

FAMILY LAW AMENDMENTS INFORMATION SLIDES

Family Law Branch
Attorney-General's Department
familylawreform@ag.gov.au

Schedule 1: Amendments to the framework for making parenting orders

ALRC RECOMMENDATION	PROPOSED MEASURE
<p><u>ALRC Recommendation 4</u> Section 60B of the <i>Family Law Act 1975</i> (Cth) should be repealed. Note: section 60B contains the Objects and Principles of Part VII which relates to children’s matters.</p>	<p><u>Redraft of Objects and Principles (section 60B)</u> Replace the objects and principles with a much shorter objects clause that refers to:</p> <ul style="list-style-type: none"> • the importance of children’s best interests in making decisions about parenting arrangements • intent to give effect to the Convention on the Rights of the Child.
<p><u>ALRC Recommendation 5</u> Section 60CC of the <i>Family Law Act 1975</i> (Cth) should be amended so that the factors to be considered when determining parenting arrangements that promote a child’s best interests are:</p> <ul style="list-style-type: none"> • what arrangements best promote the safety of the child and the child’s carers, including safety from family violence, abuse, or other harm; • any relevant views expressed by the child; • the developmental, psychological, and emotional needs of the child; • the benefit to the child of being able to maintain relationships with each parent and other people who are significant to the child, where it is safe to do so; • the capacity of each proposed carer of the child to provide for the developmental, psychological, and emotional needs of the child, having regard to the carer’s ability and willingness to seek support to assist with caring; and • anything else that is relevant to the particular circumstances of the child. 	<p><u>Simplification of best interests factors (section 60CC)</u> Amend section 60CC of the Family Law Act to reflect the six factors recommended by the ALRC.</p> <p>The best interests factor relating to safety will include a reference about ‘neglect’, specifically:</p> <ul style="list-style-type: none"> • what arrangements best promote the safety of the child and the child’s carers, including safety from family violence, abuse, neglect, or other harm. <p>The word ‘relevant’ in the factor relating to ‘any <i>relevant</i> views expressed by the child’ has been omitted.</p>

Schedule 1: Amendments to the framework for making parenting orders

ALRC RECOMMENDATION	PROPOSED MEASURE
<p><u>ALRC Recommendation 6</u> The <i>Family Law Act 1975</i> (Cth) should be amended to provide that in determining what arrangements promote the best interests of an Aboriginal or Torres Strait Islander child, a court must consider the child’s opportunities to connect with, and maintain the child’s connection to, the child’s family, community, culture, and country.</p>	<p><u>Standalone best interests factor</u> Insert a new provision that a court, in determining what arrangements best promote the best interests of a Aboriginal or Torres Strait Islander child, must consider the child’s opportunities to connect with, and maintain their connection to, family, community, culture, country and language.</p>
<p><u>ALRC Recommendation 7</u> Section 61DA of the <i>Family Law Act 1975</i> (Cth) should be amended to replace the presumption of ‘equal shared parental responsibility’ with a presumption of ‘joint decision making about major long-term issues’.</p>	<p><u>Repeal presumption of equal shared responsibility (section 61DA)</u> Repeal the presumption of equal shared parental responsibility in section 61DA and its associated provisions.</p> <p>It is not proposed to introduce a presumption of joint decision making about major long-term issues, as recommended by the ALRC.</p>
<p><u>ALRC Recommendation 8</u> Section 65DAA of the <i>Family Law Act 1975</i> (Cth), which requires the courts to consider, in certain circumstances, the possibility of the child spending equal time, or substantial and significant time with each parent, should be repealed.</p>	<p><u>Repeal equal, substantial and significant time provisions (section 65DAA)</u> Repeal the equal time and substantial and significant time provisions in section 65DAA of the Family Law Act.</p>
<p><u>ALRC Recommendation 41</u> The <i>Family Law Act 1975</i> (Cth) should be amended to explicitly state that when a new parenting order is sought, and there is already a final parenting order in force, the court must consider whether:</p> <ul style="list-style-type: none"> • there has been a change of circumstances that, in the opinion of the court, is significant; and • it is in the best interests of the child for the order to be reconsidered. 	<p><u>Codification of Rice and Asplund</u> Amend the Family Law Act to codify the principles in <i>Rice & Asplund</i> which require a party to demonstrate to the court a significant change in circumstances in order to vary an existing parenting order, and that it is in the best interests of the child for the order to be reconsidered.</p>

