

## FAMILY LAW INSIGHT SERIES

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## Culture Is Central: Section 60CC(3) and Aboriginal and Torres Strait Islander Children

It is now widely acknowledged—through both research and community testimony—that cultural disconnection can have long-term negative effects on the wellbeing, identity, and development of Aboriginal and Torres Strait Islander children. Disruption of cultural ties has been linked to heightened risks of emotional distress, identity confusion, social exclusion, and intergenerational trauma. In contrast, strong cultural identity has been shown to foster resilience, belonging, and psychological stability.

The inclusion of s 60CC(3) in the Family Law Amendment Act 2023 reflects this growing consensus. It ensures when a child is Aboriginal or Torres Strait Islander, the Family Court must consider culture as a protective right, not simply a demographic characteristic.

Under s 60CC(3), the court is required to examine:

- *The child's right to enjoy their culture, including connection with family, community, culture, Country, and language; opportunities to explore culture appropriate to their age and views; and development of a positive appreciation of that culture.*
- *The likely impact of any proposed parenting order on that right.*

These are not optional considerations; they are statutory. Reports that fail to engage meaningfully with these areas risk overlooking key aspects of the child's welfare and legal rights.

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## 1. Cultural Connection Is Protective, Not Peripheral

The inclusion of Aboriginal and Torres Strait Islander-specific provisions in s 60CC reflects a clear legal and psychological understanding: cultural identity is central to wellbeing. A strong connection to kin, Country, language, and community can enhance resilience, belonging, and emotional development, particularly in the context of historical and intergenerational trauma.

However, cultural connection is not automatically protective. Reports must assess its significance in light of the child's current experience, developmental stage, and readiness.

Assumptions that culture is irrelevant (if not visible) or beneficial (if imposed without support) risk misrepresenting the child's needs.

**Example:** A child in a non-Indigenous home may show no current cultural connection. If the report ignores heritage, it may entrench disconnection. If it urges reconnection without considering readiness or support, it may overlook relational safety and developmental fit.

Family court reports should address:

- The role of cultural identity in the child's emerging sense of self;
- Long-term risks of cultural disconnection;
- Whether any reconnection plans are trauma-informed and appropriate;
- Whether parenting arrangements enable safe, meaningful connection to culture.

Cultural identity should be understood as a developmental domain—not a tick-box—integral to a child's psychological safety, identity, and future wellbeing.

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## 2. Assessing Cultural Connection Requires Cultural Input – But This Must Be Contextualised

Family report writers must approach cultural connection with both respect and realism. While best practice guidelines emphasise cultural observations should ideally be informed by cultural consultants, Elders, or community members, this may not always be feasible in the context of family law proceedings. Nonetheless, the absence of direct consultation does not absolve the report of its responsibility to engage with cultural context in a meaningful way.

Reports should explicitly acknowledge the extent to which cultural information has (or has not) been obtained, and from whom. If no cultural stakeholders were consulted, the report should transparently state this and avoid drawing definitive conclusions about cultural identity or connection. Instead, it may highlight areas where cultural input would have enhanced the assessment, and where further evaluation may be warranted.

**Example:** A family report notes a child “shows limited engagement with cultural practices”. If this observation is based solely on clinical interview and not supported by consultation with Aboriginal services, kinship networks, or culturally relevant literature, it should be framed cautiously.

The report might state:

*“While no cultural consultants were available in this matter, the assessment explored the child’s current connections to cultural practices, Country, and kin. These observations are limited to what was shared by the parties and do not reflect broader community input. A culturally informed assessment may offer additional insights”.*

Such framing avoids unsupported assumptions while still respecting the importance of cultural context under s 60CC(3)(c).

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### 3. The Right to Culture Must Be Reflected in Parenting Recommendations

Under s 60CC(3)(c) of the Family Law Act, a child's right to enjoy their Aboriginal or Torres Strait Islander culture (where practicable) must be considered in determining their best interests. Family reports play a critical role in helping the Court understand how various parenting arrangements might promote or inhibit this right.

Recommendations should reflect the practical realities of cultural access: geographic proximity to cultural community, the presence (or absence) of extended kin, opportunities for language learning, access to cultural events, and each caregiver's demonstrated support or resistance to the child's cultural engagement. These elements should not be treated as peripheral. When relevant, they are essential to identity development, belonging, and psychological resilience.

Where cultural connection is likely to be diminished by a proposed arrangement (e.g., relocation away from Country or kin), the report should acknowledge this as a potential developmental risk, especially if no mitigations are in place. Conversely, a caregiver's active facilitation of cultural continuity may serve as a protective factor.

