

FAMILY LAW COUNCIL

ANNUAL REPORT

1997-98

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FAMILY LAW COUNCIL

**Robert Garran Offices
National Circuit
BARTON ACT 2600**

**Telephone: 02-6250 6375
Fax: 02-6250 5917**

16 October 1998

The Hon Daryl Williams AM QC MP
Attorney-General
Parliament House
CANBERRA ACT 2600

Dear Attorney-General,

In accordance with sub-section (9) of section 115 of the *Family Law Act 1975*, I have the honour to present to you the Annual Report of the Family Law Council for the period 1 July 1997 to 30 June 1998.

This report was prepared by myself and Council's Secretariat with the assistance of, and in consultation with, Council members.

Yours sincerely,

(Des Semple)
Chairperson

[photo]

Family Law Council members, observers and staff - June 1998

CONTENTS

	Page
Compliance with Annual Report Guidelines	viii
- <i>Enabling legislation</i>	viii
- <i>Responsible Minister</i>	viii
- <i>Membership and staff</i>	viii
- <i>Financial statement</i>	ix
- <i>Activities and reports</i>	ix
Powers, functions and objectives	xi
Access to information - <i>Freedom of Information Act</i> , Section 8	xii
Members of Council 1997-98	xiv
<hr/>	
1. THE YEAR IN REVIEW	1
2. ADVICE TO THE ATTORNEY-GENERAL 1997-98	
<i>Reports</i>	2
<i>Letters of advice</i>	11
<i>Submissions</i>	14
3. IMPLEMENTATION OF COUNCIL'S RECOMMENDATIONS	
- <i>Introduction</i>	22
- <i>Recommendations to government</i>	22
- <i>Monitoring implementation of recommendations</i>	22
- <i>Government consideration of reports</i>	23
- <i>Implementation of recommendations in letters of advice</i>	24
4. ADMINISTRATIVE MATTERS	
<i>Mode of operation of Council</i>	25
<i>Meetings 1997-98</i>	25
<i>Membership</i>	26
<i>Observers</i>	27
<i>Attorney-General</i>	27
<i>Meetings with the Attorney-General's Department</i>	27
<i>Relationship with other bodies in family law</i>	27
- <i>The Family Court of Australia</i>	27
- <i>The Family Court of Western Australia</i>	27

-	<i>The legal profession</i>	27
-	<i>Legal aid agencies</i>	28
-	<i>The Australian Law Reform Commission</i>	28
-	<i>Australian Institute of Family Studies</i>	28
-	<i>Family Services Council</i>	28
-	<i>Office of the Status of Women</i>	28
-	<i>National Alternative Dispute Resolution Council</i>	28
	<i>Child Support Liaison Group</i>	29
	<i>Trans Tasman liaison</i>	29
	<i>Council staff</i>	29
	<i>Financial resources</i>	29
-	<i>Program Costs</i>	30
-	<i>Sitting fees</i>	30
-	<i>Overall expenditure 1997-98</i>	30
-	<i>Table 1: Family Law Council Expenditure 1990-91 - 1997-98</i>	31
-	<i>Table 2: Family Law Council Expenditure 1993-94 - 1997-98</i>	31
-	<i>Chart 1: Family Law Council - Total Expenditure 1997-98</i>	32
	<i>Council publications</i>	32
	<i>Family Law Council News</i>	32
	<i>Council minutes</i>	33
	<i>Council meeting papers</i>	33
	<i>Tabling of Council reports</i>	33
	<i>On-line access to Council material</i>	33
	<i>Acknowledgments</i>	33

5. STATISTICS

	<i>Introduction</i>	35
	<i>Australian Bureau of Statistics</i>	36
	<i>Marriage and divorce</i>	36
-	<i>Chart 2: Marriage and divorce rates 1990 - 1997</i>	36
-	<i>Chart 3: Marriages registered and divorces granted 1990 - 1997</i>	37
	<i>Marriages celebrated and dissolved</i>	37
	<i>Divorces granted</i>	38
	<i>Joint applications</i>	38
	<i>Number of children affected by divorce</i>	38
	<i>Family Court Statistics</i>	38
	<i>Waiver of court fees</i>	39
-	<i>Chart 4: Percentage of Court fees waived</i>	39
	<i>Divorce applications made in person</i>	39
-	<i>Chart 5: Percentage of in-person applications</i>	40
	<i>Court orders sought</i>	40
-	<i>Chart 6: Orders sought from Family Court 1997-98</i>	41
	<i>Ancillary applications</i>	41
-	<i>Table 3a: Custody/guardianship and access (all children)</i>	42

-	<i>Table 3b: Residence and contact (all children), 1997-98</i>	42
-	<i>Table 4a: Custody and access (ex-nuptial children)</i>	43
-	<i>Table 4b: Residence, contact & specific issues (ex-nuptial children)</i>	43
-	<i>Table 4c: Specific issues orders, 1997-98</i>	43
	<i>Property</i>	43
-	<i>Chart 7: Number of property applications filed</i>	44
	<i>Conciliation conferences</i>	44
	<i>Pre-hearing conferences</i>	44
	<i>Maintenance</i>	45
-	<i>Chart 8: Number of maintenance applications filed</i>	45
	<i>Injunctions</i>	46
-	<i>Chart 9: Number of applications filed for injunctions</i>	46
	<i>Costs</i>	46
	<i>Discharge orders</i>	46
	<i>Consent orders</i>	46
	<i>Parenting plans</i>	47
	<i>Contested matters</i>	47
-	<i>Table 5: Matters fixed for trial and finalised by agreement or judgment</i>	48
	<i>Appeals</i>	48
-	<i>Chart 10: Number of appeals filed</i>	48
-	<i>Table 6: Disposal of appeals</i>	49
-	<i>Chart 11: Categories of issues litigated on appeal</i>	50
	<i>Court Counselling Services</i>	50
-	<i>Amalgamation of Court Counselling Statistics</i>	50
	<i>Table 7: Voluntary, privileged and reportable counselling cases</i>	51
	<i>Table 8: Opened counselling cases by category</i>	52
-	<i>Type of assistance</i>	52

APPENDICES

A.	<i>Section 115 of the Family Law Act</i>	53
B.	<i>Council publications</i>	55
C.	<i>Council Committees 1997-98</i>	56
D.	<i>Persons or organisations who have met with Council 1 July 1997 to 30 June 1998</i>	65
E.	<i>Implementation of Council's recommendations</i>	67

COMPLIANCE WITH ANNUAL REPORT GUIDELINES

The following information is provided in compliance with the *Guidelines for the Content, Preparation and Presentation of Annual Reports by Statutory Authorities*.

ENABLING LEGISLATION

Section 115 of the Family Law Act 1975. The Family Law Council was established by section 115 of the *Family Law Act 1975*. Section 115 is set out in full at Appendix A to this report.

RESPONSIBLE MINISTER

Attorney-General. The responsible Minister is the Attorney-General who appoints the Chairperson and Members, has power to terminate the appointment of a Member in specified circumstances and may convene meetings of Council.

Annual Report. The Family Law Council is required to furnish a report to the Attorney-General for presentation to Parliament as soon as practicable after 30 June each year (sub-section 115(9)). Sub-section 115(10) requires that the Annual Report be tabled within 15 sitting days of its receipt by the Attorney-General.

POWERS, FUNCTIONS AND OBJECTIVES

The powers, functions and objectives of Council are set out on page xi of this report.

MEMBERSHIP AND STAFF

Appointment of Members of Council. Members of the Family Law Council are appointed by the Attorney-General under sub-section 115(2) of the *Family Law Act*. Appointment is for a period of up to 3 years and members may be reappointed. As appointments are staggered, the terms of office of 3 or 4 members usually expire on 30 June each year. Members who retired on 30 June 1997 are listed at paragraph 4.08. Appointments for 1997-98 are discussed at paragraphs 4.09 - 4.11.

Composition of the Family Law Council The *Family Law Act* does not specify the number of Members of Council. The Council is usually comprised of the Chairperson and 10 or 11 Members. It has been the policy of successive governments that, as far as is reasonably practicable, there should be an equal number of women

and men on Council with as wide as possible geographical representation of the various Australian States and Territories.

Council Members 1997-98 Council members for 1997-98, their occupations at the time of their appointments and terms of appointment are listed at pages xiv-xv of this report. Council regards Members as being appointed as individuals rather than as representatives of their employers or organisations. However, the *Family Law Act* specifies that certain bodies, such as the Family Court, should be represented on the Family Law Council.

Observers. There are no provisions in the *Family Law Act* relating to the appointment of Observers on Council. However, Council currently has 5 Observers. The names of Observers and their background are given at page xv of this report.

Council's Staff. Staff members during the reporting year are listed at page xv. Staff for the Council's Secretariat are provided by the Attorney-General's Department.

FINANCIAL STATEMENT

General information. Funds are allocated to Council by the Attorney-General's Department for two purposes: **Program Costs** and **Sitting Fees**. Details of Council's budgetary allocations and its expenditure for 1997-98 are provided in *Part 4 - Administrative Matters*.

Payments to Members. The rates of travelling allowances and sitting fees payable to the Chairperson and Members are set out at paragraphs 4.31 and 4.34 respectively. Expenditure on sitting fees is reported on in paragraphs 4.34 - 4.36. The explanatory notes for Chart 1 (paragraph 4.39) provide details of expenditure on travel and accommodation.

Program costs. The costs, including sitting fees, of maintaining the Family Law Council are provided at paragraphs 4.37 - 4.39. Total expenditure for the past 7 years, including 1997-98, is summarised in Table 1. Table 2 compares expenditure for this year with the 2 previous financial years.

Staff salaries. Council's Secretariat currently comprises the Director of Research (Principal Legal Officer), a Legal Officer (Senior Legal Officer) and one part-time Administrative Service Officer, Grade 3. The Secretariat is a section in the Family Law Branch of the Attorney-General's Department. Staff salaries are met by the Attorney-General's Department. Staff travel is funded out of Council's program costs, and expenditure during 1997-98 on staff travel is set out in the explanatory notes for Chart 1 (paragraph 4.39).

Printing and office supplies. Expenditure on printing and office supplies is given in the explanatory notes for Chart 1 (paragraph 4.39).

ACTIVITIES AND REPORTS

Meetings of Council. Details of Council meetings during the reporting year are given in paragraph 4.02.

Council committee meetings. Details of the meetings held by Council's current committees are given at paragraphs 4.04 - 4.07. Membership of committees, the terms of reference of active projects and the current status of projects are set out in Appendix C.

Work Program 1997-98. Council's 1997-98 committee based projects are detailed in Appendix C. Advice given to the Attorney-General during the year is summarised in Part 2 of the report. Part 3 summarises the current position in relation to the implementation of Council recommendations.

Relationship with other bodies. A report on Council's relationship with other bodies is provided at paragraphs 4.14 - 4.27 of this report. Persons and organisations with whom Council met during the reporting year are listed at Appendix D.

Statistics. Council collects statistical data on family law and related matters from a number of sources. This material is presented in Part 5.

Publications. Council's discussion papers and reports are listed at Attachment B. A statement under section 8 of the *Freedom of Information Act* is provided at pages xii-xiii.

POWERS, FUNCTIONS AND OBJECTIVES

FAMILY LAW ACT 1975 - SECTION 115

The Family Law Council is a statutory authority established by section 115 of the *Family Law Act 1975*. Under sub-section 115(3) of the Act, the functions of Council are to advise and make recommendations to the Minister concerning:

- the working of the *Family Law Act 1975* and other legislation relating to family law;
- the working of legal aid in relation to family law; and
- any other matter relating to family law.

Advice and recommendations to the Minister may be either at Council's own instigation or in response to a referral by the Minister.

COUNCIL'S SECRETARIAT

Council has a small Secretariat to assist in the carrying out of its functions. The functions of the Secretariat are:

- To provide policy advice, research services and drafting assistance to Council, especially in the performance of its functions under section 115 of the *Family Law Act*.
- To provide secretarial, administrative and other support services to Council, especially in relation to meetings of Council and Council Committees and in the drafting and production of Council's reports, discussion papers, letters of advice and other material.
- To manage Council's annual budgetary allocations for running costs and sitting fees.

