



Family Court of Western Australia

EXPERT REPORTS AND MODIFIED RULES AND FORMS

Practice Direction (No. 1 of 2024)

1. This Practice Direction applies from 6 May 2024.
2. To the extent of any inconsistency, this Practice Direction prevails over the Family Court Rules 2021 (the Rules) and the Court's Case Management Guidelines.
3. The following changes to the Rules apply:
 - a. in Rule 440 the words "section 70NED" should be read as referring to "section 70NBD(3)";
 - b. in Rule 448 the words "section 65Q(2)" should be read as referring to "section 70NDA"; and
 - c. in Rule 449(5) the words "section 65Q" should be read as referring to "section 70NDA".
4. The attached standard orders and proposed Terms of Reference should be used as a guide to the orders sought in applications for the appointment of experts to prepare reports concerning children in proceedings in the Family Court of WA.

5. Effective 6 May 2024 the following forms have been modified and are approved for use in Western Australia:
 - i. Form 11 Application for Consent Orders
 - ii. Affidavit for efilng application (Divorce).
6. From 4 June 2024 the earlier versions of the forms will no longer be accepted for filing.
7. For further information and to obtain interactive and electronic copies of the forms, parties are referred to the Court's website at www.familycourt.wa.gov.au.

A handwritten signature in blue ink, reading "J Sutherland".

The Honourable Justice Sutherland, Chief Judge
Family Court of Western Australia

Dated: 3 May 2024

Standard orders for the appointment of a Single Expert Witness including preferred terms of reference

1 of in the State of Western Australia be appointed Single Expert Witness in these proceedings to enquire into and report on the following Terms of Reference by :

- (a) What is the stage of development and maturity of the child/ren?
- (b) How is the current dispute between the parties impacting on the child/ren, and what insight do each of the parties have as to that impact?
- (c) What is the relationship of the child/ren with each party and other significant people (including people of cultural significance to the child/ren), and what is the benefit in the child/ren maintaining that relationship, if it is safe to do so?
- (d) What are the child/ren's views about where they live and the time they spend with each party? Are there any factors (including from paragraphs (a) and (b) above) which are considered relevant to the weight to be given to the child/ren's views?
- (e) What is the capacity of each party to provide for the child/ren's developmental, psychological, emotional and cultural needs?
- (f) Is/are the child/ren, or a person who has the care of the child/ren being subjected to, or at risk of being exposed to, family violence, abuse, neglect or other harm?
- (g) What live and spend time with arrangements would promote the safety (including safety from being subjected to, or exposed to, any family violence, abuse, neglect, or other harm that is mentioned at (f)) of:
 - (i) the child/ren; and
 - (ii) each person who has care of the child/ren (whether or not a person has parental responsibility for the child/ren)?
- (h) If you have concerns about the child/ren, the parties or any other significant people, could those concerns be addressed by therapy, counselling or other intervention? If so, are you aware of the cost and availability of appropriate (including culturally appropriate) services in the area?
- (i) Are there any other matters you consider relevant to the particular circumstances of the child/ren?

2 Upon request by the Single Expert Witness only, the parties forthwith provide to the Single Expert Witness the names and addresses of any medical practitioners, counsellors or other professional people or agencies they have attended within the last 5 years and provide to the Single Expert Witness authorities for the release of information concerning themselves and the children from such person or agency.

