (i) Each intervening Christmas from 10am on 26 December until 10am on 28 December, commencing in 2007.
- (j) Each alternate Easter from 5pm on Thursday until 5pm on Monday, commencing in 2008. If Easter falls during the school holidays at the conclusion of Term 1, the time shall form part of the wife's time for that holiday.
- (k) On the children's birthdays each year from 9am to 2pm, provided the birthday does not fall on a school day.
- (l) Telephone calls for up to 15 minutes on each of the children's birthdays if the birthday falls on a school day.
- (m) Telephone calls for up to 15 minutes each Wednesday, with the mother to initiate the call between 6pm and 7pm.
- (n) The wife collect the children from the husband's residence at the start of these times and return them to his residence at the end of these times.

CHECKLIST

Use the checklist to make sure you have done everything you need to do

HAVE YOU:

- Completed Form 1A, photocopied twice. *
- Completed Case Information Affidavit, signed by a witness, photocopied twice. *
- In financial cases, completed Form 13 Financial Statement, signed by a witness, photocopied twice. *

IF FILING FOR URGENT INTERIM ORDERS NOT COVERED BY YOUR FORM 1A:

- Completed Form 2 Application in a Case, photocopied twice. *
- Written a letter to the Duty Registrar addressing the factors from Page 3 of this kit.
- Included an affidavit addressing further issues, if required, and written a letter seeking permission to file such affidavit.
- Organised to pay the appropriate fee or completed an Application – Reduction of payment of court fees – general form (with a photocopy of your government concession card attached) or Application for reduction of court fees on the basis of financial hardship form.

You should tick all the boxes that relate to your case before you file your application with the Court

* Where there is more than one other party you will be required to have an extra copy of the documents for each additional party.

This brochure provides general information only and is not provided as legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to the Court. The Family Court cannot provide legal advice. The Family Court of WA respects your right to privacy and the security of your information.

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