ACCESS TO INFORMATION - FREEDOM OF INFORMATION ACT - SECTION 8

The following information is provided under section 8 of the *Freedom of Information Act 1982*.

The Family Law Council is an agency for the purposes of the *Freedom of Information Act*. Council's statutory functions are set out at page x of this report.

Involvement of the public. Council's Secretariat maintains a general mailing list of persons interested in family law and related issues. Persons wishing to be added to the mailing list should contact Council's Secretariat. Copies of papers released for consultation purposes, such as discussion papers, Council's reports and quarterly newsletter are distributed free to persons on the mailing list.

Supplementary mailing lists are prepared on individual projects for the purposes of public consultation. As far as it is possible to do so within its limited resources, Council makes every effort to ensure that interested persons and organisations are consulted on issues of relevance to them.

Council documents. The Family Law Council maintains the following categories of documents:

- (a) Reports to the Attorney-General;
- (b) Discussion and consultation papers;
- (c) Letters of advice to the Attorney-General;
- (d) The quarterly newsletter *Family Law Council News*;
- (e) Minutes of Council and Council committee meetings;
- (f) Papers prepared for quarterly meetings of Council;
- (g) Correspondence;
- (h) Documents relating to internal administration and management;
- (i) Research notes and papers prepared in Council's Secretariat or provided to the Secretariat; and
- (j) Submissions from interested persons and organisations.

A list of Council reports is provided at Appendix B. That list also indicates the matters on which discussion papers have been issued.

Access to documents. A number of reports to the Attorney-General (category (a)) are available for purchase by the public through the bookshops of the Australian Government Publishing Service and may be inspected at Council's Secretariat in Canberra. Discussion papers and the quarterly newsletter (categories (b) and (d)) are available on request from the Council's Secretariat and may be inspected in Council's

Secretariat in Canberra. Supplies of discussion papers are usually discarded after a final report has been released.

Minutes of Council and Council committee meetings (category (e)) may be inspected at Council's Secretariat in Canberra and are also available for perusal in the Lionel Murphy Library, Attorney-General's Department, Robert Garran Offices, National Circuit, Canberra.

Council meeting papers (category (f)) have been bound and indexed for the period covering all Council meetings up to 30 June 1996 and are available for perusal at Australian Archives in Canberra. A set of meeting papers is also held by the Director of Research (including papers for meetings held since 30 June 1996) and are available for perusal in Canberra.

It is Council's policy to make available publicly copies of submissions (category (j)) it receives as a result of its consultation processes, unless a person making a submission specifically requests that the confidentiality provisions of the *Freedom of Information Act* should apply to his/her submission or there are strong reasons for not disclosing information in a submission (eg. if the submission contains personal information about an individual).

Other documents (categories (c), (g), (h) and (i)) are kept on Family Law Council files and are maintained for Council by the Attorney-General's Department. Access to these documents may be sought through the Family Law Council under the *Freedom of Information Act* 1982. If it is possible to release such information, it is Council's policy to do so.

The Director of Research is available to advise and assist any person seeking access to Council documents. The only person authorised to refuse access to documents is the Chairperson of Council.

Council has a home page on the Internet. The home page contains a range of Council documents and information. The home page may be viewed at <http://uniserve.edu.au/law/pub/family/>

There was one requests for access to Council documents under the *Freedom of Information Act* during 1997-98. A range of information was made available to the applicant.

Information officer. The information officer for the purposes of Freedom of Information requests and for general inquiries is:

The Director of Research
Family Law Council
Robert Garran Offices
National Circuit

BARTON ACT 2600

Telephone: 06-2506375
Fax: 06-2505917

Office hours are 8.30am - 5.00 pm Mondays to Fridays (excluding public holidays).

MEMBERS OF COUNCIL 1 JULY 1997 - 30 JUNE 1998

CHAIRPERSON

Mrs Jennifer Boland
Corrs Chambers Westgarth
New South Wales

APPOINTMENT

1 July 1995 -
30 June 1998

MEMBERS

Ms Elaine Atkinson
Clinical Psychologist
Western Australia

8 July 1997 -
30 June 2000

Ms Dale Bagshaw
University of South Australia
South Australia

1 July 1995 -
30 June 1998

Ms Susan Blashki
Magistrate
Victoria

4 March 1998 -
3 March 2001

Associate Professor Eleanor Bourke
Aboriginal Research Institute
University of SA
South Australia

4 March 1998 -
3 March 2001

Mr Stephen Bourke
Legal Aid & Family Services
Attorney-General's Department
Australian Capital Territory

8 July 1997 -
30 June 2000

The Hon Justice Rod Burr
Family Court of Australia
Adelaide
South Australia

1 July 1995 -
30 June 1998

Professor John Dewar
Faculty of Law
Griffith University
Queensland

4 March 1998 -
3 March 2001

The Hon Justice Michael Hannon
Family Court of Australia
Tasmania

1 July 1995 -
30 June 1998

Ms Annemaree Lanteri
Solicitor
Wisewoulds
Victoria

1 July 1995 -
30 June 1998

Mr Richard Morgan
Family Law Branch
Attorney-General's Department
Australian Capital Territory

8 July 1997 -
30 June 1998

Mr Des Semple
Director-General
Department of Community Services
New South Wales

1 July 1995 -
30 June 1998

OBSERVERS

Dr Carole Brown
Principal Director of Court Counselling
Family Court of Australia
New South Wales

Dr Kate Funder
Principal Research Fellow
Australian Institute of Family Studies
Victoria

Ms Margaret Harrison
Senior Legal Associate
Office of the Chief Justice of the Family Court
Victoria

The Hon Justice Carolyn Martin
Family Court of WA
Western Australia

Ms Sally Moyle to November 1997
Mr Michael Barnett from November 1997
Australian Law Reform Commission
New South Wales

SECRETARIAT

Mr Bill Hughes
Director of Research

Dr Jo Herlihy to 28 November 1997
Executive Officer

Ms Jenny Degeling from 22 September 1997

Mr Nick Tsakalos to 31 July 1997
Ms Cate Wells from 4 August 1997
Administrative Officer

Address: Family Law Council
 Robert Garran Offices
 National Circuit
 BARTON ACT 2600

The Family Law Council home page may be viewed at <http://uniserve.edu.au/law/pub/family/>

Telephone: 02-6250 6375; 02-6250 6519; 02-6250 6842
Fax: 02-6250 5917

1. THE YEAR IN REVIEW

A number of major projects were finalised and considerable progress was made on others during the year. The report *Parental Child Abduction* was transmitted to the Attorney-general in February 1998, completing the work of the Child Abduction Committee. An interim report on *Penalties and Enforcement*, under the *Family Law Act*, was transmitted to the Attorney-General in March 1998. The final report on this issue, titled *Child Contact Orders*, was transmitted to the Attorney-General in late June 1998.

The Child and Family Services Committee released for public comment a discussion paper proposing *Principles and Minimum Standards for the Care, Support and Protection of Children*. The discussion paper, which is the first in a series proposed by the committee, focuses on the interaction between the *Family Law Act* and State and Territory Child and Family Services legislation in particular. A discussion paper *Violence and Family Law: Financial Remedies* was settled by Council in June 1998 and will be released in July or August 1998.

The following submissions were made by Council during the year:

- FLC submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs Inquiry into Audit Report No 33 for 1996-97 *The Administration of the Family Court of Australia* (July 1997)
- FLC submission to the Attorney-General on the report of the Hon Ian McCall on *Publicity in Family Law Cases* on proposals for amendment to section 121 of the Family Law Act 1975 (13 August 1997).
- FLC submission in response to the Attorney-General's Department discussion paper *Delivery of Primary Dispute Resolution Services in Family Law* (5 December 1997)

Letters of advice were sent to the Attorney-General on the following issues: Arbitration in Family Law, Legal Aid Guidelines, Step-parent Adoptions, Civil and Religious Divorce, the ALRC's Issues Paper No 22 and the operation of the Family Court in Alice Springs NT.

The Council met on 7 occasions during the year which, in terms of the number of Council meetings held, made it the busiest year since the Council was established in 1976. There were also 25 committee meetings and there was one joint meeting with the Family Services Council. As the terms of appointment of 7 members of Council expired on 30 June 1998, the Council's year was particularly busy in an effort to finalise as much of the work program as possible.

For part of the year Council operated with 9 members, rather than the usual 11 or 12 members. This placed some additional responsibilities on other members, observers and Council's staff.

Council maintained close contacts with a number of related organisations and provided regular quarterly reports to the Attorney-General, who also met with Council in Canberra on 20 November 1997.

It is with regret that the Council records the death in Melbourne on 13 June 1998 of Dr Kate Funder of the Australian Institute of Family Studies (AIFS). Dr Funder had been the AIFS Observer on Council since September 1993. Council wishes to acknowledge the very significant contribution made by Dr Funder to the work of the Council. Council has conveyed its sincere sympathy to Dr John Funder and family.

2. ADVICE TO THE ATTORNEY-GENERAL 1 JULY 1997 - 30 JUNE 1998

2.01 Council provided advice to the Attorney-General during the year in 3 major reports and 6 letters of advice. It also made several submissions on matters related to its area of expertise.

REPORTS

Parental Child Abduction (January 1998)

2.02 The recommendations of this report were:

Recommendation 1 (para 2.18)

There is a need to improve the data collected on child abduction and it is therefore recommended that:

- (a) Detailed data should continue to be collected by the International Civil Procedures Unit of the Attorney-General's Department in relation to international child abduction to Hague Convention countries and non-Hague Convention countries;
- (b) The data collected in relation to international parental child abductions should include the sex of the alleged perpetrator, the number of children involved, the ages of those children and the nationality of the abductor; and
- (c) The Australian Federal Police and State and Territory Police should not be required to collect similar data in relation to child abductions within Australia. A body such as the Australian Institute of Criminology, could be commissioned to collect such data as required from time to time if, and when, this is considered necessary.

Recommendation 2 (para 4.23)

- (a) That arrangements be made for requests from non police sources (ie child welfare authorities and Hague Abduction Convention Central Authorities) to locate children abducted from Australia be channelled to the National Central Bureau (NCB), either directly or via State and Territory Police Missing Persons Bureaus.

(b) That a protocol be drawn up between the NCB and the Australian Hague Convention Central Authority (the International Civil Procedures Unit of the Commonwealth Attorney-General's Department) setting out arrangements which will enable the Central Authority to refer cases directly to the NCB.

Recommendation 3 (para 4.34)

Parental child abduction, whether at the international level or within Australia, should not be criminalised and alternative means of improving the recovery rate of abducted children should be explored.

Recommendation 4 (para 4.35)

That a broad discretionary power be given to the courts to make reparation, from the property of persons responsible for international child abductions, to the Commonwealth, or other bodies associated with the recovery of the child, of the costs associated with the recovery of those abducted children.

Recommendation 5 (para 4.45)

That the Attorney-General's Department and the Department of Finance and Administration give consideration to how more resources can be made available to the Australian Federal Police for the recovery of abducted children.

Recommendation 6 (para 5.50)

If the Government does not accept the Council's recommendation that parental child abduction should not be criminalised and proposes to proceed with legislation giving effect to such a proposal, the Council's answers to the consequential questions raised in the terms of reference are as follows:

- (a) Should any such offence apply to parental abduction regardless of the age of the child or should it be confined to persons under the age of 18 years?

The offence should apply to the abduction of a child under 16 years of age. However, it should be possible for an exception where, in the opinion of the court, such a child was capable of making a reasoned consent to the action.

- (b) What exceptions or defences should apply in relation to any such offence?

The following exceptions and defences should apply -

- fleeing from violence (Section 112AC of the *Family Law Act* is an example of this defence);
- sudden, extraordinary emergency;
- protecting the child from danger of imminent harm;
- reasonable excuse within the meaning of the *Family Law Act 1975*;

- the consent of the child involved. Consent could be given by a child who is over the age of 16 years, or, if under 16 years of age, where the age and maturity of the child are such that s/he was able, in the opinion of the court, to make a reasoned judgment in the circumstances of the case.

