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Beyond Allegation: Evaluating Risk in Line with the New Safety Standard

Post-Reform Expectations under the Family Law Amendment Act 2023

The 2023 reforms to the *Family Law Act* require courts to prioritise both the safety of children and the safety of those who care for them (s 60CC(2)(a)). As a result, expert psychological evidence must shift away from simply reporting allegations to providing defensible, evidence-based evaluations of risk. This tip sheet sets out core principles and examples of what high-quality risk assessments should contain, and how lawyers can identify when expert reports fall short.

1. Allegation \neq Risk

What the Law Now Demands:

Psychologists must not equate a parent's complaint with an actual risk. A competent risk assessment critically evaluates the veracity, relevance, and impact of an allegation—not merely its existence.

In a strong psychological report, you should expect to see:

- Review of collateral material (e.g., medical records, police reports, previous court orders).
- Analysis of the context and behavioural patterns surrounding the alleged event(s).
- A clear statement of whether the allegation is substantiated and what it implies about the child's current safety.

Example:

Rather than stating, *"The mother alleges the father yelled at the child"*, a quality report might read: *"The allegation is corroborated by teacher records describing the child's distress following weekend contact. When observed with the father, the child displayed startle responses to raised voices. This supports the mother's account and suggests a risk of emotional dysregulation in the father during contact."*

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2. Risk = Likelihood × Impact

What the Law Now Demands:

Risk is not binary. It must be quantified (How likely is it to occur?) and qualified (How severe would the impact be?). Expert evidence should seek to distinguish speculative concerns from those based in behavioural data.

In a strong psychological report, you should expect to see:

- An estimate of the probability of recurrence or escalation.
- Identification of protective versus aggravating factors.
- Analysis of severity, frequency, and recency of incidents.

Example:

"While the father engaged in anger management counselling in 2022, he discontinued prematurely and reports no further intervention. Given his history of reactive behaviour in high-stress situations, the risk of verbal aggression during transitions remains moderate and likely to escalate under current parenting arrangements".

3. Intent ≠ Capacity to Protect

What the Law Now Demands:

Section 60CC(2)(a) focuses on the ability to protect, not merely the intention to do so. A stated commitment to child safety is insufficient unless it is reflected in observable conduct.

In a strong psychological report, you should expect to see:

- Concrete behavioural examples demonstrating (or failing to demonstrate) protective actions.
- Consideration of how the parent responds in high-conflict or emotionally charged situations.
- Evaluation of the parent's insight into the child's needs and past harm.

Example:

"The mother reports she always 'puts the child first', yet continues to involve the child in disputes with the father and has breached previous orders regarding contact. This incongruence between stated intention and behaviour limits her demonstrated capacity to protect".

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4. Vague Language Undermines Weight

What the Law Now Demands:

Courts require expert evidence that is specific, testable, and grounded in data. Statements such as *"there may be concerns"* lack forensic value unless clearly explained.

In a strong psychological report, you should expect to see:

- Specific descriptions of the nature and degree of the concern.
- Direct references to observations, records, or assessments underpinning the opinion.
- Avoidance of hedging or generic phrasing.

Example:

Poor: *"The child may be at risk of emotional harm"*.

Better:

"There is moderate risk of emotional harm based on the father's persistent derogatory comments about the mother during contact changeovers, as corroborated by both parental reports and a school social worker".

5. Ask the Right Questions

What the Law Now Demands:

A valid psychological evaluation must answer the court's core questions, not just document history. It must assess current and future risk and explicitly link conclusions to data.

In a strong psychological report, you should expect to see:

- Evaluation of change over time (e.g., treatment engagement, compliance with past recommendations).
- Consideration of both risk and protective factors.
- Clear reasoning linking facts to opinions.

Example:

"The father has attended 14 of 16 recommended sessions and provided therapist verification of improved anger management. He has demonstrated insight into his prior behaviour and has implemented appropriate coping strategies. Based on this progress, current risk is assessed as low, provided the therapeutic support continues".