- 3 Upon request by the Single Expert Witness only, the parties forthwith provide to the Single Expert Witness the names and addresses of all medical practitioners, schools, day care centres and / or agencies whom the child/ren have seen in the last 5 years and also provide to the Single Expert Witness an authority authorising the release of information concerning the child/ren from such person or agency.
- 4 The parties do all things necessary to facilitate the completion of this assessment by the Single Expert Witness including making themselves and the child/ren available for appointments by the Single Expert Witness and executing any authorities for the release of information to the Single Expert Witness.
- 5 The Single Expert Witness be at liberty to liaise with any person in relation to the welfare of the children.
- 6 The costs incurred by the Single Expert Witness be paid by the .
- 7 The Single Expert Witness have permission to inspect or inspect and copy any subpoenaed documents and/or any documents received from the WA Police or Department of Communities, where the Independent Children's Lawyer, and/or the parties have/has such permission.
- 8 The parties and the Independent Children's Lawyer be restrained and an injunction is hereby granted restraining each of them from providing copies of any Single Expert's report prepared for the purpose of these proceedings, or permitting any other person to do so, to any person or entity other than their solicitor or counsel in these proceedings, and/or the Chairperson of an Alternate Dispute Resolution Conference to be convened between the parties, without first obtaining leave of the Court.
- 9 The parties and the Independent Children's Lawyer be restrained and an injunction is hereby granted restraining each of them from making any complaint to a professional body or association concerning the conduct of the Single Expert or concerning the content of the Single Expert's report, or permitting any other person to do so, without first obtaining leave of the Court.
- 10 Paragraphs 8 and 9 of these orders shall remain in full force and effect following completion of the proceedings.
- 11 For the purposes of paragraphs 8 and 9 of these orders, leave of the Court may be sought by the filing of a:
 - (j) written request by the Independent Children's Lawyer, copied to all parties to the proceedings;
 - (k) Minute of Consent orders signed by the Independent Children's Lawyer and all parties or their legal representatives; or
 - (l) Form 2 Application in a case with a brief affidavit in support.

Standard orders for the appointment of a Single Expert Witness including preferred terms of reference - where proceedings involve Aboriginal and Torres Strait Islander children/families

1 of in the State of Western Australia be appointed Single Expert Witness in these proceedings to enquire into and report on the following Terms of Reference by :

- (a) What is the stage of development and maturity of the child/ren?
- (b) Which peoples, countries, cultures and language groups do the parents and/or significant carers of the child/ren belong to?
- (c) Which country, culture and language group does/do the child/ren identify with?
- (d) Which languages do the child/ren, parents and carers speak, and which is their first language?
- (e) How is the current dispute between the parties impacting on the child/ren, and what insight do each of the parties have as to that impact?
- (f) What is the relationship of the child/ren with each party and other significant people (including people of cultural significance to the child/ren), and what is the benefit in the child/ren maintaining that relationship, if it is safe to do so?
- (g) What are the child/ren's views about where they live, the time they spend with each party and their engagement in cultural practices? Are there any factors (including from paragraphs (a) and (d) above) which are considered relevant to the weight to be given to the child/ren's views?
- (h) What is the capacity of each party to provide for the child/ren's developmental, psychological, emotional and cultural needs?
- (i) What is the capacity of each party;
 - (i) to connect with and maintain the child/ren's connection with members of their family and with their community, culture, country and language;
 - (ii) to explore the full extent of their culture, consistent with the child/ren's age and developmental level and the child/ren's views; and
 - (iii) to develop a positive appreciation of their culture.
- (j) Is/are the child/ren, or a person who has the care of the child/ren being subjected to, or at risk of being exposed to, family violence, abuse, neglect or other harm?
- (k) What live and spend time with arrangements would promote the safety (including safety from being subjected to, or exposed to, any family violence, abuse, neglect, or other harm that is mentioned at (i)) of:
 - (iv) the child/ren; and
 - (v) each person who has care of the child/ren (whether or not a person has parental responsibility for the child/ren)?
- (l) If you have concerns about the child/ren, the parties or any other significant people, could those concerns be addressed by therapy, counselling or other intervention? If

so, are you aware of the cost and availability of appropriate (including culturally appropriate) services in the area?