- (c) Should the consent of the Attorney-General or the DPP be required before the commencement of a prosecution?

The Attorney-General's approval should be necessary before commencing prosecution.

- (d) Should the general prosecution policy of the Commonwealth apply to the institution of such prosecutions?

There should be a special prosecution policy for such cases.

- (e) Should any offence provisions be in the Family Law Act 1975 or in some other legislation?

The offence should be in the Commonwealth Criminal Code with a cross reference to the *Family Law Act*.

- (f) Should any offence be tried in the Family Court or some other court?

Almost all prosecutions for offences under Commonwealth law are conducted before State and Territory courts exercising federal jurisdiction pursuant to sections 39 and 68 of the *Judiciary Act* 1903. The offence should be tried in the same court as most other Commonwealth offences; that is, State and Territory courts exercising federal jurisdiction.

- (g) Should police have powers to intercept telephone communications and use listening devices to locate a child who has been removed or retained by a person in breach of any such offence?

The Council notes that the strict privacy based policy on which the existing legislation is based would not allow an extension of such powers in relation to parental child abduction. The Council appreciates the arguments under which invasions of personal privacy, such as telephone interception and use of listening devices, are confined to the more serious criminal offences. Notwithstanding this, Council considers that, irrespective of whether parental child abduction is criminalised, police should have power to intercept telephone communications and use listening devices in cases where a child has been abducted and such interception or use would assist in the recovery of the child.

Brief answers to the Attorney-General's specific questions

2.03 The Attorney-General addressed 12 specific questions to Council. Those questions are set out below together with Council's brief answer to each question. More detailed reasons for the Council's answers are given in the body of the report:

Q1. Should it be a criminal offence for a person with parental responsibility for a child to remove the child from Australia, or retain the child in a foreign country, in breach of the custody, guardianship or access rights of another person?

A No.

Q2. Should it be a criminal offence for a person with parental responsibility for a child to remove a child from his or her country of habitual residence to Australia, or to retain the child in Australia, in breach of the custody, guardianship or access rights of another person?

A No.

Q3. Should it be a criminal offence for a person with parental responsibility for a child to do the following within Australia:

- to remove the child from the care of a person, or
- to refuse or fail to deliver or return a child to a person

with intent to prevent the exercise or performance of any of the powers, duties or responsibilities of another person who has parental responsibility for the child?

A No. However, see Recommendations 4, 5 and 6.

Q4. Should it be an offence to aid or abet the commission of any such offence?

A If, contrary to the Council's recommendation, it is decided to criminalise parental child abduction, it would be incongruous not to make it an offence to aid and abet a person who abducts his or her own child.

Q5. Should any such offence apply to parental abduction regardless of the age of the child?

A If it is decided to criminalise parental child abduction it should be an offence to abduct a child up to age 16 years. However, Council would suggest that the court should have some discretion in determining

whether a child, who was competent to do so, had given consent to the action of the parent.

Q6. What exceptions or defences should apply in relation to any such offence?

A If it is decided to criminalise parental child abduction Council is of the view that the following exceptions and defences should apply:

- **fleeing from violence (Section 112AC of the *Family Law Act* is an example of this defence);**
- **sudden, extraordinary emergency;**
- **protecting the child from danger of imminent harm;**
- **reasonable excuse within the meaning of the *Family Law Act 1975*;**
- **the consent of the “child”. “Child” would be defined as a person who has attained the age of 16 years, or a person who is under 16 years of age but whose age and maturity are such that s/he was able, in the opinion of the court, to make a reasoned judgment in the circumstances of the case.**

Q7. Should the consent of the Attorney-General be required for the commencement of a prosecution for parental child abduction?

A If it is decided to criminalise parental child abduction the consent of the Attorney-General should be necessary before commencing prosecution action.

Q8. Should the prosecution policy of the Commonwealth apply to the institution of such prosecutions?

A If it is decided to criminalise parental child abduction a special prosecution policy should be developed for such cases.

Q9. Should any such offence provisions be in the *Family Law Act 1975* or in some other legislation?

A If it is decided to criminalise parental child abduction the offence should be in the Commonwealth Criminal Code with a cross reference to the *Family Law Act* .

Q10. Should any such offences be tried in the Family Court or some other court?

A Almost all prosecutions for offences under Commonwealth law are conducted before State and Territory courts exercising federal jurisdiction pursuant to sections 39 and 68 of the *Judiciary Act 1903*. The offence should be tried in the same court as most other

Commonwealth offences; that is, State and Territory courts exercising federal jurisdiction.

Q11. Should police have powers to intercept telephone communications and use listening devices to locate a child who has been removed or retained by a person in breach of any such offences?

A The Council appreciates the arguments under which invasions of personal privacy, such as telephone interception and use of listening devices, are confined to the more serious criminal offences. Notwithstanding this, Council considers that, irrespective of whether parental child abduction is criminalised, police should have power to intercept telephone communications and use listening devices in cases where a child has been abducted.

Q12. Should proceeds of crime legislation apply to any such offences?

A The Council considers that, irrespective of whether parental child abduction is criminalised, the courts should have a broad power to make reparation, from the property of persons responsible for abducting children, to the Commonwealth of the costs associated with the recovery of those abducted children.

Action: Council's report is currently being considered by Government.

Penalties and Enforcement: Interim Report March 1998

2.04 The following recommendations are made at the end of Chapter 5 (paragraph 5.57) of this interim report:

1. That, as a matter of priority, Council finalise its study, and report to the Attorney-General by the end of June 1998, on the following matters:
 - Whether there is a need for a new system for managing applications for enforcement and if so how such a system would operate. For example, whether the proposed Federal Magistracy, or the existing Magistracy, should hear applications summarily for enforcement of child contact orders.
 - The use of warrants for the purposes of enforcing contact orders, including an examination of the system operating in New Zealand.
 - The appointment of enforcement officers for the purpose of enforcing a contact order in the event of a breach of that order.

- Whether standard wording and model orders would assist the parties, legal practitioners, the court and others in overcoming existing problems in relation to the drafting of contact orders;
 - The use of:
 - (a) post-order counselling, and
 - (b) counselling in general where problems with enforcing orders arise.
 - The role and value of Contact Handover Centres in enabling children to have an ongoing relationship with both of their parents.
 - Whether there is a need for education programs for legal practitioners, parents and others in relation to child contact.
 - Whether there should be a new and separate 3 tiered approach to breaches of contact orders (as distinct from enforcement provisions relating to other court orders) involving preventative, remedial and punitive measures.
 - What consideration should be given to developing mechanisms for ensuring that the wishes and needs of children are given appropriate consideration in any enforcement process.
 - What penalties should apply for refusal to comply with a court order.
 - Other matters, including the application of the “best interests” principle and the principles set out in section 60B of the *Family Law Act*, and any matter which will assist in developing a system to ensure that contact enforcement problems are effectively and inexpensively resolved.
2. That Council also undertake an examination of what legislative amendments would be necessary to achieve any proposed changes.

Action: The Attorney-General agreed to the Council’s proposed course of action as set out in these preliminary recommendations.

Child Contact Orders: Enforcement and Penalties June 1998

2.04 The recommendations of this report were:

Recommendation 1 (para 2.13)

That a program of community education on child contact be established. The program should focus on the general community, the legal profession and others and should cover child contact, contact orders and the enforcement of orders, and other matters referred to throughout this report. This proposal will have cost implications initially,

but any improvements in the operation of the present system should result in a reduction of expenditure in the long term.

The aim of the community education program should be to reinforce the right of children to have contact on a regular basis with both parents and with other people significant to their care, welfare and development. It is important that all sections of the general community understand that, following separation, the residence parent (irrespective of whether that person is the mother or father of the child) does not set the conditions and determine the individual circumstances under which the other parent - or others, including grandparents and relatives - can have contact with a child of the marriage.

The community education program should complement other measures recommended in this report.

Recommendation 2 (para 2.19)

That the legislation dealing with enforcement of contact orders makes it clear that the court is to ensure that breaches of its orders are appropriately and adequately dealt with and that wilful or repeated breaches of orders are punished. Council recommends that there should be an objects provision in the legislation which clearly states that this is the intention of the legislation.

Recommendation 3 (para 4.17)

That, in appropriate cases, judicial officers should be empowered to require both parties to attend for compulsory post-order counselling where they identify the need for such counselling at the time residence and contact orders are made.

Recommendation 4 (para 4.26)

That parents who are having difficulties maintaining contact with their children should have the option, if they so choose, of contacting a conciliation counsellor or mediator who would be able to initiate and facilitate remedial action wherever possible and appropriate.

Recommendation 5 (para 4.35)

That section 112AD(5) of the *Family Law Act 1975* be re-drafted to remove the current ambiguity which exists in relation to its interpretation as to the point at which counselling can be ordered.

Recommendation 6 (para 5.37)

Council recommends that the following changes be made to the system for determining contact enforcement applications:

- (a) That in the short term Judges/Judicial Registrars and State Magistrates continue to hear applications to the court concurrently with programs designed to develop specialist expertise for handling contact enforcement cases and, as far as possible, there should be consistency of personnel handling individual cases;
- (b) That in the short term the Family Court give greater priority to hearing contact enforcement applications and meet its Case Management Guidelines of a hearing within 14 days.
- (c) Subject to the matters in (d) below being put into place, that in the long term the jurisdiction to hear such applications be transferred to Federal and State Magistrates who would use a summary procedure and would be empowered to transfer a matter to the Family Court where they considered this desirable. There would be a right of appeal to the Family Court against a Magistrates decision only on a question of law;
- (d) That Federal and State Magistrates who hear such matters should have the following assistance:
 - i. provision of a comprehensive and specialised training program.
 - ii. the supply of adequate information and resource material, including up-to-date legislation and a handbook;
 - iii. a 24 hour help line which enables them to seek urgent advice from the Family Court; and
 - iv. access to both court and community based counselling, mediation and family report services.

Recommendation 7 (para 5.47)

That in cases involving more complex issues, the court should be able to appoint Counsel to assist the court. Child Representatives, because of their special training, would be appropriate for appointment to undertake this role. Where Counsel to assist the court is appointed, Council recommends that the Legal Aid Guidelines should direct that this be taken into account by Legal Aid Commissions when considering applications for legal aid by the parties.

Recommendation 8 (para 5.53)

That after the effects of the implementation of recommendations made in this report are known, the cost and merits of the proposal to give responsibility for taking court action against breaches of court orders to a public body should be fully examined. Relevant public bodies, such as the Director of Public Prosecutions, should be consulted about the proposal at that time.

Recommendation 9 (para 6.11)

That standard contact orders be developed by the Family Court in consultation with judicial officers, legal practitioners, counsellors, mediators and others for use by legal practitioners, the parties and others in preparing court orders.

Orders should have endorsed on them appropriately worded warnings which indicate the seriousness of breaching contact orders and explanatory information about orders, including the consequences of breaching an order and advice about what to do when an order is breached.

Recommendation 10 (para 7.28)

That the availability of recovery orders for the delivery of children to contact parents be included in the community education program, particularly in relation to legal practitioners. Council considers that the number of cases where this would offer a practical solution would be small and the education program should make this quite clear.

Recommendation 11 (para 7.41)

That existing arrangements for enforcing recovery orders issued in favour of a residence parent under the *Family Law Act* should also operate in relation to recovery orders issued for the delivery of a child to a contact parent under section 67T(b) of the Act.

Recommendation 12 (para 8.28)

Contact problems are unique and there is a need for special provisions to apply in relation to the making, and breaches, of contact orders. Provisions separate from those relating to other court orders should, therefore, be inserted in the *Family Law Act* addressing these matters.

A solely punitive approach for breaches of contact orders has shortcomings and the legislation should recognise the need for preventative, remedial and punitive

approaches to be available to the parties and the court in relation to breaches of contact orders.

In extending the powers of the court to take preventative, remedial and punitive action appropriate to individual cases, Council recommends that the issues discussed in paragraphs 8.09, 8.10, 8.12, 8.14, 8.16 and 8.21-8.25 be taken into account.