Schedule 2: Enforcement of child-related orders

ALRC RECOMMENDATION	PROPOSED MEASURE
<p><u>ALRC Recommendation 42</u> Part VII Div 13A of the <i>Family Law Act 1975</i> (Cth) should be redrafted to achieve simplification, and to provide for:</p> <ul style="list-style-type: none"> • a power to order that a child spend additional time with a person; • a power to order parties to attend relevant programs at any stage of proceedings; and • a presumption that a costs order will be made against a person found to have contravened an order. 	<p><u>Redraft of Part VII, Division 13A</u> Amend the Family Law Act to simplify the enforcement provisions in Part VII, Division 13A consistent with the ALRC report. Additionally, remove Community Service Orders as an enforcement measure.</p>
<p><u>Make Up Time Orders</u> Registrars are able to be delegated a broad range of judicial powers under the Family Law Act, including to make certain parenting orders (interim orders, orders in undefended proceedings, and consent orders), but are unable to make orders for children to spend ‘make up’ time with a parent.</p>	<p><u>Delegation of power to make parenting orders (FCFCOA Act)</u> Amend the <i>Federal Circuit and Family Court of Australia Act 2021</i> (Cth) to allow delegation of the power to make parenting orders to allow for Registrars to make orders that compensate for time lost with a child.</p>

Schedule 3: Definition of ‘member of the family’ and ‘relative’

<p><u>ALRC Recommendation 9</u> Section 4(1AB) of the <i>Family Law Act 1975</i> (Cth) should be amended to provide a definition of member of the family that is inclusive of any Aboriginal or Torres Strait Islander concept of family that is relevant in the particular circumstances of the case.</p>	<p><u>Definition of member of the family</u> Amend subsection 4(1AB) of the Family Law Act to provide a definition of member of the family that is inclusive of any relevant Aboriginal or Torres Strait Islander concept of family or kinship.</p>
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Schedule 4: Independent Children's Lawyers

ALRC RECOMMENDATION	PROPOSED MEASURE
<p>ALRC Recommendation 44</p> <p>Section 68LA(5) of the <i>Family Law Act 1975</i> (Cth) should be amended to include a specific duty for Independent Children's Lawyers to comply with the Guidelines for Independent Children's Lawyers, as promulgated from time to time and as endorsed by the family courts.</p>	<p><u>Requirement for ICL's to meet with a child</u></p> <p>Amend the Family Law Act to require Independent Children's Lawyers to meet with a child and to provide the child with an opportunity to express a view, unless there are exceptional circumstances.</p>
<p><u>Requirement for Independent Children's Lawyers to be used only in 'exceptional circumstances' in cases brought under the 1980 Hague Convention on the Civil Aspects of International Child Abduction</u></p> <p>Judges are only permitted to appoint Independent Children's Lawyers (ICLs) in Convention cases where there are exceptional circumstances that justify doing so (subsection 68L(3) of the Family Law Act). Removing the requirement for 'exceptional circumstances' to be met would improve judicial discretion to appoint ICLs, and support the availability of additional evidence and perspectives relating to children involved in Convention cases.</p>	<p><u>Removal of exceptional circumstances requirement</u></p> <p>Amend the Family Law Act to remove the 'exceptional circumstances' threshold established at subsection 68L(3).</p>

