# Ready reckoner – Overview of Commonwealth family law guideline changes

We have redrafted our Commonwealth family law and child support guidelines to make them clearer, more consistent and easier to use.

It was not the intention of the redraft to expand or restrict eligibility criteria, however in addressing gaps and inconsistencies, some minor expansions of eligibility have occurred. The following tables outline the changes that are substantive in nature (ie which change eligibility criteria), and those that relate to structure, language and functionality.

## Any questions?

**For training and content queries** contact David Cleary, Coordinator, Assignments Family Law on (03) 9606 5251 or Tina Nikoloski, Coordinator, Assignments Family Law on (03) 9606 5252.

**For general queries** about the guidelines,contact the Family Law Assignments team on (03) 9606 5355.

## Table 1 – Substantive changes

| **Pre-July 2017 guidelines** | **From 3 July 2017** | **Reason for change** |
| --- | --- | --- |
| Definition:‘Priority client’ (eligibility criterion applied in parenting disputes to prioritise funding for FDRS for clients with a particular vulnerability).  | Replaced by **priority FDRS client** 1. Addition of drug and/or alcohol issues as a core vulnerability, which must impact on a person’s ability to participate effectively in family dispute resolution at VLA's Family Dispute Resolution Service.
2. Removal of requirement in the redrafted FDRS guideline for there to be ‘a matter currently before the court’ where a person is relying on the criterion that the child’s ability to maintain a meaningful relationship with a parent ‘will be substantially prejudiced by the proposals or conduct of a party to the dispute’.

These represent changes in eligibility criteria. | 1. This achieves consistency across the core vulnerabilities in the two priority client categories for FDRS and for litigation and increases opportunities for matters to be resolved at an earlier point in a dispute.
2. This aligns with VLA policy to encourage the resolution of disputes without recourse to litigation.
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| Definition: ‘Priority matter’ (eligibility criterion applied in parenting disputes to prioritise funding for litigation for clients with a particular vulnerability, or for particular kinds of matters). | Replaced by **priority litigation client**1. Inclusion of Aboriginal and Torres Strait Islander people in the definition. This must impact on the person’s ability to effectively run their own case in court without a lawyer representing them.This represents a change in eligibility criteria.
2. Inclusion of disability as a core vulnerability, which must impact on a person’s ability to effectively run their own case in court without a lawyer representing them. This represents a (partial) change in eligibility criteria.
 | 1. This achieves greater consistency across the vulnerabilities in the two priority client categories for FDRS and for litigation and aligns with VLA strategies to provide better access to legal assistance for this client group.
2. This achieves consistency across the core vulnerabilities in the two priority client categories for FDRS and for litigation, and across different kinds of disabilities.
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| Nullity | Removed as a guideline.  | Not needed as a guideline. Few applications have been made under this guideline in recent years and those that were submitted related to divorce, and were therefore not eligible. Applications for assistance in matters relating to nullity can still be made under the [Commonwealth special circumstances.](http://handbook.vla.vic.gov.au/handbook/15-special-circumstances/commonwealths-special-circumstances)  |
| Guideline 1.2:Family Dispute Resolution (FDRS) assistance (parenting disputes) | Availability for FDRS extended to alleged perpetrators in matters involving allegations of family violence.This represents a change in eligibility criteria. | Extending the availability for FDRS to alleged perpetrators implements action 27 of the [Family Law Legal Aid Services Review](http://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-family-law-legal-aid-services-review-final-report.docx). |
| Fee schedule change | Inclusion of a condition in the stage 3A fee (Preparation and first day of trial, Family Court) that a lesser fee is available for the first day of trial in matters appearing in the Less Adversarial Trial stream in the Family Court, where the hearing is used as a directions hearing and no evidence is taken. This introduces a new condition attaching to the 3A fee. | This change reflects current case management practice in the Family Court.  |
| Funding for child litigants – no current guideline. | Introduction of new guidelines outlining assistance for child litigants. See new guidelines:1.6; 1.7; 1.8; 5.5; 5.6; 7.3.Children are not required to meet the means test. The redrafted guideline requires VLA to be satisfied that a ‘parent, or person with parental responsibility who would otherwise make the application is genuinely unwilling or unable to do so’. | The new guidelines articulate existing funding policy in these rare applications. Prior to July 2017, child litigants were funded under the Commonwealth special circumstances or [public interest and /strategic litigation](http://handbook.vla.vic.gov.au/handbook/8-public-interest-and-strategic-litigation) criteria. The exclusion of children from having to meet the means test in family law matters represents a change in eligibility criteria.  |

## Table 2 – Non-substantive changes

| **Pre-July 2017 guidelines** | **From 3 July 2017** | **Reason for change** |
| --- | --- | --- |
| The pre-July 2017 guidelines were not organised in a consistent way, didn’t list all criteria applicable under each guideline, and required lawyers to move between different guidelines. | The guidelines are now organised in the following order:* Matter type (parenting dispute, child support etc.)
* Client type (adult or child)
* Service type (advice and negotiation, family dispute resolution at VLA’s FDRS, or litigation)