Recommendation 13 (para 9.21)

Council notes the Government's current initiatives in relation to contact handover centres and stresses that such centres offer some parents their only means of maintaining regular contact with their children. Council notes that at present the availability of centres is inadequate in metropolitan areas and that, apart from Mildura, the needs of rural and regional areas are not addressed.

Council supports the further expansion of publicly subsidised services as additional funds become available, the encouragement of the use of informal arrangements between parents and the development of commercial operations. However, Council considers that there is a need for commercial operations to be studied and, if necessary, regulated by Government in the interests of the children involved.

Recommendation 14 (para 10.24)

Council strongly recommends that there be no link between payment of child support and child contact.

Recommendation 15 (para 12.08)

That the Government invest funds in the proposals put forward in this report on the basis that it will ultimately lead to a more efficient and effective system for dealing with child contact problems. Council considers that in the long term the improvements proposed in this report will result in cost savings in both financial and human terms.

Action: This report was conveyed to the Attorney-general at the end of the 1997-98 financial year.

LETTERS OF ADVICE

Arbitration in family law March 1998

The Attorney-General's Department wrote to Council about proposed amendments to the Family Law Act 1975 relating to arbitration in family law and sought Council's advice on the proposed changes.

Council's advice was mainly supportive of the proposed amendments. However, Council drew attention to a number of matters. These related to:

- The need for new rules in relation to the arbitral process.
- The scope of the existing rule making powers (section 123).
- The circumstances in which a court could set aside an award of an arbitrator.

Action: Council's advice was taken into account in the development of the proposed amendments.

Legal aid guidelines March 1998

The Attorney-General's Department referred to Council its Legal Aid Guidelines, which were being reviewed prior to implementation from 1 July 1998.

Council discussed the guidelines with a senior officer of the NSW Legal Aid Commission before preparing its advice. The main matters raised in Council's advice were:

- Council's concern about the vary limited circumstances in which, even wealthy, parents were required to pay for child representation.
- The inflexibility of the means test limit on property between country and city applicants.
- Cost caps.
- The need for specific guidelines in relation to appeals.

Action: Council's advice was taken into account in the preparation of the guidelines.

Step-parent adoptions May 1998

On 2 January 1998 the Attorney-General forwarded to Council a copy of a letter from the Hon Justice Richard Chisholm raising concerns about the operation of the *Family Law Act 1975* in relation to step-parent adoptions and asked for Council's advice on the issue by 30 June 1998.

Council considered the matters raised in Justice Chisholm's letter and took into account a number of factors including recent articles of relevance, the case law, statistics on step-parent adoptions in Australia, the policy behind the current family

law provisions, consideration of the matter by the Standing Committee of Attorneys-General and other matters.

Council advised the Attorney-General that in its view the current legislative provisions were soundly based and recommended that there should be no change to the current policy.

Action: Council's advice was accepted by the Attorney-General.

Civil and religious divorce

A problem has been identified where a Muslim or Jewish woman may obtain a civil divorce, but her husband refuses to agree to or grant a religious divorce. This has obvious implications for the woman's ability to remarry in her religious faith. It also has immigration and social security implications in some cases. However, Council is not in a position to advise you on these issues.

An opinion was obtained from the Acting Solicitor-General on the constitutional validity of possible amendments to the *Family Law Act*:

- to amend the Act to insert in Part VI a "no impediment" clause which would defer the hearing of the civil dissolution application pending the granting by the relevant parties of a religious divorce; or
- to amend the Act so that, after a decree nisi for civil dissolution has been made, there be a deferment of the decree becoming absolute under section 55 of the Act until the Court is satisfied that the grant of the religious divorce has occurred.

The Acting Solicitor-General advised that the proposed amendments would be within the scope of s.51(xxi) -(xxii) of the Constitution but they would most probably contravene s.116 of the Constitution.

In considering the effects of denial of a religious divorce on a party who has been divorced in the civil courts, Council is aware of the anomalous situation arising when a person enjoys the Constitutional protection of the freedom of religious expression but seeks the assistance of Government to circumvent certain undesirable consequences of the observance of their religion. The problem, in Council's view, affects those who wish to uphold their religious beliefs and obtain a religious divorce before remarrying according to their religion. A person who obtains a civil divorce in Australia has no impediment, arising from the divorce, to civil remarriage in Australia. Furthermore, section 116 of the Constitution provides a guarantee of freedom from, as well as freedom of, religion. Hence it protects the right not to hold religious views or take part in religious rites.

A more general provision which does not focus on religious processes, but extends the Court's discretion, may be constitutionally valid, but there is some uncertainty on this issue. However a broad discretionary power could leave it open to the Court to impose a range of conditions not sought to be covered by any amendments arising out of this issue, thereby introducing certain consequences which may be undesirable from a policy perspective.

Given the constitutional uncertainty of the proposed amendment, the possible undesirable consequences from a policy perspective, and the Acting Solicitor-General's view that there would be considerable difficulty in drafting the amendment, it is Council's view that the *Family Law Act* should not be amended to deal with this particular problem. In light of this view, the current judicial approach taken by the Family Court would continue to be available on a case by case basis.

Whether other legislation should be amended to deal with the immigration and social security issues raised in the background paper is a matter for the responsible Ministers.

Council took the view that the problems outlined above arise from the observance of religious practices and not from any shortcomings in the *Family Law Act*. It therefore recommended that the *Family Law Act* should not be amended in these circumstances.

Action: This advice was forwarded to the Attorney-General at the end of the financial year.

ALRC Issues Paper No. 22

Council made a submission to the ALRC through the Attorney-General in relation to Issues Paper No. 22.

Council had earlier written to the President of the ALRC, Mr Alan Rose AO, on 16 March 1998 expressing its concerns. In its letter Council noted that aspects of some of the issues raised in the paper were already being considered by other bodies, including the Family Law Council, the Family Services Council and NADRAC.

In the circumstances, Council suggested to the ALRC that there might be a need for an audit of the various issues raised in the paper with a view to sharing the work and to avoid duplication of effort.

Mr Rose replied saying that he agrees with Council's suggestion. Council will discuss the matter further with its ALRC Observer (Mr Barnett) and will cooperate with the Commission in relation to the sharing of the workload and the avoidance of duplications of effort and overlaps in projects.

Council's submission was submitted in June 1998. In it Council repeated its concerns about the wide ranging nature of the ALRC's inquiry and indicated a number of areas in which Council was conducting, or was proposing, its own inquiries.

Council drew attention, at a general level, to a number of matters gained from its own experiences in relation to a number of the issues raised in the ALRC's paper.

Council will continue to work closely with the ALRC and other bodies to avoid duplications and overlaps on this reference.

Action: Council's submission was made at the end of the financial year.

Court services in Alice Springs

Following its meeting in Alice Springs on 21-22 May 1998, Council wrote to the Attorney-General in relation to the isolation of family law practitioners in Central Australia and of local issues. Council made the following specific recommendations:

- That video conferencing facilities used by the Family Court elsewhere in Australia be considered for use in Central Australia to overcome some of the difficulties associated with isolation which are currently being experienced in Alice Springs; and
- That the possibility of appointing an Aboriginal mediator in Alice Springs be examined by the Family Court as a means of assisting Indigenous communities in the area.

Action: This advice was transmitted to the Attorney-General at the end of the financial year.

SUBMISSIONS

The following submissions were made by Council during the year:

Submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs Inquiry into Audit Report No 33 for 1996-97 *The Administration of the Family Court of Australia* (July 1997)

Submission to the Attorney-General on the report of the Hon Ian McCall on *Publicity in Family Law Cases* on proposals for amendment to section 121 of the Family Law Act 1975 (13 August 1997).

Submission in response to the Attorney-General's Department discussion paper
Delivery of Primary Dispute Resolution Services in Family Law (5 December
1997)

Council's views, as expressed in these submissions, are summarised below.

Administration of the Family Court

Council does not regard itself as qualified to assess the methodology and general approach used by the ANAO in undertaking its audit. Council's comments here are, therefore, confined to those matters relating to family law policy which fall within its statutory responsibilities.

In general, Council has no difficulty with the recommendations of the second audit report. The Family Court already has mechanisms in place to address most if not all of the recommendations and, with the exception of Recommendation No. 4, where the Court accepted the thrust of the recommendation 'subject to considerations of proportionality and materiality'; and Recommendation 5, which the Court accepted but with the view that the ANAO's 'emphasis on estimating demand is over emphasised when there is evidence of actual demand readily available' (p.36), the Court accepted all recommendations.

Until the Court's new processes are fully in place and operational, little advantage is to be gained by revisiting hypotheses concerning the probable effectiveness or otherwise of the recommendations of the second audit report. Nonetheless, Council notes that Audit Report No. 33 takes a broad managerialist approach with little detailed attention to, and few firm conclusions concerning, the initial aims of the exercise. In doing so, it ignores many of the difficult questions concerning the Family Court's performance including any indication of how the Family Court has managed and might manage its resources to implement the programs which enable it to fulfil its obligations under the *Family Law Act 1975* and the child support legislation, as efficiently as possible and at as low a cost as is reasonably achievable.

The basic aims of the audit were to review the efficiency and economy of the Court's non-judicial processes, and to identify better administrative processes that could be promulgated throughout the Court. In other words, the audit was intended to:

- assess whether the Court's administrative processes met the Court's aims and objectives and, second, whether they met these aims and objectives in a cost-effective manner and provided good value for the money expended;
- assess whether the Court's administrative processes were economical, and met the Court's aims and objectives with as little expense as was reasonably achievable;
- and

- identify areas of the Court's administration which were operating at less than maximum efficiency, suggest ways in which these areas could be improved, and suggest processes and procedures which could be disseminated more widely.

Council is not convinced that these basic aims of Audit Report No. 33 have been fully met.

A better balanced study would certainly have included the positive achievements of the Court, as outlined by Council in 1996 (p.4) and highlighted by the Attorney-General in his speech at the National Press Club in October 1996 (paras 102-5). Moreover though the Family Court reputedly 'found the report for the most part a sensible and fair analysis' (p.xiv), the failure of the report to provide a comprehensive analysis of the efficiency of the Court's administrative processes, and to assess whether its processes operated economically, meant that a proper evaluation of the Court's many achievements by comparison with its expenditures has not been done and is not possible from the audit data.

Although the audit found that 'the Court is well focused on a move towards best practice' (p.xv) and 'was found to be generally well administered' (p.xiii), it provided no detailed analysis of the efficiency or the economy of the Court's administrative processes, and of whether the Court's operations meet audit standards in this regard. Council is concerned that this may leave the Court vulnerable to demands for further cost cutting which the high demand for its services and its workloads generally may not be able to support.

At the same time, the costs to the Court and to the general public of repeated reviews such as those which have taken place over the last few years cannot be ignored. Regardless of the outcomes, the uncertainty created by having a review and the necessary diversion of resources to prepare material to satisfy review requirements inevitably impact on an organisation's ability to carry out its primary functions effectively. The diversion of resources may also lead to a diminution of client services available and to case delays, and consequently may create further public discontent. Such problems need to be avoided at all costs.

At this stage, in Council's view, the Family Court needs time to enable the various reforms and changes to settle down, and to enable the Court to evaluate their effectiveness. Council therefore suggests that a moratorium on further reviews for a period of no less than two years might be appropriate.

Publicity in Family Law Cases

The individual recommendations, as summarised at pages 64 - 69 of the McCall Report, are set out below with Council's comments on each recommendation.

Recommendation (a)

In child cases where a parenting order, a child maintenance order or an order in the welfare jurisdiction is sought, non-identifying information relating to the case be permitted.

“Identification” to mean the names, addresses, occupations of the persons or a photograph that would identify the person to the public or a section of the public, not an individual member of the public.

This recommendation would enable non-identifying information about a matter in which a child is involved to be published. Thus a newspaper report could cover the nature of the application and orders sought, submissions on points of law, the orders made by the court and names of the judges or officers who heard the matter (see page 65).

