

Mental health assessments in family law parenting proceedings

Date: Sunday August 10, 2025

Mental health is a sensitive but important issue in many family law cases, particularly where parenting arrangements are being decided. If a parent is struggling with mental health issues, the court must consider whether these affect their ability to care for their child safely and consistently.

This article explains how and why mental health assessments are used in Australian family law, how they are conducted, and what impact they may have on a case.

Why the court considers mental health in family law proceedings

Under the *Family Law Act 1975* (Cth), the court's main concern in parenting matters is the best interests of the child.

To determine this, the court will consider the:

safety of the child and caregivers, including protection from family violence, abuse, neglect or harm;

needs of the child, including emotional, psychological, and developmental needs;

willingness and ability of each parent to meet those needs;

views expressed by the child, depending on the child's maturity and understanding;

benefit of maintaining relationships, particularly with parents and other significant people, where it is safe to do so;

cultural identity, especially for Aboriginal and Torres Strait Islander children.

If there are allegations or concerns that one parent's mental health could put the child at risk, the court may require independent expert evidence about the parent's condition and its impact on their parenting.

When are mental health assessments ordered?

Mental health assessments aren't ordered in every case. They are only ordered when the court believes it is necessary to understand a parent's psychological state or condition.

Common situations include:

allegations of mental illness (e.g. depression, bipolar disorder, PTSD or schizophrenia);

concerns about erratic or unsafe behaviour;

a history of hospitalisation or treatment for mental health, substance abuse or self-harm;

disputes over whether a parent is fit to care for the child;

contradictory evidence about a parent's mental state.

The court may order a psychological or psychiatric assessment as part of the process of obtaining expert evidence to help determine what arrangements are in the child's best interests.

What types of mental health assessments are used in family law?

There are two main types of expert reports used in family law where mental health is a factor.

Family Report

This is prepared by:

a court child expert, a family consultant employed at the Court to provide expertise;

a panel family consultant, a private practitioner paid by the courts on a fee for service basis; or

a Single Expert Witness, a qualified psychologist, psychiatrist, social worker or other external provider deemed appropriate by the Court.

Involves interviews with parents, children (if appropriate), and other relevant parties.

May involve observations of interactions between parents and children.

Explores family dynamics, relationships, parenting capacity, and any safety concerns.

May explore the mental health of a parent. The extent to which this occurs is subject to the expertise of the report writer.

May make recommendations for parenting arrangements.

NOTE: These reports can be known by various names, subject to which court you are in and who prepares them, including Case Assessment Conference Memorandum, Child Impact Report, Family Report and Single Expert Witness Report.

You can read more about these in our earlier blog, "Family Reports in parenting proceedings".

Single Expert Witness Report (specific psychiatric or psychological assessment)

Ordered by the court and conducted by a qualified psychologist or psychiatrist.

Focuses on a parent's mental health, diagnosis, treatment, and impacts on parenting.

Usually includes a written report and sometimes evidence in court.

What happens during a mental health assessment?

If the court orders a mental health assessment, you will be required to attend appointments with the appointed expert.

A mental health assessment may include:

- a comprehensive interview about mental health history, current symptoms, and daily functioning;
- review of medical and psychological records (with your consent or via court order);
- psychological testing;
- interviews with other parties (such as the other parent, child or treating professionals).

The expert will prepare a confidential report for the court. This cannot be shared outside of the legal proceedings.

How the court uses mental health reports

The court uses mental health assessments to evaluate:

- whether a parent can meet the child's emotional, psychological and physical needs;
- whether there are any risks to the child's safety;
- what parenting arrangements would be in the best interests of the child.

Importantly, a mental health condition does not automatically disqualify a parent from having time with or responsibility for their child. The court considers:

- the type and severity of the condition;
- whether it is being appropriately managed or treated;
- the support systems available to the parent;
- evidence of any risk to the child.

Can a parent refuse a mental health assessment?

A parent can technically refuse to participate in a court-ordered assessment, but this may negatively impact their case. The court may draw an “adverse inference,” meaning it might assume the parent is trying to hide something.

If you have genuine concerns about the assessment (e.g. the selected expert isn’t independent), it is vital to get immediate legal advice.

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Seeking your own expert report

In some situations, a party may wish to obtain their own psychiatric or psychological report to support their case. However, this is only considered admissible if:

- the court has granted permission to use the report;
- the report complies with the rules for expert evidence (such as objectivity and qualifications etc).

You must follow the rules of evidence in family law matters when submitting any expert evidence. These can be complex and complicated, and it is highly recommended you seek advice from a family lawyer to help manage this process.

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What if I disagree with the report?

If you believe the mental health report is inaccurate or unfair, you may:

- request a second expert opinion (with court approval);
- cross-examine the expert during the hearing;
- submit evidence from your treating health professionals to respond to the claims.

Your lawyer can help challenge the report’s findings if they are unreasonable or based on incorrect information.

In summary

- Mental health assessments are used in family law when a parent’s psychological condition may impact the child’s safety

and/or wellbeing.

The court may order a family report or a psychiatric assessment to gather expert insight.

The focus is on the child’s best interest rather than punishing or stigmatising parents with mental illness.

Mental illness does not automatically affect parenting rights; it depends on how the condition is managed.

Legal advice is essential if a mental health assessment is ordered or is being considered in your case.

Get help from a family lawyer

Mental health issues can be deeply personal and difficult to navigate. But if managed properly, mental health evidence can help ensure court decisions prioritise the safety, stability and wellbeing of children.

If you’re involved in a family law matter where mental health is a concern, speak to a family lawyer early to understand your rights and responsibilities, and plan the best way forward.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.