



Instructions for completion

NOTICE OF RISK

1. This is a mandatory form to be used by any person who files an application or response seeking parenting orders on or after 12 January 2015 and as the prescribed notice when allegations for the purposes of subsections 67Z(2) or 67ZBA(2) of the *Family Law Act 1975* are raised on or after 12 January 2015 (see Question 2 of the form).

Note: The form also fulfils the court's obligation under paragraph 69ZQ91)(aa) of the Family Law Act 1975.

2. If you are completing this application by hand and you need more space in any section attach extra page/s as required. The form must be completed by typing or hand printing in ink.
3. Once completed and signed the form must be filed. Before the notice is filed you must make sufficient copies to have one for each person to be served and a copy for your own records.
4. Service is by ordinary service and the following must be served:
 - Each party to the proceedings;
 - The Independent Children's Lawyer (ICL) – if one has been appointed;
 - The alleged abuser or the person from whom the child is alleged to be at risk of abuse when allegations for the purposes of subsections 67Z(2) or 67ZBA(2) are raised.

Note: IF YOU TICK 'YES' TO QUESTION 2 OF THE FORM, the prescribed child welfare authority must be provided a copy of this Notice of Risk by the Registry Manager who may provide such other court documents and information as is required to enable investigation of the contents of the Notice of Risk.

5. An affidavit setting out the evidence on which the allegations are based must be filed with this form unless the evidence relied on is contained in the affidavit filed with the Application or Response (see rule 4.05 *Federal Circuit Court Rules 2001*).
6. **Note: the form will not be accepted unless the specific details of the alleged abuse, or risk of abuse, are clearly particularised in the space provided** (see over for examples of the appropriate particulars required and relevant legislation)

Examples of the appropriate particulars required:

Do you allege that a child to whom the proceedings relate has been abused?

On <date> the child Jason was struck on the back of the head by the respondent's partner Jane because Jason had refused to complete his household chores. The assault caused a 3cm laceration and bleeding. Jason was taken to a GP for treatment where he was diagnosed with a mild concussion, received 6 stitches and was prescribed pain relief medication. Jason was absent from school for 2 days as a result of his injuries.

Do you allege that a child to whom the proceedings relate is at risk of abuse?

The children are at significant risk of serious harm as the respondent was evicted from their home on <date> and has been sleeping in the car with the children for the last 2 weeks with no access to bathroom or kitchen facilities. It is not known how the 3 month old baby's bottles are being sterilised or how formula is being heated.

Do you allege that there has been family violence or there is risk of family violence?

Between <date> and <date> the child has witnessed domestic abuse of his mother (Anne) by his father (John). Incidents occurred weekly including the father yelling at, threatening to assault and threatening to kill the mother. Incidents included physical violence perpetrated by the father including hitting, kicking, pushing, hair pulling and throwing objects. As a result of the domestic abuse the mother has sought medical attention for injuries on at least one occasion and police have attended the home on 3 occasions over the last 12 months.

Details of the adults and children involved in these risks are to be provided to enable them to be clearly identified. The list must include the children or adults at risk. For example:

Examples of relevant adults or children:

Name	Last Known Address	Date of Birth	Description/Role
John Smith	21 Known Pde, Kew	02/03/1985	Applicant Father
Jane Smith	304 Unknown St, Kew	04/05/1985	Respondent Mother
Jason Smith	304 Unknown St, Kew	06/07/2008	Child of parties
Pete Newe	304 Unknown St, Kew	Unknown	Partner of Mother

Relevant Legislation – *Family Law Act 1975*

s.67Z Where interested person makes allegation of child abuse

- (1) This section applies if an interested person in proceedings under this Act alleges that a child to whom the proceedings relate has been abused or is at risk of being abused.
- (2) The interested person must file a notice in the prescribed form in the court hearing the proceedings, and serve a true copy of the notice upon the person who is alleged to have abused the child or from whom the child is alleged to be at risk of abuse.
- (3) If a notice under subsection (2) is filed in a court, the Registry Manager must, as soon as practicable, notify a prescribed child welfare authority.
- (4) In this section:

interested person in proceedings under this Act, means:

- (a) a party to the proceedings; or
- (b) an independent children's lawyer who represents the interests of a child in the proceedings;
or
- (c) any other person prescribed by the regulations for the purposes of this paragraph.

prescribed form means the form prescribed by the applicable Rules of Court.

Registry Manager means:

- (a) in relation to the Family Court—the Registry Manager of the Registry of the Court; and
- (b) in relation to the Family Court of Western Australia—the Principal Registrar, a Registrar or a Deputy Registrar, of the court; and
- (c) in relation to any other court—the principal officer of that court.

s.67ZBA Where interested person makes allegation of family violence

- (1) This section applies if an interested person in proceedings for an order under this Part in relation to a child alleges, as a consideration that is relevant to whether the court should make or refuse to make the order, that:
 - (a) there has been family violence by one of the parties to the proceedings; or
 - (b) there is a risk of family violence by one of the parties to the proceedings.
- (2) The interested person must file a notice in the prescribed form in the court hearing the proceedings, and serve a true copy of the notice upon the party referred to in paragraph (1)(a) or (b).
- (3) If the alleged family violence (or risk of family violence) is abuse of a child (or a risk of abuse of a child):
 - (a) the interested person making the allegation must either file and serve a notice under subsection (2) of this section or under subsection 67Z(2) (but does not have to file and serve a notice under both those subsections); and
 - (b) if the notice is filed under subsection (2) of this section, the Registry Manager must deal with the notice as if it had been filed under subsection 67Z(2).

