



Conference of Experts

Family Court Rule 297(b)

Guidelines for expert witnesses and those instructing them
FAMILY COURT OF WESTERN AUSTRALIA

This brochure will tell you

How to comply with the Family Court Rules about the use of expert witnesses.

If two or more parties to a case in the Family Court want to tender an expert report or produce evidence from an expert witness they must:

- arrange for the expert witnesses to meet at least 14 days before the pre-trial conference; and
- give a copy of this brochure to the expert witness instructed by them.

Why have a conference of experts?

The conference is about reducing the costs for both parties, it gives the experts a chance to identify and narrow the issues that the Judicial Officer will need to consider before going to trial. Conferences help shorten the length of the trial and may even result in a quick settlement.

How do I prepare for a conference?

The Court will order a conference of experts if it feels it is necessary. The court order will include information about:

- which experts are to attend the conference;
- where and when the conference is to occur;
- which issues the experts must discuss;
- the questions to be answered by the experts;
- the documents to be given to the experts, including:
 - Part 15, Division 5 of the Family Court Rules 2021;
 - relevant affidavits;
 - a joint statement of the assumptions to be relied on by the experts during the conference, including any competing assumptions;
 - all expert reports already disclosed by the parties; and
 - any other documents the parties agree need to be included.

These documents should be provided to the experts at least **seven days** before the day of the conference.

Separate conferences may be required between experts in different specialities about different issues in a case. The same procedures must be followed for each conference.

Questions for the experts

Any questions to be answered by the experts at a conference should be:

- those specified by the Court or agreed by the parties; and
- any other question which any party wishes to submit for consideration.

The questions should be framed to solve an issue or issues in the case. If possible, questions should require Yes or No answers, or if not by a very brief response.

Setting a time and place

If the Court has not fixed a place and date for the conference, the parties should fix a mutually convenient date, time and place. The experts should be given a reasonable opportunity to prepare for the conference (ie. it should not normally take place until at least 7 days after the experts have received the pre-reading material but at least 14 days before the pre-trial conference). This ensures the experts have time, if necessary, to:

- seek clarification from lawyers or the Court concerning any question put to them; and
- access any additional materials which the parties are able to provide and which the experts consider to be relevant.

What happens at the conference?

The Family Court Rules state that at the conference the experts must:

- identify the issues that are agreed and not agreed;
- if practicable, reach agreement on any outstanding issue;
- identify the reason for disagreement on any issue;
- identify what action (if any) may be taken to resolve any outstanding issues.

Conduct of the conference

The conference should be conducted in a manner that is flexible, free from undue complexity and fair to all parties.

The experts may appoint one of their number as a chairperson. However, if one of them requests and the parties agree or the Court orders, another person may chair the conference. Secretarial or administrative assistance should be provided by the parties if requested by the experts.

If the experts agree, one of them or a secretarial assistant may be appointed to make a note at the conference of:

- matters agreed; and
- matters not agreed and reasons for disagreement.

The conference may be adjourned and reconvened as necessary.

Information for Experts

If you have been notified that a conference is about to occur you should keep in mind that the Court requires you to follow certain rules.

You should:

- **Respond individually to the questions asked based on the witness statements.**
Your responses need to state the assumptions made, including the opinions based on any alternative assumptions.
- **State any contrary view.**
- **Accept as fact the matters stated in witness statements or assumptions submitted to them.**

It is not your role to decide any disputed question of fact or the credibility of any witness.

Where there are competing assumptions, alternative answers may have to be provided to a question or questions, specifying which of the assumptions are adopted for each answer.

Writing a Joint statement

At the end of the conference the experts must write a joint statement setting out the result of the conference, specifically addressing the items listed under 'What a conference must do'. The statement must be signed by all participating experts immediately at the conclusion of the conference and, otherwise, as soon as practicable thereafter. The experts may specify in the joint statement other questions that they believe would be useful for them to consider. If an expert has a contrary view the expert should express it.

The participating experts should not seek advice or guidance from the parties or their lawyers prior to signing the joint statement

Where experts reach agreement on an issue, the agreement does not bind the parties unless the parties expressly agree to be bound by it.

The joint statement may be tendered by consent as evidence of matters agreed and to identify the issues on which evidence will be called.

Lawyers at a conference

Lawyers attending a conference by order of the Court or who are approached for advice by a participating expert should respond jointly and not individually. The only exception to this is if they have been authorised to respond individually by the lawyers for all other parties with an interest in the conference.

Advice may be provided by:

- Responding to any questions in relation to the legal process applicable to the case.
- Identifying relevant documents.
- Providing further materials on request.
- Correcting any misapprehension of fact or any misunderstanding concerning the conference process.

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.

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.