- (m) What is the impact any recommendations made may have on the child/ren's right to enjoy their Aboriginal culture, including the right to enjoy the culture with people who share that culture.
 - (n) Are there any other matters you consider relevant to the particular circumstances of the child/ren?
- 2 Upon request by the Single Expert Witness only, the parties forthwith provide to the Single Expert Witness the names and addresses of any medical practitioners, counsellors or other professional people or agencies they have attended within the last 5 years and provide to the Single Expert Witness authorities for the release of information concerning themselves and the children from such person or agency.
- 3 Upon request by the Single Expert Witness only, the parties forthwith provide to the Single Expert Witness the names and addresses of all medical practitioners, schools, day care centres and / or agencies whom the child/ren have seen in the last 5 years and also provide to the Single Expert Witness an authority authorising the release of information concerning the children from such person or agency.
- 4 The parties do all things necessary to facilitate the completion of this assessment by the Single Expert Witness including making themselves and the child/ren available for appointments by the Single Expert Witness and executing any authorities for the release of information to the Single Expert Witness.
- 5 The Single Expert Witness be at liberty to liaise with any person in relation to the welfare of the children.
- 6 The costs incurred by the Single Expert Witness be paid by the .
- 7 The Single Expert Witness have permission to inspect or inspect and copy any subpoenaed documents and/or any documents received from the WA Police or Department of Communities, where the Independent Children's Lawyer and/or the parties have/has such permission.
- 8 The Independent Children's Lawyer (if appointed) / the parties / the Court be at liberty to provide copies of the following documents to the Single Expert Witness for their perusal and their consideration in this matter:
- (a) 'Strengths of Australian Aboriginal cultural practices in family life and child rearing', Lohoar S, Butera N and Kennedy E, *Child Family Community Australia Paper No. 25 of 2014*, Australian Institute of Family Studies [https://aifs.gov.au/cfca/publications/strengths-australian-aboriginal-cultural-practices-fam](https://aifs.gov.au/cfca/publications/strengths-australian-aboriginal-cultural-practices-fam;);
 - (b) Westerman, T & Wettinger, M. (1997). Psychological Assessment of Aboriginal people. *Psychologically Speaking* <https://indigenoupsychservices.com.au/wp->

<content/uploads/2018/10/Psychological-Assessment-of-Aboriginal-People-Assessment.pdf>;

- (c) 'Some considerations for Family Law Practitioners in working with Aboriginal and Torres Strait Islander children and their families' Stephen Ralph, Forensic Psychologist, presented to NLA Independent Children's Lawyer training program;
 - (d) 'Assessment of capacity in aboriginal and Torres Strait Islander parents', Stephen Ralph, *InPsych* 2015 Vol 3 August Issue 4 <https://www.psychology.org.au/inpsych/2015/august/ralph>; and
 - (e) for Noongar families, the report: Scrine C, Farrant B, Michie C, Shepherd C, and Wright M (2020). 'Raising strong, solid Koolunga: values and beliefs about early child development among Perth's Aboriginal community'. *Children Australia* 45: 40–47.
- 9 Upon giving 7 days' notice to the parties, the Independent Children's Lawyer and/or the Court be at liberty to provide copies of such further or other material to the Single Expert Witness as they consider appropriate in this matter.
- 10 The parties and the Independent Children's Lawyer be restrained and an injunction is hereby granted restraining each of them from providing copies of any Single Expert's report prepared for the purpose of these proceedings, or permitting any other person to do so, to any person or entity other than their solicitor or counsel in these proceedings, and/or the Chairperson of an Alternate Dispute Resolution Conference to be convened between the parties, without first obtaining leave of the Court.
- 11 The parties and the Independent Children's Lawyer be restrained and an injunction is hereby granted restraining each of them from making any complaint to a professional body or association concerning the conduct of the Single Expert or concerning the content of the Single Expert's report, or permitting any other person to do so, without first obtaining leave of the Court.
- 12 Paragraphs 10 and 11 of these orders shall remain in full force and effect following completion of the proceedings.
- 13 For the purposes of paragraphs 10 and 11 of these orders, leave of the Court may be sought by the filing of a:
- (a) written request by the Independent Children's Lawyer, copied to all parties to the proceedings;
 - (b) Minute of Consent orders signed by the Independent Children's Lawyer and all parties or their legal representatives; or
 - (c) Form 2 Application in a case with a brief affidavit in support.