



FAMILY COURT
OF AUSTRALIA



FEDERAL CIRCUIT
COURT OF AUSTRALIA

Joint Practice Direction: JPD1 of 2020

Core Principles in the Case Management of Family Law Matters

- A. This Joint Practice Direction applies to all family law applications filed in the Family Court of Australia and the Federal Circuit Court of Australia (“the Courts”), and where applicable, to appeals in family law.
- B. This Practice Direction sets out the ten core principles that underpin the exercise of the family law jurisdiction of the Courts. All steps taken in proceedings before the Courts, including commencement of proceedings, should follow these principles.
- C. This Practice Direction takes effect from the date it is issued and, to the extent practicable, applies to all family law applications whether filed before, or after, the date of issuing.

Statement of Core Principles

Risk

- 1. The prioritisation of the safety of children, vulnerable parties and litigants, as well as the early and ongoing identification and appropriate handling of issues of risk, including allegations of family violence, are essential elements of all case management.

Parties, lawyers’ and the Courts’ obligations and overarching purpose

- 2. The overarching purpose to be achieved is to ensure the just, safe, efficient and timely resolution of matters at a cost to the parties that is reasonable and proportionate in all the circumstances of the case, having regard to the significant impact of family law disputes on children and families.

Efficient and effective use of resources

- 3. The Courts’ judicial, registrar and family consultant resources are to be allocated and used efficiently to achieve the overarching purpose in the context of ensuring the appropriate handling of risks wherever they are identified as issues in proceedings.

Approach to case management

4. Effective case management of all cases relies on:
 - a. a consistent approach to the case management of like-cases;
 - b. early triaging of matters to an appropriate case pathway, including assessment of risk;
 - c. the use of both internal and external Alternative Dispute Resolution (ADR), including private mediation, family dispute resolution, conciliation conferences and arbitration in property disputes for as many appropriate cases as possible.

Importance of ADR

5. The Courts encourage the use of appropriate dispute resolution procedures. Before commencing an action, parties are expected to make a genuine attempt to resolve their dispute, complying with the requirements and obligations of section 60I of the *Family Law Act* (Cth), the pre-action procedures in Schedule 1 to the *Family Law Rules 2004* and rule 1.03 of the *Federal Circuit Court Rules 2001* as applicable. Subject to an exception applying, the Court must not hear an application for parenting orders unless a section 60I certificate has been filed. After commencing an action, parties are expected to:
 - a. be proactive in identifying the appropriate time, and the appropriate way, in which they can participate in ADR, either by agreement or by court order; and
 - b. Be prepared to consider reasonable offers of settlement at any stage of the proceedings. Failure to do so may have cost consequences.

Costs consequences for failure to comply with orders

6. Non-compliance with orders of the Court and the Rules of Court may attract costs consequences, including, if relevant, the possibility of costs being awarded personally against lawyers in accordance with the *Family Law Act 1975* (Cth) and the Rules of Court.

Lawyers' obligations about costs

7. Parties and their lawyers are expected to take a sensible and pragmatic approach to litigation, and to incur costs only as are fair, reasonable and proportionate to the issues that are genuinely in dispute. Parties and their lawyers are expected to engage in cost budgeting, and regularly inform their clients and the Court of the actual costs they have incurred and are likely to incur (see Part 19.2 of the *Family Law Rules 2004*).

Identifying and narrowing issues in dispute

8. Issues in the case are to be narrowed to those issues genuinely in dispute. In particular:
 - a. all parties are required to make frank disclosure to assist the Court in the determination of the dispute or the parties in the resolution of the dispute;
 - b. applications should only be brought before the court if they are reasonably justified on the material available;
 - c. it is expected that parties will negotiate both prior to, and at court, in order to narrow the issues in dispute before having the matter heard;
 - d. when appropriate, a single expert or an assessor should be engaged to assist the parties and the Court to resolve disputes; and
 - e. costs consequences may flow if parties seek to reopen issues already resolved or unreasonably agitate issues.

Preparation for hearings

9. Parties and their lawyers are to be familiar with the specific issues in the case and prepared for court events and the final hearing in a timely manner. Parties must provide the Court with a considered and informed estimate of the expected hearing time, the number of witnesses, and the specific issues to be decided.

Efficient and timely disposition of Cases

10. The Courts will act effectively and efficiently in achieving the prompt and fair disposition of pending matters, with judgments being delivered as soon as reasonably practicable after the receipt of the final submissions. Where permitted by legislation, short form reasons may be utilised in appropriate cases to facilitate the expeditious delivery of judgments.

[Signed in hard copy]

THE HONOURABLE JUSTICE WILLIAM ALSTERGREN

CHIEF JUSTICE

FAMILY COURT OF AUSTRALIA

CHIEF JUDGE

FEDERAL CIRCUIT COURT OF AUSTRALIA

DATE: 28 JANUARY 2020