**Example:** One caregiver encourages regular contact with community Elders, arranges transport to cultural events, and speaks positively about the child's heritage. The other expresses ambivalence and has previously restricted such involvement.

A culturally sensitive report might note:

*"The parenting proposals differ in the extent to which they support the child's cultural development. Continued engagement with community, language, and kinship practices may be affected by the proposed relocation. The Court may wish to consider the implications of reduced cultural access under s 60CC(3)(c), particularly in light of the evidence linking cultural identity with emotional wellbeing in Aboriginal children".*

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#### 4. Relationships with Cultural Knowledge Holders Should Be Identified

For many Aboriginal and Torres Strait Islander children, cultural identity is shaped not just through family but also through relationships with Elders, cultural mentors, and kin who carry cultural knowledge. These individuals often serve as critical supports in helping children understand their place within community, culture, and Country.

While family report writers may not be in a position to interview cultural knowledge holders directly, the report should explore whether such relationships exist and how they are being supported or restricted. This includes considering whether either parent facilitates safe and appropriate contact with cultural figures, or whether there are barriers that warrant explanation.

Reports should also reflect the developmental significance of these relationships, particularly when they contribute to the child's cultural learning, sense of belonging, and broader emotional wellbeing. Recognising these ties aligns with s 60CC(3)(c) of the Family Law Act, which requires courts to consider the child's right to enjoy their culture with others who share it.

**Example:** A child may have a strong bond with a grandparent who speaks language and maintains cultural practices. If one parent supports ongoing contact while the other resists it, the report should clearly identify how these dynamics may affect the child's cultural development and stability.

Well-drafted reports will:

- Clarify the presence or absence of cultural mentors or knowledge holders in the child's life;
- Explore each parent's role in maintaining or limiting access to those relationships;
- Identify the likely long-term implications for cultural identity, especially in the context of disrupted or relocating care arrangements.

This helps ensure the court receives a culturally informed view of the child's relational world that is both legally relevant and developmentally grounded.

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#### 5. Future Cultural Planning Must Be Evident, Not Implied

Section 60CC(3) requires decision-makers to consider the child's right to enjoy their culture with others who share that background. For Aboriginal and Torres Strait Islander children, this includes ongoing connection to Country, kinship systems, and community practices. In the context of family reports, this means that cultural identity must be addressed as developmental and evolving. Not as a fixed trait or a one-time checkbox.

Psychological and family court reports should not assume that cultural identity will simply 'emerge' or that a lack of current engagement reflects a child's future cultural trajectory. Instead, reports should examine whether the proposed parenting arrangements include intentional support for the child's ongoing cultural connection, even if that connection is not currently strong.

This means exploring:

- Whether a parent or caregiver demonstrates understanding of cultural identity development over time.
- Whether there is a realistic plan or pathway for increasing cultural exposure, connection, or knowledge.
- Whether practical barriers (e.g., distance from community, lack of transport, school policies) are acknowledged and addressed.
- Whether the caregiver seeks guidance or support from culturally informed sources (such as schools, Elders, or community programs) in fostering cultural identity.

#### Example:

A caregiver may not currently facilitate regular cultural events due to geographic or logistical barriers. However, if they articulate a clear plan to enrol the child in a local cultural mentoring program, connect with language revival initiatives, or maintain extended kinship relationships, this can indicate cultural commitment and developmental insight. Conversely, where no future cultural consideration is discussed (or is treated as irrelevant) the report risks falling short of its obligations under s 60CC(3).

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### Implications for Legal Practice

Under the amended Family Law Act 1975, s 60CC(3) requires specific attention to Aboriginal and Torres Strait Islander children's rights to cultural identity, connection, and community. For lawyers, this means that family reports should not only mention cultural background in passing but must demonstrate how cultural considerations are integrated into both assessment and recommendation.

Family reports that fail to address the practicalities of cultural maintenance or that rely solely on current levels of engagement – without considering developmental potential or planning – may be insufficient. Where cultural input or consultation is absent, this may signal a gap in the report's evidentiary foundation.

Lawyers should therefore scrutinise whether:

- Cultural connection is treated as integral to the child's wellbeing, rather than peripheral.
- Any statements about cultural engagement are backed by appropriate consultation or evidence.
- The proposed parenting arrangements include realistic, proactive plans to foster cultural identity over time.
- The report acknowledges both present and future cultural needs, especially where current engagement is minimal but capacity or desire exists to build connection.
- The role of cultural mentors, Elders, or knowledge holders is clearly identified where relevant, and their influence on the child's identity and emotional security is appropriately considered.

These considerations go beyond legal compliance; they are essential to ensuring reports respect the child's right to develop a secure, supported cultural identity, in line with both psychological research and Australia's broader commitment to reconciliation.