The Family Law Council agrees with this recommendation on the basis that it maintains the current restriction in subsection 121(3) in relation to disclosing information which will identify a child. The retention of such a restriction would be consistent with similar restrictions in other courts. The Council recommends that the existing provision (subsection 121(3)) not be adjusted but that the provision be redrafted to make the requirements more readily understood.

Recommendation (b)

In all other cases publicity be permitted which includes the names, addresses, occupation of the parties and witnesses, a concise statement as to the nature of the application, submissions on the law and the decisions thereon, the orders made and the reasons given, the name of the judicial officer and legal representatives. What would not be permitted would be a daily account of the evidence.

In cases other than those covered by recommendation (a), the aim of this recommendation is to prevent use of a “daily account” of the evidence; that is evidence which has not been tested by cross examination or which is not set out in the judgment of the court.

The Family Law Council opposes the use of the names and other personal, identifying details of divorcing couples for reasons already stated.

Recommendation (c)

The court be given an overriding power to withhold publication in whole or in part or to permit publication in any particular case.

This would enable the court to prevent the publication of specific information, such as information provided in camera.

Council may consider that a broad discretion would leave the court open to the existing criticism that it has power to “cover up” anything it wishes. A structured discretion could overcome this.

The Family Law Council supports the general thrust of this recommendation but recommends that the court be given guidance in relation to the matter through the use of a structured discretion. In the Council's view the guidelines could cover matters such as the release of psychiatric evidence, medical evidence and financially sensitive material. The guidelines could also give directions in relation to the publication of material which could damage children and the particular sensitivities which would be required in relation to material which could identify persons from small country towns or remote areas.

Recommendation (d)

“Publication” means in a newspaper, periodical, by radio or television or by electronic or other means which disseminates information to the public or a section of the public.

The existing sub-section 121(2) makes it clear what constitutes “publication” for the purposes of section 121 and is of pivotal importance. Although the need for a provision like sub-section 121(2) will not be as important in the new provision, a definition of “publication” is still necessary because it still contains some instances in which “publication” is not permitted.

The Family Law Council agrees with this recommendation.

Recommendation (e)

Publication of court lists identifying the parties be permitted.

This proposal enables the publishing of court lists as at present.

The Family Law Council agrees with this recommendation on the basis that it has worked well and has an important practical use in the court's day-to-day operations.

Recommendation (f)

Any amendment to section 121 be retrospective and apply to any proceedings commenced before an amendment (if any).

In the Council's view, two interpretations could be placed on what is proposed in this recommendation; first, that all proceedings from the commencement of the *Family Law Act* would be opened to publicity; and, second, that any amendment would contain a transitional provision which would enable cases commenced before the amendment, but completed after the amendment, to be open to publicity.

If the first interpretation is the correct one, the Family Law Council disagrees with it. However, the Council would support any proposal along the lines of the second interpretation.

Recommendation (g)

Exceptions to the general rules prohibiting publication be made in cases summarised as follows:

- (i) providing information to be used by a person in connection with proceedings in another court;**
- (ii) providing information to a person for use before a body concerned with disciplining members of the legal profession;**
- (iii) providing information to a body that grants legal aid;**
- (iv) information published by order of the court ie. judicial officer, not by direction of an officer of the court;**
- (v) information contained in law publications whether printed, by CD-ROM or on database, but not on the internet (emphasis added);**
- (vi) information to a member of a profession for the purposes of practicing that profession or to a student in connection with his [sic] studies.**

Recommendation (g)(i). The Council agrees with this recommendation.

Recommendation (g)(ii). In examining this recommendation the Council considered that there is a need to draw a distinction between the following categories of persons:

- (a) Conduct before the court by persons acting in a professional capacity; that is, by (i) legal practitioners, and (ii) other professionals such as counsellors and mediators; and
- (b) Evidence about the conduct of professionals who are parties to proceedings where that evidence is relevant to their professional practice.

The Council considers that there should be no bar to the court reporting to professional bodies on the conduct of professionals, in all of these circumstances. Accordingly, Council recommends that recommendation (g)(ii) should be amended to read:

providing information to a person for use before a body concerned with disciplining members of a professional body;

Recommendation (g)(iii). The Council agrees with this recommendation.

Recommendation (g)(iv). The Council assumes that “court” includes Registrars, Judicial Registrars and Magistrates as well as judges. This would be necessary. For example, Judicial Registrars issue location orders under section 67M(2) of the Act by virtue of Order 36A, Rule 3, and it is desirable that this should continue having in mind the need for expeditious action in such cases.

The Council supports this recommendation on the basis that it maintains the status quo.

Recommendation (g)(v). The Council has some concerns about the publication of material on the internet. Consistent with its earlier advice, Council recommends that material of the type published in law publications should be available on the internet. As the recommendation stands it seems to indicate otherwise. There seems to be a need to remove the exclusion on the internet here, and to put that exclusion into recommendation (d) instead to address the issue of individuals opening web sites to publish material about their case or other cases.

Recommendation (g)(vi). Council agrees with this recommendation.

Recommendation (h)

Breach of the section to be an offence. However, a greater range of options relating to the penalties be given to the court than now appears in section 121.

At present the penalty is imprisonment for a period of one year and the McCall report suggests a wider range of penalties is necessary to fit the new provisions proposed.

The Council agrees with the general thrust of this recommendation. It also considers that there need to be substantial safeguards against breaches of the legislation. This could particularly be achieved by the inclusion of severe financial penalties and/or corrective advertising provisions similar to those found in the *Trade Practices Act* 1974 in relation to offences by persons and corporations.

Delivery of Primary Dispute Resolution Services in Family Law

The main issues raised in Council's submission were:

- Council considers that any changes to the present system should have the primary objective of fairness and improved service delivery for the client.
- Divorce is a process involving significant change in people's lives and there needs to be overall management of that whole process at an individual level. The discussion paper (DP) does not indicate who will undertake that overall role which is currently allocated to the Family Court under the *Family Law Act*.
- Council considers that the issue of the court's capacity to purchase the primary dispute resolution (PDR) services it needs is of pivotal importance and there is a need to closely examine the issue.
- Council's submission discusses in some detail the advantages and disadvantages of geographical or administrative separation of the court and the PDR services it

uses. However, Council does not agree with the assumption made in the DP that it is necessary to physically separate the court and PDR services in order to ensure that PDR services are fully used by Family Court applicants. In Council's view the court's policy of judicial determination as a last resort is already ensuring that PDR services are fully used where this is appropriate.

- While the Family Court is a dispute resolution body, there are also strong therapeutic elements to the legislation and the bulk of cases coming before the court are resolved by, or agreements are reached following, use of PDR processes. Council agrees with the comment of the Joint Select Committee on Certain Aspects of the Operation and Interpretation of the Family Law Act (1992) that the Family Court, as well as being a court of litigation, is a court of conciliation.
- The Family Court currently provides a range of advisory and referral services, including advice and referral to PDR services. While the DP refers to the need for clients to be able to access a 'front door' the issues related to establishing advisory and referral services outside the court need to be explored. Council recommends that the Family Court, the Legal Aid Commissions and the legal profession be recognised as important points of first contact. This is not to suggest that those services could not also be obtained through the use of other agencies. The provision of additional advice and referral services would have cost implications.
- There is currently little or no overlap between court-based counselling and community based counselling services, although there is the potential for overlap in relation to court-based and community based mediation services. The differing focus at present of the court-based PDR services (dispute resolution counselling or conciliation) and the community based services (relationship counselling) has significant implications for the proposals raised in the DP. These need close study.
- Council draws attention to its report *The Administration of Family Law in Australia* (1985) and its previous work in this area in 1988. These papers were made by different Councils at different times in the development of the family law system and came to different conclusions.
- Council puts forward practical ways in which the expertise of the Family Court Counselling and Mediation Service (FCCMS) can be retained on the basis that this is a stated objective in the DP.
- Council does not have sufficient information to establish whether the changes proposed in the DP can or cannot be done within the existing budgetary allocation. A full unit costing of existing and proposed services would be required to establish the resource level necessary. Council is concerned that the stated objective in the DP of achieving change within the existing budgetary

allocation may lead to a reduction in the level of PDR services currently available.

- Council identifies a range of options available to government in relation to the delivery of PDR services in family law and suggests that all need to be considered.
- Council suggests that the timing of change to the present system should aim at achieving a balance between, on the one hand, allowing adequate time for change to be planned and implemented and, on the other, maintaining momentum and commitment to change and avoiding loss of morale. Full consideration should also be given to the client throughout the change process.

3. IMPLEMENTATION OF COUNCIL'S RECOMMENDATIONS

Introduction

3.01 Council makes recommendations to the Attorney-General in either (a) reports on major issues, or (b) letters of advice on specific matters. From 26 November 1976, when Council was established, to 30 June 1998, a total of 647 recommendations have been made. Of these 280 have been made in reports and 367 in letters of advice. More details are given in Table 1 of Appendix E.

Recommendations to government

3.02 During the year Council's Secretariat updated its summary of the results of recommendations made from 1976-1998. Full details of the results are given in Table 2 of Appendix E. In general, over 80 per cent of recommendations which are considered by government are either fully or partly implemented.

3.03 At present 89 (13.7%) of recommendations are still awaiting government consideration. A further 85 (13.1%) are regarded as having "lapsed". Council has no control over its recommendations once it has provided them to government, but monitors their progress. Over the years the reasons for "lapsed" recommendations have included:

- (a) Delays in considering them;
- (b) Deferral pending further inquiries or studies, or the matter is subsumed into subsequent inquiries or studies;
- (c) The matter is outside the Commonwealth's power to implement (a number of recommendations made in one or two early reports of Council contained a number of such recommendations);
- (d) The advice is outdated by subsequent developments; and
- (e) Failure of the relevant authority to pass advice on to the appropriate agency within a reasonable time.

Monitoring implementation of recommendations

3.04 Council has undertaken a regular review of progress of its recommendations each year since 1994-95. Monitoring progress in this way is expected to reduce the possibility of recommendations lapsing. Council receives reports from its secretariat on the status or outcome of outstanding recommendations so that matters can be followed up as required.

3.05 The current status of each of Council's major reports is set out below. The present position of recommendations made in letters of advice is also summarised below with further details on individual outstanding recommendations being provided in Appendix E.

Government consideration of reports

3.06 Of the 22 published reports submitted to the Attorney-General the following 16 have been considered by government and action on the recommendations made in them is now completed:

- *Wardship, Guardianship, Custody, Access, Change of Name - Watson Committee Report* (1982)
- *Creating Children: A uniform approach to the law and practice of reproductive technology in Australia* (1985)
- *Administration of Family Law in Australia* (1985)
- *Cinderella Re-visited: Rights and Responsibilities in Step-families* (1986)
- *Access - Some Options for Reform* (1987)
- *Arbitration in Family Law* (1988)
- *Child Sexual Abuse* (1988)
- *Representation of children in Family Court proceedings* (1989)
- *Comments on the Report of the Joint Select Committee on the Operation and Interpretation of the Family Law Act* (1993)
- *Patterns of Parenting After Separation* (1992)
- *Section 64A of the Family Law Act* (1992)
- *Family Mediation* (1992)
- *The Operation of the (UK) Children Act 1989* (1994).
- *Female Genital Mutilation* (1994)
- *Interaction of bankruptcy and family law* (1992)
- *Interim Report: Penalties and Enforcement* (1998)

3.07 Recommendations made in the report *Interaction of bankruptcy and family law* (1992) were addressed in the Law and Justice Legislation Amendment Bill (No. 2) 1995, which lapsed following the Federal Elections in March 1996. Council was subsequently advised that the Government was considering its legislative options in relation to this matter. However, as there are no plans, at this stage, to implement Council's proposals, and in view of the time which has elapsed since those proposals were put to government, Council regards the recommendations made in the report as having been rejected by government. In the long-term it is still possible that some of Council's proposals may be implemented.

3.08 On 16 April the Attorney-General advised the Council that he agreed with the preliminary recommendations made in the interim report *Penalties and Enforcement* (1998). Council made its final report to the Attorney-General on this matter at the end of June 1998 - see *Child Contact Orders: Enforcement and Penalties* (1998).