Schedule 5: Case management and procedure

ALRC RECOMMENDATION	PROPOSED MEASURE
<p><u>ALRC Recommendation 30</u> The <i>Family Law Act 1975</i> (Cth) should include an overarching purpose of family law practice and procedure to facilitate the just resolution of disputes according to law, as quickly, inexpensively, and efficiently as possible, and with the least acrimony so as to minimise harm to children and their families.</p>	<p><u>Overarching purpose</u> Amend the Family Law Act to include an overarching purpose of family law practice and procedure to facilitate the just resolution of disputes:</p> <ul style="list-style-type: none">(a) according to law; and(b) as quickly, inexpensively, and efficiently as possible; and(c) in a way that ensures the safety of families and children; and(d) in relation to proceedings under this Act in which the best interests of a child are the paramount consideration — in a way that promotes the best interests of the child.
<p><u>ALRC Recommendation 31</u> The <i>Family Law Act 1975</i> (Cth) should impose a statutory duty on parties, their lawyers, and third-parties to cooperate amongst themselves, and with the courts, to assist in achieving the overarching purpose. Breach of the duty will have costs consequences for the person who fails to act in accordance with the overarching purpose.</p>	<p><u>Statutory duty to comply with overarching purpose</u> Amend the Family Law Act to impose a duty on parties and their legal representatives to conduct the proceedings consistent with the overarching purpose, with costs consequences for individuals who breach the duty.</p>
<p><u>ALRC Recommendation 32</u> The <i>Family Law Act 1975</i> (Cth) should be amended to provide the courts with a power to make an order requiring a litigant to seek leave of the court prior to making further applications and serving them on the other party where the court is satisfied that such an order is appropriate for the protection of the respondent and/or any children involved in the proceedings, having regard to the overarching purpose of family law practice and procedure.</p>	<p><u>Harmful proceedings orders</u> Amend the Family Law Act to provide courts with a power to restrain a party from filing new applications in a matter without leave of court, where it is necessary for the protection of the child or the respondent.</p>

Schedule 6: Protecting sensitive information

ALRC RECOMMENDATION	PROPOSED MEASURE
<p><u>ALRC Recommendation 37</u></p> <p>The <i>Family Law Act 1975</i> (Cth) should be amended to provide courts with an express statutory power to exclude evidence of ‘protected confidences’. In determining whether to exclude evidence of protected confidences the court must:</p> <ul style="list-style-type: none">• be satisfied that it is likely that harm would or might be caused, directly or indirectly, to a protected confider, and the nature and extent of the harm outweighs the desirability of the evidence being given, and• ensure that in parenting proceedings, the best interests of the child is the paramount consideration when deciding whether to exclude evidence of protected confidences	<p><u>Power to exclude evidence of ‘protected confidences’</u></p> <p>Amend the Family Law Act to provide courts with an express power to exclude evidence of ‘protected confidences’ (e.g. records relating to the provision of health services such as medical or counselling records), with the best interests of the child as the paramount consideration.</p>

Schedule 7: Communications of details of family law proceedings

<p><u>ALRC Recommendation 56</u></p> <p>Privacy provisions that restrict publication of family law proceedings to the public, currently contained in s 121 of the <i>Family Law Act 1975</i> (Cth), should be redrafted.</p>	<p><u>Amend section 121</u></p> <p>Amend the Family Law Act to simplify and clarify existing terms within section 121 to promote certainty and to facilitate necessary information sharing, including in relation to government and service providers.</p>
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Schedule 8: Standards and requirements for family report writers

ALRC RECOMMENDATION	PROPOSED MEASURE
<p><u>ALRC Recommendation 53</u> The Australian Government Attorney-General's Department should develop a mandatory national accreditation scheme for private family report writers.</p>	<p><u>Power to make regulations that set standards and requirements to be met by family report writers</u> Amend the Family Law Act to allow Government to make regulations that will set standards and requirements for family report writers.</p> <p>It should be noted that the proposed measure would establish the power for the Government to develop regulations that set standards and requirements to ensure the competency and accountability of family report writers. However, the exact implementation approach (for example accreditation scheme or other oversight mechanism) would be determined by Government, in consultation with stakeholders, when the regulations are developed.</p>