Note: If an allegation of abuse of a child (or a risk of abuse of a child) relates to a person who is not a party to the proceedings, the notice must be filed in the court and served on the person in accordance with subsection 67Z(2).

(4) In this section:

interested person in proceedings for an order under this Part in relation to a child, means:

- (a) a party to the proceedings; or
- (b) an independent children's lawyer who represents the interests of the child in the proceedings; or
- (c) any other person prescribed by the regulations for the purposes of this paragraph.

prescribed form means the form prescribed by the applicable Rules of Court.

Registry Manager has the same meaning as in section 67Z.

s.69ZQ General duties

(1) In giving effect to the principles in section 69ZN, the court must:

(aa) ask each party to the proceedings:

- (i) whether the party considers that the child concerned has been, or is at risk of being, subjected to, or exposed to, abuse, neglect or family violence; and
- (ii) whether the party considers that he or she, or another party to the proceedings, has been, or is at risk of being, subjected to family violence;

Definitions:

When completing this form you should carefully read the specific definitions of the terms 'abuse' and 'family violence' in the *Family Law Act 1975*, which provides:

4 Interpretation

(1) In this Act, the standard Rules of Court and the related Federal Circuit Court Rules, unless the contrary intention appears:

abuse, in relation to a child, means:

- (a) an assault, including a sexual assault, of the child; or
- (b) a person (the **first person**) involving the child in a sexual activity with the first person or another person in which the child is used, directly or indirectly, as a sexual object by the first person or the other person, and where there is unequal power in the relationship between the child and the first person; or
- (c) causing the child to suffer serious psychological harm, including (but not limited to) when that harm is caused by the child being subjected to, or exposed to, family violence; or
- (d) serious neglect of the child.

(1AB) For the purposes of ... section 4AB ... a person (the first person) is a member of the family of another person (the second person) if:

- (d) the first person is or has been married to, or in a de facto relationship with, the second person; or
- (e) the first person is or has been a relative of the second person (as defined in subsection (1AC)); or
- (f) an order under this Act described in subparagraph (i) or (ii) is or was (at any time) in force:
 - (i) a parenting order (other than a child maintenance order) that relates to a child who is either the first person or the second person and that is in favour of the other of those persons;
 - (ii) an order providing for the first person or the second person to have custody or guardianship of, or a right of access to, the other of those persons; or
- (g) an order under a law of a State or Territory described in subparagraph (i) or (ii) is or was (at any time) in force:
 - (i) an order determining that the first person or the second person is or was to live with the other of those persons, or is or was to have custody or guardianship of the other of those persons;
 - (ii) an order providing for contact between the first person and the second person, or for the first person or the second person to have a right of access to the other of those persons; or
- (h) the first person ordinarily or regularly resides or resided with the second person, or with another member of the family of the second person; or
- (i) the first person is or has been a member of the family of a child of the second person.

(1AC) For the purposes of subsection (1AB), a relative of a person is:

- (a) a father, mother, grandfather, grandmother, step-father or step-mother of the person; or
- (b) a son, daughter, grandson, grand-daughter, step-son or step-daughter of the person; or
- (c) a brother, sister, half-brother, half-sister, step-brother or step-sister of the person; or
- (d) an uncle or aunt of the person; or
- (e) a nephew or niece of the person; or
- (f) a cousin of the person; or
- (g) if the person is or was married--in addition to paragraphs (a) to (f), a person who is or was a relative, of the kind described in any of those paragraphs, of the person's spouse; or
- (h) if the person is or was in a de facto relationship with another person--in addition to paragraphs (a) to (f), a person who would be a relative of a kind described in any of those paragraphs if the persons in that de facto relationship were or had been married to each other.

4AB Definition of *family violence* etc.

- (1) For the purposes of this Act, family violence means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the family member), or causes the family member to be fearful.
- (2) Examples of behaviour that may constitute *family violence* include (but are not limited to):
 - (a) an assault; or
 - (b) a sexual assault or other sexually abusive behaviour; or
 - (c) stalking; or
 - (d) repeated derogatory taunts; or
 - (e) intentionally damaging or destroying property; or
 - (f) intentionally causing death or injury to an animal; or
 - (g) unreasonably denying the family member the financial autonomy that he or she would otherwise have had; or
 - (h) unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependent on the person for financial support; or
 - (i) preventing the family member from making or keeping connections with his or her family, friends or culture; or
 - (j) unlawfully depriving the family member, or any member of the family member's family, of his or her liberty.
- (3) For the purposes of this Act, a child is exposed to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence.
- (4) Examples of situations that may constitute a child being exposed to family violence include (but are not limited to) the child:
 - (a) overhearing threats of death or personal injury by a member of the child's family towards another member of the child's family; or
 - (b) seeing or hearing an assault of a member of the child's family by another member of the child's family; or
 - (c) comforting or providing assistance to a member of the child's family who has been assaulted by another member of the child's family; or
 - (d) cleaning up a site after a member of the child's family has intentionally damaged property of another member of the child's family; or
 - (e) being present when police or ambulance officers attend an incident involving the assault of a member of the child's family by another member of the child's family.