3.09 The remaining 6 reports which are still under consideration, and their current status, are as follows:

- ***Sterilisation and other medical procedures on children* (1994)**

This report was referred to the Standing Committee of Attorneys-General in June 1996 but has remained largely unresolved by that body. Council understands that the options available to Government are being reviewed in the (Commonwealth) Attorney-General's Department and proposals for addressing the issue of sterilisation of children are currently being developed.

- ***Magistrates and Family Law (1995)***
The Government is currently examining proposals for a federal magistracy and this report is being considered in the course of that examination. A discussion paper on a federal magistracy was released by the Attorney-General's Department in January 1997. Council made a submission on that paper in February 1997. Council understands that the matter is still under consideration in the Attorney-General's Department.
- ***Family Court Appeals and Review (1996)***
This report was transmitted to the Attorney-General in June 1996. The report is currently under consideration by the Government. It is also being considered by the Family Court.
- ***Involving and representing children in family law (1996)***
This report was transmitted to the Attorney-General in August 1996 and is currently under consideration by the Government.
- ***Parental Child Abduction (1998)***
This report was transmitted to the Attorney-General on 2 February 1998 and is under consideration by the Government.
- ***Child Contact Orders: Enforcement and Penalties (1998)***
This report was transmitted to the Attorney-General at the end of June 1998.

Implementation of recommendations made in letters of advice

3.09 At 30 June 1998, 6 recommendations made in letters of advice were still under consideration by government. A more detailed report on these recommendations is set out in Appendix E.

4. ADMINISTRATIVE MATTERS

Mode of Operation of Council

4.01 Plenary sessions of Council are usually held on a quarterly basis. The dates and venues for meetings are listed below. As a matter of policy, Council usually visits one regional centre as well as the main capital cities for its meetings. It also appoints ad hoc committees, using outside expertise as well as Council members, to consider specific topics requiring in depth examination. Committees meet as required between Council meetings.

Meetings 1997-98

4.02 During the year Council met as follows:

- 17 - 18 July 1997 Coffs Harbour
- 15-17 October 1997 Wellington NZ*
- 20 - 21 November 1997 Canberra
- 19-20 February 1998 Sydney
- 17 April 1998 Melbourne**
- 14 May 1998 Canberra***
- 21-22 May 1998 Alice Springs
- 22 June 1998 Canberra**

* A delegation of Council went to Wellington NZ for discussions with the Family Court, Family Lawyers, Government officials and others. A brief Council meeting was held at the end of the visit and a report on the visit was submitted to the Attorney-General.

** Special one day meeting.

*** This was a joint meeting with the Family Services Council.

4.03 The following dates were set for meetings in the first half of 1998-99:

- 27-28 August 1998 Canberra
- 29-30 October 1998 Hobart

The Hobart meeting follows the Eighth National Family Law Conference conducted by the Family Law Section of the Law Council of Australia on 24-28 October 1998.

4.04 During 1997-98 ten committees were active (that is, they met on one or more occasions during the year). Committee meetings held during the year were as follows:

Name of committee	Number of meetings
ALRC Issues Paper No 22	1

4.10 Mr Richard Morgan was re-appointed to Council for a 12 months period commencing from 8 July 1997.

4.11 The following members were appointed for 3 year periods from the dates shown:

Ms Susan Blashki	4 March 1998
Associate Professor Eleanor Bourke	4 March 1998
Professor John Dewar	4 March 1998

Observers

4.12 Council's observers play an important part in the management of Council's workload. Observers currently attend Council meetings from the Family Court of Western Australia, the Family Court of Australia, the Australian Law Reform Commission and the Australian Institute of Family Studies. Observers participate fully in Council discussions, but Council members alone decide issues coming before Council. In addition to providing information about the interests and activities of their organisations and maintaining links between Council and the organisations concerned, the observers make a significant contribution to the work of Council committees.

Attorney-General

4.13 Council met with the Attorney-General at its meeting in Canberra on 20 November 1997. During the year Council followed its established practice of providing written reports to the Attorney-General on each of its quarterly meetings.

Relationship with other bodies in family law

4.14 It is important to Council that close contact is maintained with a number of bodies in the family law field. Significant among such bodies are: the Family Court of Australia and the Family Court of Western Australia; the legal profession; the legal aid commissions; law reform bodies; and the Australian Institute of Family Studies. Council has also maintained contact with Commonwealth Government bodies such as the Office of the Status of Women.

- ***The Family Court of Australia***

4.15 The Chief Justice of the Family Court, the Hon Justice A B Nicholson AO RFD, has a standing invitation to meet with Council and regularly does so. Council is appreciative of the authoritative and up-to-date advice and information it receives at such meetings. Chief Justice Nicholson met with Council during the course of its meeting in Canberra on 20-21 November 1998.

4.16 A number of judges and staff of the Family Court of Australia have a close and ongoing contact with Council. Dr Carole Brown, the Principal Director of Court Counselling, is an observer on Council and the Chief Justice's Senior Legal Associate, Ms Margaret Harrison, is also an observer. Council also met with counselling staff at its meeting in Coffs Harbour in July 1997.

- ***The Family Court of Western Australia***

4.17 The Hon Justice Carolyn Martin is the observer from the Family Court of WA on Council. Justice Martin serves on a number of Council committees and generally ensures that the WA perspective is taken into account in Council's deliberations.

- ***The legal profession***

4.18 Council's contacts with the legal profession are maintained through regular meetings with representatives of the Family Law Section of the Law Council of Australia and with other legal organisations and authorities. During the year Council met with representatives of the Law Council at its meetings in November 1997 and February 1998. Council also met with a number of family law practitioners at its meetings in July 1997, February 1997 (Coffs Harbour) and May 1998 (Alice Springs).

- ***Legal aid agencies***

4.19 Council continued to maintain its links with legal aid agencies during the year in a number of ways. Throughout the year invitations were issued to several Legal Aid Commissions to meet with Council and discussions were held with representatives from the Commissions in Coffs Harbour in July 1997 and in Sydney in February 1998. In Alice Springs in May 1998 Council had discussions with a representative of the Central Australian Women's Legal Service Inc. Mr Stephen Bourke, Assistant Secretary of the Legal Aid Branch in the Commonwealth Attorney-General's Department, is a member of Council.

- ***The Australian Law Reform Commission***

4.20 The presence of an observer from the Commission at Council meetings ensures that close links between the 2 bodies are maintained and each body is aware of relevant aspects of the work program of the other. Mr Michael Barnett, a Team Leader with the Australian Law Reform Commission, took over from Ms Sally Moyle as the ALRC's observer on Council from November 1997.

- ***Australian Institute of Family Studies***

4.21 Dr Kate Funder, the Australian Institute of Family Studies (AIFS) Observer on Council died on 13 June 1998 and her significant contribution to the work of the Council over the past 5 years is recorded elsewhere in this report. Ms Grania Sheehan acted as the AIFS observer from April 1998 during Dr Funder's absence due to illness prior to her death.

- ***Family Services Council***

4.22 Ms Dale Bagshaw, first Chairperson of the new Family Services Council from November 1994 to December 1996 and current member of that Council, is also a member of the Family Law Council. Council met with the Chair of the Family Services Council, Mrs Judith Roberts AM, at its November 1997 meeting in Canberra.

- ***Office of the Status of Women***

4.23 Council has maintained regular contact with the Commonwealth Office of the Status of Women (OSW) through its project on Violence and the Family Law Act, and through the exchange of relevant papers and information. Ms Pru Goward, Head of OSW, met with Council in Canberra on 20 November 1997.

- ***National Alternative Dispute Resolution Advisory Council***

4.24 The National Alternative Dispute Resolution Advisory Council (NADRAC) was established in 1995 as part of the Commonwealth's response to the recommendations of the Access to Justice Advisory Committee in its 1994 report *Access to justice: an action plan*. The Family Law Council exchanges meeting agenda and other papers with NADRAC and also shares its Administrative Officer with that body.

- ***Child Support Liaison Group***

4.25 The Child Support Liaison group provides a forum for liaison between bodies dealing with issues relating to child support. It meets quarterly in Canberra. The group comprises representatives of the Child Support Agency, the Department of Social Security, the Family Law Section of the Law Council of Australia and the Family Law Council. Council's delegate is Ms Annemaree Lanteri, Convenor of the Child Support Committee. Ms Jenny Degeling, of Council's secretariat, deputised for Ms Lanteri during the year when required.

- ***Trans Tasman liaison***

4.26 A delegation from Council met with the Hon Judge Patrick Mahony and other New Zealand Judges and officials, and family law practitioners in Wellington from 15-17 October 1997.

4.27 The Convenor of the Council's Penalties Committee and the Director of Research visited Wellington and Auckland on 24-26 March 1998 for discussions with New Zealand judges, officials and practitioners about child contact orders. Those with whom discussions were held in Wellington were: Judge Marion Frater, Administrative Judge of the Family Court, Wellington; Family lawyers David Howman, Mary Jeffcoat, Simon Maude, Craig Boyce, David Howden, Ann Wilson, Margaret Powell; Belinda Fletcher of the Social Welfare Department and Dick Edwards and Judith Oliver of the NZ Law Society. In Auckland discussions were held with: Judge David Robinson, Administrative Judge of the Family Court, Auckland; Judge Frank Bremner; Judge Dale Green; Family lawyers: Usha Patel, David Burns, Alastair Wright and David Rice.

Council staff

4.28 The Attorney-General's Department provides Council with resources, including staff. Council's Secretariat is a Section of the Family Law Branch of the Department. The current permanent Secretariat staff comprises the Director of Research (Legal 2), the Legal Officer (Legal 1) and a part-time Administrative Officer (Administrative Service Officer Class 3). During most of the year the Administrative Officer was shared with the National Alternative Dispute Resolution Council.

Financial resources

4.29 Council receives an allocation of funds from the Attorney-General's Department under the following headings each year:

- *Program Costs* - For costs associated with the day to day operation of Council;
- *Sitting Fees* - Payable at a daily rate to eligible Council members when they attend meetings of Council or Council committees or are otherwise engaged on Council business;

4.30 ***Program Costs.*** For the 1997-98 financial year Council's allocation for program costs was \$143,000 plus an amount of \$5,209 for administrative expenses, making a total of \$148,209.

4.31 Travelling allowances for members and staff of Council are paid out of Council's program costs appropriation. Members receive travelling allowances to cover the costs of travel and accommodation associated with Council meetings. Travelling allowances are \$320 a day (capital city) and \$165 a day (other than a capital city). The staff's travelling allowances are paid at the appropriate public service rates. Further details of expenditure are provided in Tables 1 and 2 and Chart 1 below. Generally speaking, members, staff and observers travel economy class.

4.32 The salaries of staff of Council are paid out of the appropriation to the Family Law Branch of the Attorney-General's Department.

4.33 The Attorney-General's Department provides Council's staff with Power Macintosh computers, Gestetner Laser printers, access to Mainframe facilities and accompanying computer software. The costs of accommodation, equipment, training and most day to day administrative expenses of Council's Secretariat are also met by the Department. Council currently pays an annual amount of \$ 7,000 for photocopying services.

4.34 ***Sitting Fees.*** Council is allocated funds by the Attorney-General's Department to meet the costs of sitting fees for the Chairperson and members of

Council. The first determination of the Remuneration Tribunal which awarded sitting fees to Council members was made in 1983. Sitting fees are not payable to members who are Judges, Magistrates or employees of Commonwealth Departments or Authorities. From 17 October 1997 the sitting fees were \$553 (Chairperson) and \$477 (Member).

4.35 During 1997-98, seven Council members were entitled to sitting fees. There were four 2-day meetings of Council during the year. In addition, there were 2 one-day sittings and 1 one-day joint meeting with the Family Services Council as well as 25 committee meetings. A delegation of Council members also visited Wellington, New Zealand, for discussions with Family Court Judges, counsellors and officers, family law practitioners, Government officials and others. The Chairperson was also called upon to attend other meetings for which sitting fees were payable.

