

FAMILY LAW ACT 1975

**IN THE FEDERAL CIRCUIT AND
FAMILY COURT OF AUSTRALIA
(DIVISION 2)**

AT NEWCASTLE

No. (P)NCC3896/2023

BETWEEN

**STEPHEN CHRISTOPHER COOKE
(Applicant)**

AND

**HEATHER ANNE COOKE
(Respondent)**

AND

INDEPENDENT CHILDREN'S LAWYER

ORDER 15/10/2024

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STEPHEN CHRISTOPHER COOKE (Applicant)

AND:

HEATHER ANNE COOKE (Respondent)

AND:

INDEPENDENT CHILDREN'S LAWYER

BEFORE:

JUDICIAL REGISTRAR FURNER

DATE:

15 October 2024

MADE AT:

NEWCASTLE

UPON APPLICATION MADE TO THE COURT by the Applicant appearing on his own behalf and Ms Roberts, Solicitor for and with the Respondent and Ms Markham for the Independent Children's Lawyer, all appearances by way of Microsoft Teams.

THE COURT ORDERS BY CONSENT AND PENDING FURTHER ORDER THAT:

1. Pursuant to Part 7.1 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*, Mr Drew Cowen, Psychologist, is appointed as Single Expert ("the Single Expert") to prepare a Family Report in relation to the children, CHRISTIAN FINN COOKE, born 20 August 2014, and JOSHUA FINN COOKE, born 27 January 2017 ("the Single Expert Report").
2. Within 21 days of the date of these Orders, the parties shall finalise and send a joint letter of instruction to the Single Expert in relation to his appointment and requesting the preparation of the Single Expert Report in relation to the following matters:
 - a. The matters set out in sections 60CC, 61DA and 65DAA of the *Family Law Act 1975*;
 - b. Any views expressed by the children and any matters (such as the children's maturity or level of understanding) that may affect the weight that the Court should place on those views;
 - c. The impact of these proceedings on the children; and
 - d. Any other matters that the Single Expert considers relevant.



3. Copies of all documents filed in the parenting proceedings are to be provided to the Single Expert by the party that filed such document at the time of providing the joint letter of appointment to the Single Expert.
4. The parties are granted leave to file an Amended Initiating Application/Response to Initiating Application and Affidavits within 14 days of the date of these Orders.
5. The parties shall not provide any documents to the Single Expert save for:
 - a. a copy of any Orders relating to the appointment of the Single Expert;
 - b. the joint letter of instruction including the sealed documents referred to at Order 3 above;
 - c. any documents filed in these proceedings;
 - d. any documents produced under subpoena in these proceedings; and/or
 - e. any documents requested by the Single Expert.
6. The Applicant and Respondent shall attend, and shall arrange for the children to attend, upon the Single Expert for interviews at such times and locations and in such manner as is directed by the Single Expert.
7. The Single Expert is permitted to speak to the children's psychologists, school counsellor and/or treating paediatrician in the preparation of the Single Expert Report.
8. The Applicant and Respondent shall pay any costs of the Single Expert in equal shares.
9. Should the Applicant and/or Respondent require the Single Expert at Court for the purpose of cross-examination, the Applicant and Respondent shall pay any costs of the Single Expert in respect of such attendance in equal shares.
10. Within seven (7) days of the Single Expert Report being provided to the Applicant, the Applicant shall cause a copy of the Single Expert Report, annexed to an Affidavit of the Single Expert, to be filed and served on each other party to the proceedings.
11. Unless a party objects in writing within 14 days of the date the Single Expert Report is provided to the parties, a copy of the Single Expert Report may be provided to the following:
 - a. A child protection authority,
 - b. A convener of any dispute resolution conference.
12. If requested to do so by the Single Expert, the solicitor for the Respondent Mother is granted leave to photocopy any or all documents produced under subpoena in relation to this matter and is to provide a copy of same to the Single Expert directly.