Remove these instruction sheets before filing

**FEDERAL CIRCUIT COURT
OF AUSTRALIA
REGISTRY:**

File number:
COURT USE ONLY
Court
Location:
Court date:
Court time:

Applicant

Respondent

Other party (if applicable)

Repeat as necessary for additional parties

NOTICE OF RISK [Subrule 2.04(1B)]

1. This Notice is filed by:

Applicant Respondent
Other Specify:

Please proceed to question 2 on the next page.

Filed on behalf of

Prepared by

Lawyer's code

Name of law firm

Address for service in Australia

State

Postcode

Email*

DX

Tel

Fax

Attention

*Please do not include email or fax details unless you are willing to receive documents from the Court and other parties this way.

Allegations relating to child abuse

2. **Has a child to whom the proceedings relate been abused or is a child to whom the proceedings relate at risk of being abused?**

(See sections 67Z and 67ZBA and 4 and 4AB of the *Family Law Act 1975*)

Yes

No

If you tick 'no' go straight to question 3.

NOTE (1): If you tick 'yes' to this question, further particulars must be provided at (a) – (d) below. This information will be reported to the relevant child welfare authority, as required by sections 67Z and 67ZBA of the Family Law Act 1975.

NOTE (2): This form also fulfils the Court's obligation under paragraph 69ZQ(1)(aa) of the Family Law Act 1975.

- (a) **Do you allege that a child to whom the proceedings relate has been abused by a party to proceedings or any other person who is relevant to these proceedings?**

Yes

No

Particulars of alleged abuse to a child:

1)

(b) Do you allege that a child to whom the proceedings relate is at risk of being abused by a party to proceedings or any other person who is relevant to these proceedings?

Yes

No

Particulars of alleged risk of abuse to a child:

1)

(c) If 'yes' is ticked to question (a) or (b) please select all of the categories that cover the alleged abuse or risk of abuse.

Physical assault

Serious psychological harm

Sexual assault or abuse

Serious neglect

(d) Have these allegation/s been reported to an external authority?

Yes

No

If you tick 'yes' to question (d), specify to whom the allegation/s have been reported.

Police

Child Welfare Authority

Medical Practitioner

Other (please specify)

Allegations relating to family violence

3. Has there been family violence or is there a risk of family violence by a party to the proceedings or any other person who is relevant to these proceedings?

(See sections 67Z and 67ZBA and 4 and 4AB of the *Family Law Act 1975*)

Yes

No

NOTE (1): If you tick 'yes' to this question, and a child or children have suffered or are at risk of suffering abuse in the form of serious psychological harm caused by being subjected to or exposed to family violence, you should also answer 'yes' to Question 2 above.

NOTE (2): This form also fulfils the Court's obligation under paragraph 69ZQ(1)(aa) of the Family Law Act 1975.

Particulars of alleged family violence or risk of family violence:

1)

(a) Have these allegation/s been reported to an external authority?

Yes

No

If you tick 'yes' to question (a) specify to whom the allegation/s have been reported.

Police

Child Welfare Authority

Medical Practitioner

Other (please specify)

Allegations related to other risk

4. Are there any other facts or circumstances that you allege pose a risk to a child who is the subject of the proceedings?

(a) Do you allege that a child is at risk because a party to the proceedings, or another person relevant to the proceedings, suffers mental ill-health?

Yes

No

(b) Do you allege that a child is at risk because a party to the proceedings, or another person relevant to the proceedings, abuses drugs or alcohol?

Yes

No

(c) Do you allege that a child is at risk because a party, or another person relevant to the proceedings, suffers a serious parental incapacity?

Yes

No

(d) Do you allege that a child is otherwise at risk?

Yes

No

Particulars of facts or circumstances alleged in questions 4(a) to (d):

1)

Details of the identity of all relevant adults and children

5. Details of the identity of all relevant adults and children:

**NOTE If you fear for your safety or the safety of your children, you do not need to disclose your or your children's residential address*

Name	Last Known Address*	Date of Birth	Description/Role

The evidence of the allegations must be set out in an affidavit accompanying this form.

Signature of person filing notice

Signed

Date:

	/ /
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This notice was signed by:

person(s) filing this notice

lawyer for person(s) filing this notice

This notice was prepared by:

person(s) filing this notice

lawyer for person(s) filing this notice

PRINT NAME AND LAWYER'S CODE