4.36 Expenditure on sitting fees in 1997-98 was \$46,071. This compares with \$27,230 in 1996-97 and \$48,462 in 1995-96. Expenditure on sitting fees varies from year to year in accordance with the number of meetings held and the number of members who qualify for payment of sitting fees.

4.37 ***Overall expenditure 1996-97.*** Table 1 below sets out expenditure for the eight financial years of the 1990s.

Table 1: Family Law Council expenditure 1990-91 to 1996-97

Year	Sitting fees	No. paid sitting fees	Amount paid per capita	Program costs	Total
1990-91	\$52,236	7	\$ 7,462.29	\$120,395	\$172,631
1991-92	\$49,040	7	\$ 7,005.71	\$121,025	\$170,065
1992-93	\$31,187	6	\$ 5,197.83	\$156,895	\$188,082
1993-94	\$40,413	5	\$ 8,082.60	\$148,973	\$189,386
1994-95	\$18,072	4*	\$ 4,518.00	\$157,153	\$175,225
1995-96	\$48,462	6	\$ 8,077.00	\$138,280	\$186,742
1996-97	\$27,370	5	\$5,474.00	\$146,756	\$174,126
1997-98	\$46,071	7	\$6,581.57	\$148,207	\$194,278

* The number receiving sitting fees was reduced to 3 in October 1994 when the Chairman was appointed a judge of the Family Court of Australia.

4.38 Total expenditure by the Family Law Council in 1997-98 was \$200,859. Table 2 below compares expenditure for 1995-96, 1996-97 and 1997-98 under the main expenditure headings.

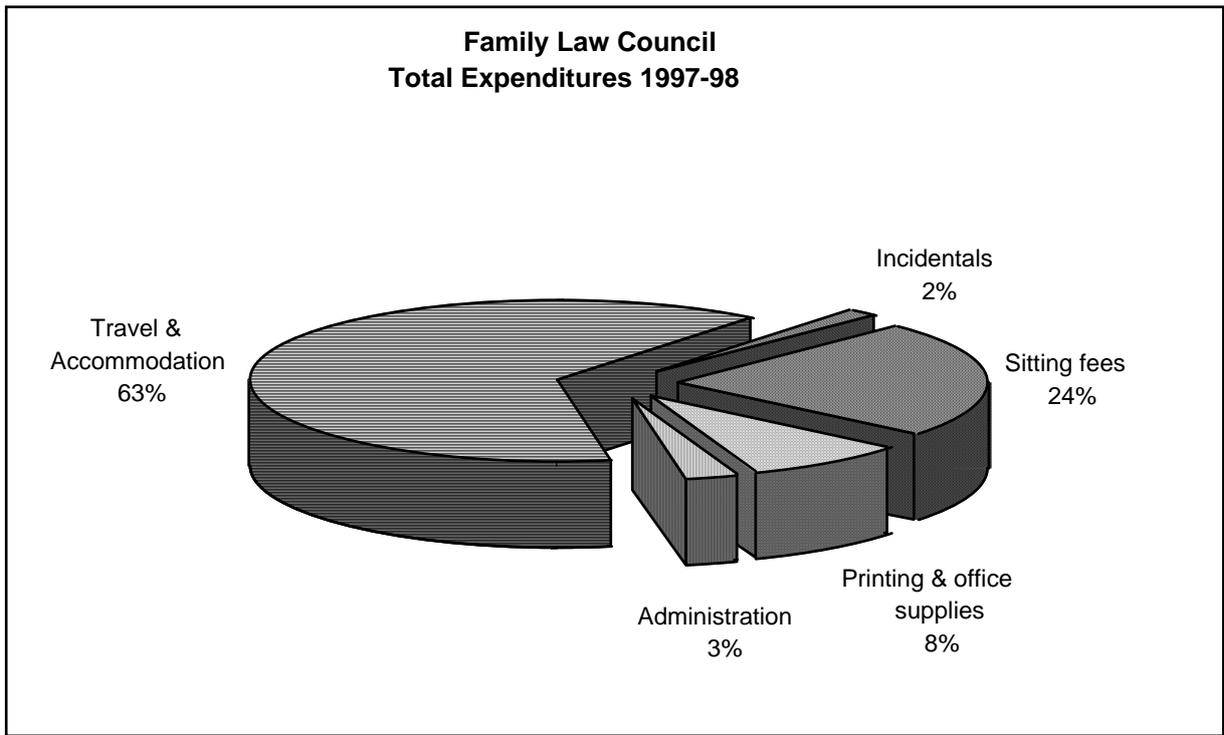
Table 2: Family Law Council expenditure 1995-96 to 1997-98

Item	1995-96	1996-97	1997-98
Sitting fees	\$ 48,462	\$27,370	\$46,071
Travel & accommodation	\$106,927	\$103,582	\$123,811
Printing and office supplies	\$ 23,137	\$27,944	\$16,002
Administrative services	\$ 6,072	\$7,248	\$5,209
Incidentals and other	\$ 2,144	\$7,982	\$3,185
TOTALS *	\$186,742	\$174,126	\$194,278

* Minor discrepancies in totals are due to rounding.

4.39 During 1997-98 about 63 per cent of Council's budget was used in travel and accommodation costs, a proportional increase of 4 per cent from 1996-97 resulting from the higher number of Council meetings during the year. Other expenditure items tend to vary from one year to the next. The manner in which Council's funds are expended is considered to be appropriate for an advisory body which meets regularly and operates a committee system to do much of its detailed work. Chart 1 below shows the main items of expenditure for 1997-98.

CHART 1: Family Law Council - Total Expenditures 1997-98



Explanatory Notes:

- Sitting Fees - In 1997-98 seven members were entitled to sitting fees, compared with five in 1996-97, six in 1995-96 and four in 1994-95. There were 8 Council meetings and 25 committee meetings. **Total = \$46,071.**
- Travel and accommodation - Covers the cost of fares, cabcharge and travelling allowances for Council members, committee members, observers and staff. **Total = \$123,811.**
- Administrative expenses - Administrative costs of computer services. **Total = \$5,209.**
- Printing and office supplies - This mainly covers the costs of Council's printing of reports, discussion papers and newsletters. Expenditure on printing was \$8,676. **Total = \$16,002.**
- Incidentals and other - This mainly covers items such as photocopying, staff training, subscriptions and nomination fees for attendance at conferences. **Total = \$3,185.**

Council publications

4.40 A full list of Council's reports and discussion papers is provided in Appendix B of this report.

- ***Family Law Council News***

4.41 During the year issues of the *Family Law Council News* were produced and distributed in July 1997, October 1997, January 1998 and April 1998. The publication gives brief and informative advice on Council's activities, and its preparation and distribution does not place a large additional workload on Council and its Secretariat. The *News* is distributed to all Members of Parliament and to persons and organisations

on Council's general mailing list. In all, about 1,000 persons and organisations currently receive the *News*.

- ***Council minutes***

4.42 A bound set of Council minutes up to the end of 1997 is available for perusal in the Lionel Murphy Library, Attorney-General's Department, Robert Garran Offices, Barton ACT. Copies of minutes of Council committee meetings are included in the set. Bound copies of the minutes are also held by Council's Director of Research and the Senior Government Counsel in the Family Law Branch of the Attorney-General's Department.

- ***Council meeting papers***

4.43 A bound set of Council meeting papers for the period 1976-1996 is held by Australian Archives in Canberra. A further copy covering the period 1976 to 30 June 1998 is held by the Director of Research in Canberra.

- ***Tabling of Council reports***

4.44 The Council's *Annual Report 1996-97* was tabled in Parliament on 30 October 1997.

- ***On-line access to Council material***

4.45 Since mid-1997, Council has had a home page on the internet, with links to other organisations interested in family law matters. The home page provides access to recent Council reports, discussion papers, annual reports and other material on-line. The home page may be viewed at <http://uniserve.edu.au/law/pub/family/>

- ***Communication with members and observers***

4.46 Most Council members and observers are now linked to the Council's Secretariat by e-mail. This has greatly improved communication with those members and observers.

ACKNOWLEDGMENTS

4.47 Council particularly wishes to record its appreciation to those persons who assisted it by serving on Council committees and thereby added to the available expertise. No fees are payable to persons who serve in this way. They are only reimbursed actual expenditure on travel, accommodation and incidentals. Persons who served in this capacity during 1996-97 were:

Ms Jenny Bedlington*	<i>Department of Immigration & Multicultural Affairs</i>
The Hon Justice John Faulks*	<i>Family Court, Canberra (ACT)</i>
Ms Louise Hansen*	<i>ATSIC (WA)</i>
The Hon Justice J V Kay*	<i>Family Court, Melbourne (VIC)</i>
Sgt Gerold Knight	<i>Australian Bureau of Criminal Intelligence</i>
Mr Geoff McDonald	<i>Senior Adviser, Attorney-General's Department</i>
Mr John McGinness	<i>Attorney-General's Department</i>
Mr Garry Watts	<i>Solicitor, Parramatta (NSW)</i>
* Former Member of Council.	

4.48 Members of Council are also grateful to persons who met with them during the year (these persons are listed in Appendix D), persons and organisations who responded to Council's discussion papers and others who gave assistance in various ways.

4.49 Council would like to express special thanks to the Hon Judge Patrick Mahony, Principal Judge of the Family Court of New Zealand, who was host to the Council delegation which visited Wellington NZ in October 1997 for talks with New Zealand officials. The success of this visit was in large part due to the considerable work undertaken by Judge Mahony. A full list of names of those with whom the Council met while in New Zealand is set out in Appendix D.

4.50 Council wishes to express its thanks to the Australian Bureau of Statistics and the Family Court of Australia for their assistance in providing the material on which the statistics summarised in Part 5 of this report are based.

5. STATISTICS

Introduction

5.01 The statistics presented in this report are based on information provided by the Family Court of Australia, the Family Court of Western Australia and the Australian Bureau of Statistics (ABS).

5.02 *Family Court statistics.* Council relies on the Family Court of Australia and the Family Court of Western Australia for most of the statistics in the report and has been assisted by officers of those courts in the preparation of statistical tables. Council wishes to emphasise that it has no direct control over the collection of Family Court statistics.

5.03 *Australian Bureau of Statistics.* ABS statistics on divorce are compiled using data provided by the Family Court. The data relates to all applications resulting in the grant of a decree absolute during the year. Marriage and divorce statistics are collected by the ABS on a calendar year basis and are set out accordingly in this report. Further statistical information on marriage and divorce in Australia in 1997 are available in the ABS publication *1997 Marriages and Divorces, Australia*, released in August 1998. That publication contains a considerable amount of information on marriage and divorce from the 1996 Census of Population and Housing.

5.04 *Child Support Agency.* In past years, statistics on the operation of the Child Support Scheme (CSS) were provided by the Child Support Agency, Australian Taxation Office. Statistics on the CSS are no longer provided in this report. Full details are available in the annual report of the Commission for Taxation.

5.05 *Magistrates courts statistics.* For a number of years Council has been attempting to arrange for the collection of uniform statistics on family law applications in the Magistrates Courts. Victoria is the only State which collects family law statistics using the standard format designed by Council. In that State collection of the standard statistics began on 1 July 1991.

5.06 The annual reports for 1991-92 and 1992-93 contained a summary of statistics provided by Victoria on the operation of the Magistrates Courts in family law in that State. These statistics were discontinued in the report in 1993-94 but are available in the publication *Family Law Act: Hearing Statistics Victoria Magistrates' Courts* which are compiled and published annually by the Victoria Department of Justice, Courts and Tribunals Services Division.