THE COURT FURTHER ORDERS THAT:

Single Expert Access to Documents



13. The Single Expert shall be at liberty to inspect by appointment at the Court Registry, or electronically, any material presently before the Court in admissible form, any material filed by the parties, produced under subpoena, or produced pursuant to a request made under s 69ZW/67ZBE/67ZBD of the Family Law Act AND the legal representatives for the parties/Independent Children’s Lawyer is/are granted leave to provide to the single expert copies of documents herein including electronic copies.

Subpoena Leave

14. Leave is granted to the Applicant to issue subpoena to the following:
- a. Chromis Occupational Medicine, Maitland; and
 - b. Atune Psychology – Dr Moisey.

Compliance and Readiness Hearing

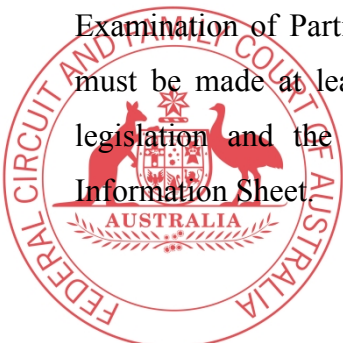
15. The proceedings are listed for a Compliance and Readiness hearing on **3 February 2025 at 11.30am** in person at the Newcastle Registry of the Federal Circuit and Family Court of Australia (Division 2) before His Honour Judge Betts.
16. In accordance with the [Central Practice Direction – Family Law Case Management](#), no less than 7 days prior to the listing, each party must file and serve:
- a. An Amended Application or Response as appropriate, setting out the precise orders sought, if the most recently filed Application or Response is not current;
 - b. An undertaking as to disclosure in accordance with Rule 6.02 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*; and
 - c. A Certificate of Readiness in the approved form.
17. No less than 5 days prior to the listing, the parties or their legal representatives must confer in order to be able to advise the Court of the following matters at the Compliance and Readiness Hearing:
- a. the factual issues requiring determination at a Final Hearing;
 - b. the main legal and factual contentions advanced in relation to each issue in dispute;
 - c. in parenting matters, the capacity of each party to contribute to the cost of a single expert report instead of a family report;
 - d. the proposed witnesses (including expert witnesses) and their availability;
 - e. whether interpreters are required;
 - f. whether the matter is appropriate to be heard by videoconference;
 - g. whether expert evidence can be given by videoconference;
 - h. the estimated length of the Final Hearing and proposed trial plan; and
 - i. whether any other step is required in order for the matter to proceed to a Final Hearing.



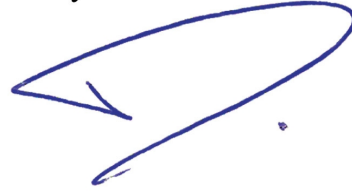
18. No later than **4.00pm on 31 January 2025**, the parties shall provide a draft minute in Microsoft Word format setting out with precision any procedural orders sought to aid the limiting of issues or time required for the Final Hearing, by email to the Chambers of the Compliance and Readiness Hearing Judge at Associate.JudgeBetts@fcfcoa.gov.au.

THE COURT NOTES THAT:

- A. The Application in a Proceeding and supporting Affidavit submitted for filing by the Applicant on 15 October 2024 are rejected for filing as the document titled ‘Application in a Proceeding’ is a Notice of a Address for Service file erroneously under the incorrect title.
- B. If the Compliance and Readiness Hearing does not proceed or the matter is unable to be listed for Final Hearing as a consequence of the non-compliance of one party, consideration will be given to a grant of leave to the complying party or parties to proceed on an undefended basis and to orders for costs.
- C. If the contents of a Certificate of Readiness are found not to be accurate, consideration will be given to a grant of leave to the non-defaulting party or parties to proceed on an undefended basis and to orders for costs.
- D. Any adjournment of the Compliance and Readiness Hearing event is at the discretion of the presiding Judge, and such requests must be made in writing jointly to the presiding Judge's chambers no less than 7 days prior to the Compliance and Readiness Hearing.
- E. Section 114Q of the *Family Law Act 1975* provides that it is an offence punishable by imprisonment for up to one year to communicate to the public an account of family law proceedings which identifies a party to the proceedings, a witness in the proceedings, a person related to, or associated with, a party to the proceedings, or a person who is, or alleged to be, in any other way concerned in the matter to which the proceedings relate, unless specifically authorised by the court. Penalties may apply under section 114Q of the *Family Law Act 1975* to the communication of any material contained in this report other than for use in connection with the proceedings.
- F. If in any proceedings there are allegations of family violence and the provisions of s 102NA of the *Family Law Act 1975* apply (see attached Family Violence Information Sheet), any unrepresented party will not be permitted to personally cross-examine the other party/parties. Affected unrepresented parties may apply to the Commonwealth Family Violence and Cross-Examination of Parties Scheme (“the Scheme”) for representation but any such application must be made at least 12 weeks prior to the final hearing. Further information about the legislation and the Scheme can be found at Part 4 of the attached Family Violence Information Sheet



By the Court

A handwritten signature in blue ink, consisting of a large, sweeping loop that tapers to a point on the left and ends with a small dot on the right.

Registrar



Family Violence Information Sheet

This information sheet contains important information for litigants who have experienced, or are alleged to have perpetrated, family violence. This information is not a substitute for legal advice.

About family violence

Family violence means violent, threatening or other behaviour that coerces or controls a member of the person's family (the family member), or causes them to be fearful (section 4AB *Family Law Act 1975*).

The Federal Circuit and Family Court of Australia (the Court) takes family violence very seriously. Protecting family members from the effects of family violence and ensuring the safety of all people engaged in the family law system, including when attending court, is a high priority for the Court.

Safety at court

Parties concerned about their safety when attending court events can contact the Court's registry in which their matter is listed to arrange a safety at court plan prior to the listing.

Legal and support services

The Family Advocacy and Support Service (FASS) is a free legal and support service provided by Legal Aid to assist family law litigants who have been affected by family violence. Litigants can attend the free Legal Aid Family Law Duty Service. For more information about FASS, see Family Advocacy and Support Services, Legal Aid, see the Legal Aid section of Find a Lawyer or contact the Court.

Cross-examination

Division 4 of Part XI of the *Family Law Act 1975* provides that **unrepresented litigants** will be **unable** to cross-examine the other party at an interim or a final hearing if there are allegations of family violence **and**:

- i. either party has been charged with or convicted with an offence involving violence or threat of violence involving the other party: section 102NA(1)(c)(i)
- ii. a final Family Violence Order applies to both parties: section 102NA(1)(c)(ii)
- iii. an injunction has been made under section 68B or section 114 of the *Family Law Act* for the personal protection of one party against another: section 102NA(1)(c)(iii), or
- iv. the Court makes an order that personal cross-examination should not be permitted: section 102NA(1)(c)(iv).

In matters involving alleged family violence which **do not** fall into the above categories, the Court may permit personal cross-examination by an unrepresented party but must ensure alternative protections, such as cross-examination via video link, are implemented: section 102NB.

These provisions apply to all proceedings under the Family Law Act, not just parenting proceedings.

Parties who are not permitted to personally cross-examine another party may retain private legal representation or apply to the Commonwealth Family Violence and Cross-Examination of Parties Scheme (the Scheme) to obtain legal representation. The Scheme is not means or merits tested, but applicants may be required to contribute to the cost of their representation. Applications are made through the relevant state or territory Legal Aid Commission. All applications to the Scheme must be made at least 12 weeks prior to the final hearing.

Unrepresented litigants who do not have legal representation either privately or through the Scheme will be unable to cross-examine the other party at the final hearing.

Further information can be found on the Court's website: www.fcfoa.gov.au/fl/fv/overview

This information sheet 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 Federal Circuit and Family Court of Australia cannot provide legal advice.

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