Each guideline lists every applicable criterion. This minimises the need to move between different guidelines and different parts of the Handbook. The redrafted guidelines will be easier to read and to navigate using the links. | Greater clarity and ease of use.  |
| Threshold tests of:* Forum
* Substantial issue in dispute
* Commonwealth merit
* Contravention of order in last 12 months
 | These tests have been redrafted for clarification and plain language. Links to the applicable tests are provided in each guideline. | Greater clarity and ease of use.  |
| Introductory section | More information is provided. New section on the principles underlying the guidelines.  | Greater clarity and transparency  |
| Assistance for advice and negotiation in parenting disputes (old guideline 1.1)  | Redrafted for clarity. No significant change, apart from substantive changes to definition of ‘priority client’ (see above). Clarification that advice and negotiation grants are available in combined parenting and property, child support, child maintenance and spousal maintenance matters (currently only clearly set out in parenting disputes guideline). | Advice and negotiation funding in parenting disputes was re-introduced in 2016 (action 20 of the [Family Law Legal Aid Services Review](http://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-family-law-legal-aid-services-review-final-report.docx)). The redraft makes it clear that we are also investing in timely intervention in other dispute types.  |
| Family Dispute Resolution (FDRS) assistance in parenting disputes (old guideline 1.2) | Restructure and redraft for clarity. See above re the following substantive changes: * change to definition of ‘priority client’ and
* extending availability for FDRS to alleged perpetrators in matters involving allegations of family violence.
 | Greater clarity and ease of use. |
| Litigation assistance in parenting disputes (old guideline 2) | Restructure and redraft for clarity. See above re change to definition of ‘priority matter’. | Greater clarity and ease of use. |
| FDRS and litigation assistance in combined parenting/property disputes (old guideline 1.3) | Restructure and redraft for clarity. See above re substantive changes to definitions of ‘priority client’ and ‘priority matter’.Clarification that assistance can be provided where there is a negative asset pool i.e. debt only. | Greater clarity and ease of use.  |
| Applicants in parenting disputes litigation (old guideline 2.1.1) | Restructure and redraft for clarity. Incorporated into other guidelines (i.e. no longer stand-alone).  | Greater clarity and ease of use.  |
| Respondents in parenting disputes litigation (old guideline 2.1.2) | Restructure and redraft for clarity. Incorporated into other guidelines (i.e. no longer stand-alone).  | Greater clarity and ease of use.  |
| Parties who are not parents (old guideline 3) | Restructure and redraft for clarity. Incorporated into other guidelines (no longer stand-alone).  | Greater clarity and ease of use.  |
| Discharge or vary orders (old guideline 4) | Restructure and redraft for clarity. Incorporated into other guidelines (no longer stand-alone).  | Greater clarity and ease of use.  |
| Definition: ‘Urgent matter’(criteria as to the matters in which a certificate relating to attendance at family dispute resolution is not required as a condition to obtaining assistance for litigation) | Expanded to include matters where* current reported allegations, investigations or court proceedings relating to child abuse, and
* a state child protection order is in place and the Department of Health and Human Services (DHHS) has recommended that legal proceedings be issued in the family law jurisdiction for orders to be made on lapsing of the child protection order.
 | Greater clarity and ease of use.  |
| Independent Children’s Lawyers (ICL)(old guideline 5) | Restructure and redraft for clarity. Clearer articulation of which matter types an ICL grant may be made for.  | Greater clarity and ease of use.  |
| Child support and child maintenance (old guideline 6) | Restructure and redraft for clarity. Inclusion of child litigants in child maintenance matters guideline. | Included for clarity and consistency. Assistance for child litigants is currently provided under the Commonwealth special circumstances guideline.  |
| Spousal maintenance (old guideline 7) | Restructure and redraft for clarity.  | Greater clarity and ease of use.  |
| Arrears of maintenance or child support (old guideline 8) | Restructure and redraft for clarity. Incorporated into relevant guidelines (no longer stand-alone). | Greater clarity and ease of use.  |
| Determining parentage of a child (old guideline 9) | Redraft for clarity. | Greater clarity. |
| Special medical procedures involving children (old guideline 10) | Restructure and redraft for clarity. Removes reference to ‘parents’ and replaces with ‘person’ to encompass non-parents who exercise parental responsibility relating to the child.Inclusion of child litigants. | Articulates current funding policy and is not an expansion of current eligibility criteria.  |
| Recovery, location and information orders (old guideline 11)  | Redraft for clarity. Conditions attached to grants clearer and more comprehensive.  | Greater clarity. |
| Assistance after final court orders are made (old guideline 13) | Removed as a guideline and information incorporated into preface to guidelines.  | Not needed as a guideline.  |
| Appeals (old guideline 14) | Redraft for clarity.  | Greater clarity. |
| Contravention and enforcement of court orders and contempt of court (old guideline 15) | Restructure and redraft for clarity. Incorporated into relevant guidelines (no longer stand-alone). ‘Substantial contravention’ defined for the first time.  | Greater clarity and ease of use.  |
| International Child abduction (old guideline 16) | Clarification that assistance for three conferences available in these matters. | No impact as this reflects current funding policy. See below under ‘Fee schedule changes’.  |
| Family law costs management (old guideline 17) | Removed as a guideline and information clarified and incorporated into section on costs payable.  | Not needed as a guideline. |
| Fee schedule changes | Note: These changes do not alter eligibility for fees, or quantum of fees. 1. All stage of matter fees incorporated into the following three tables:
* 4.1 – Lawyer professional costs (excluding ICL costs)
* 4.2 – Independent children’s lawyer professional costs
* 4.3 – Counsel costs and ​daily circuit fees

**Note:** This has resulted in some minor changes to fee numbers. 1. Redraft to reflect availability of up to three additional hearing fees in child support matters in the Magistrates’ Court (implemented 1 September 2016).
2. Redraft to specify availability of assistance for attendance at 3 conferences for FDRS litigation intervention in international child abduction matters.
 | 1. Greater clarity and ease of use.
2. Greater clarity.
3. This reflects current funding policy.
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