5.07 The Victoria Department of Justice also produces detailed statistics on domestic violence matters brought before the Magistrates' and Childrens' Courts under the

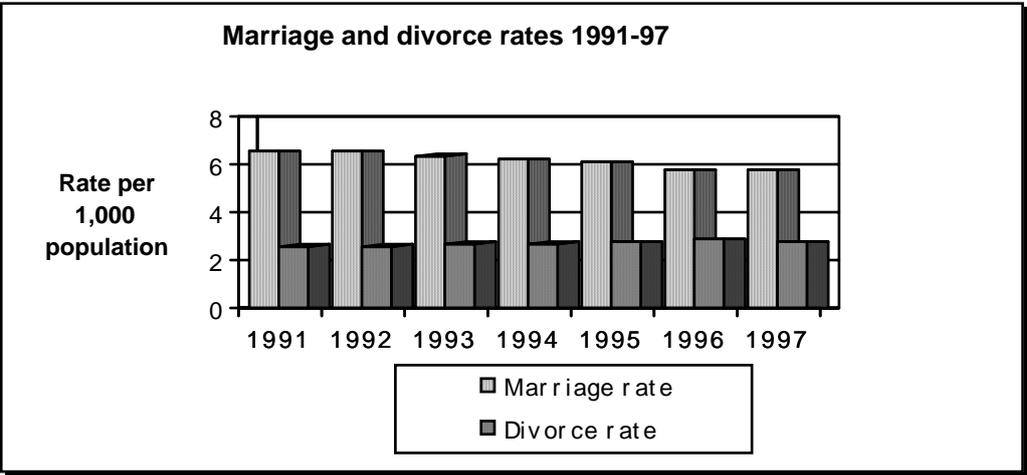
(Victoria) *Crimes (Family Violence) Act*. The statistics are published in *Crimes Family Violence Act* which is produced annually by the Caseflow Analysis Section of the Courts and Tribunals Division of the Department of Justice.

AUSTRALIAN BUREAU OF STATISTICS

Marriage and divorce

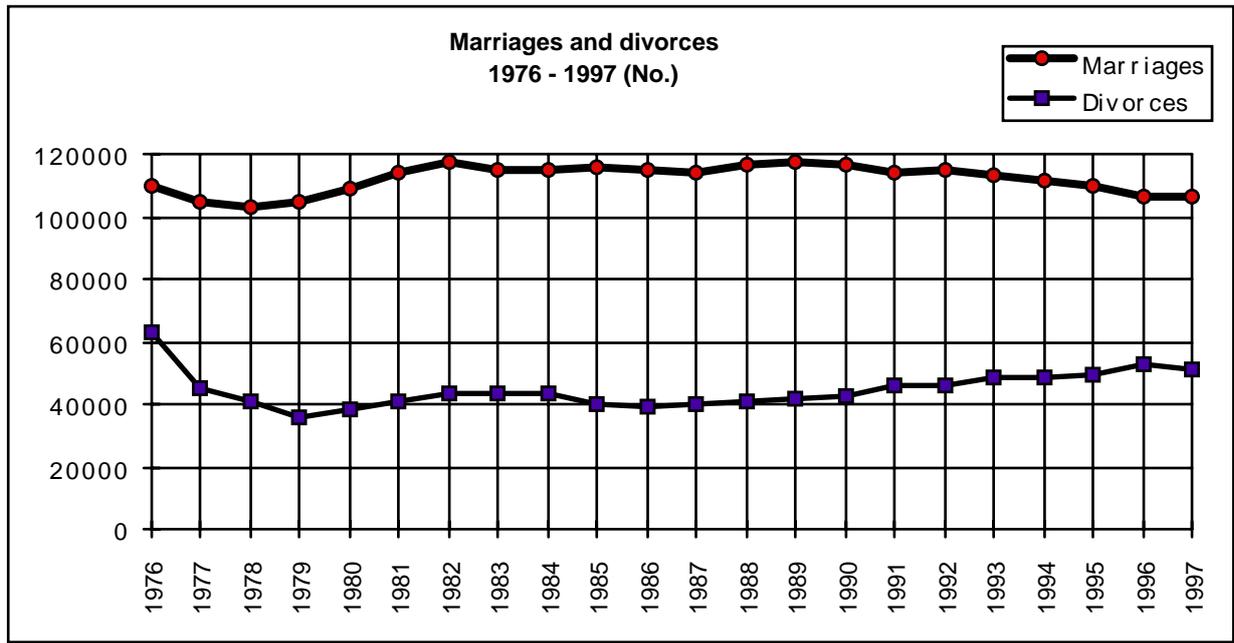
5.08 Marriage and divorce statistics for 1997 halted the upward trend in divorce and the downward trend in marriages. The divorce rate per 1,000 population fell from 2.9 in 1996 to 2.8 in 1997. Although there was a slight increase in marriages for 1997 over the previous year, the marriage rate per 1,000 population was steady on 2.8 for both years. Whether these developments indicate a bottoming of the downward trend in marriages and a peaking of the divorce rate may become evident as data for the next few years becomes available. The chart below compares the marriage and divorce rates on a year by year basis for the calendar years 1991-1997 inclusive.

CHART 2: Marriage and divorce rates per 1,000 population 1991-1997



5.09 Chart 3 below shows the actual number of marriages registered with the number of divorces granted in 1997 by comparison with the years of operation of the *Family Law Act 1975*.

CHART 3: Marriages registered and divorces granted in Australia, 1976 - 97



Marriages celebrated and dissolved

5.10 According to the ABS figures, in 1997 the number of marriages in Australia was 106,735 - an increase of 632 over the previous year. Of the marriages registered in 1997, in 71,042 instances, or 66.6 per cent of marriages, neither partner had previously married, a slight increase on the proportion for the previous year, but lower than the rate for the previous 10 years which had been fairly stable at 67 per cent.

5.11 In 1997 the crude marriage rate (number of marriages per 1,000 population) was 5.8, the same as for 1996, which is the lowest rate for a generation. The median age at marriage in 1997 was 29.7 years for men and 27.5 years for women, compared with 27.6 and 25.2 respectively, 10 years earlier. The trend for both men and women to marry at an older age continued. The peak age at which men marry for the first time has been the same since 1976, at 25 - 29 years. The last 2 decades, however, have seen a marked increase in the proportion of bridegrooms marrying after their 30th birthday. Men aged 30 years or more at marriage represented 49 per cent of all men marrying in 1997 compared with almost 48 per cent of all men marrying in 1996, 46 per cent in 1995, 34 per cent in 1985 and 18 per cent in 1975.

5.12 For women the peak age for first marriages increased from 20 - 24 years to 25 - 29 years between 1976 and 1986, and remains at 25 - 29 years. The percentage of women marrying at 30 years or more has also been rising. In 1975 12 per cent of women married at 30 years of age or more, increasing to 24 per cent in 1985, 33 per cent in 1994 and 1995, just under 36 per cent in 1996 and 36 per cent in 1997. The

median age of all brides in 1997 was 27.5 years compared with 27.2 years in 1996 and 26.8 years in 1995.

Divorces granted

5.13 The number of divorces dropped in the mid 1980s but has been increasing steadily since then. However, in 1997 there were 51,288 divorces, which represented a decline of 1,178 in the number of divorces over the previous year. The 1997 figure was 29 per cent up on the figure for 1987. The average length of marriages which end in divorce has been relatively consistent over the last few years. The median duration between the date of the marriage and the final date of separation increased from 7.4 years in 1987 to 7.7 years in 1997. The median duration between the date of marriage and the date of decree absolute during 1997 was 11.1 years compared with 11.0 years in 1996.

5.14 The median age at divorce for men and women has continued to rise, consistent with the later age for marrying and the relatively steady median length of marriages that end in divorce.

5.15 The crude divorce rate in Australia (number of divorces per 1,000 population) was 2.8 in 1997, compared with 2.9 in 1996, 2.8 in 1995 and 2.7 in 1993 and 1994. This represents a fall in the rate for the first time in 10 years.

Joint applications

5.16 Since 1984 under the *Family Law Act* husbands and wives may apply jointly for divorce. The incidence of joint applications increased over the years prior to 1991. In 1994, however, joint applications declined from the levels of the previous 3 years to 14.9 per cent of divorce applications. In 1995 the proportion of joint applications increased to 18.0 per cent of divorce applications. The proportion of joint applications showed a further 3 per cent increase in 1996, to 21.5 per cent of applications. However, in 1997 joint applications fell to 20 per cent.

Number of children affected by divorce

5.17 Over the period 1987 to 1997 the number of divorces granted where children under 18 years of age have been involved has fallen from 59 per cent to 54 per cent. The average number of children of divorcing couples in 1997 was 1.9, the same as for 1996. The actual number of children involved was 51,742.

FAMILY COURT STATISTICS

5.18 The following paragraphs provide a summary of the statistical returns of the Family Court of Australia and the Family Court of Western Australia, excluding statistics relating to the operation of the Court Counselling Services, which are given at the end of this part. The Family Court of Western Australia converted to the

standardised statistical system in 1996-97 and its statistics are now amalgamated with those of the Family Court of Australia.

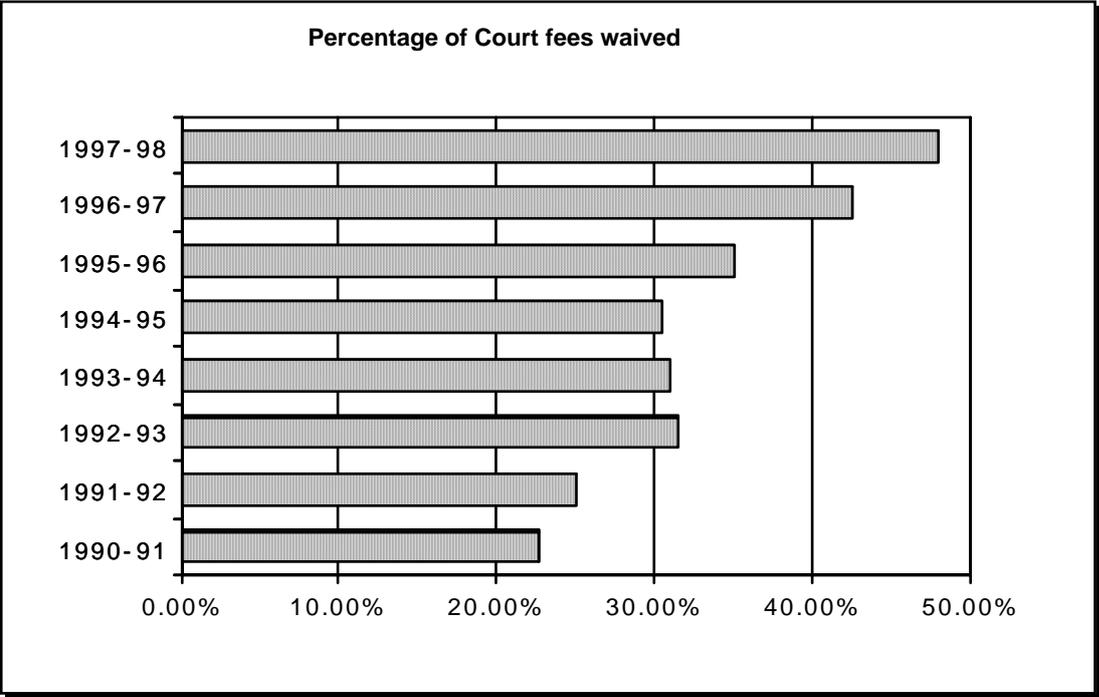
5.19 In relation to children, the new principles set out in section 60B(2) of the *Family Law Act* are that, except where it is or would be contrary to a child’s best interests:

- children have a right to know and be cared for by both parents;
- children have a right of contact, on a regular basis, with both parents and any other person significant to the care, welfare and development of the child;
- parents share the duties and responsibilities concerning the care, welfare and development of the child; and
- parents should agree about the future parenting of the child.

5.20 In particular, the traditional concepts of custody, access and guardianship have been replaced. Parents now have “parental responsibility” and the court makes “residence”, “contact” and “specific issues” orders. To reflect these changes, and to demonstrate where they may result, or have resulted, in statistical changes, the relevant figures are presented here in two parts.

Waiver of court fees

CHART 4: Percentage of Court fees waived to applications for divorce filed



5.21 From 1 December 1996 a filing fee of \$500 has been payable under Regulation 11 of the Family Law Regulations when a party files an application for divorce. The

fee can be waived or refunded in special circumstances, including where, in the opinion of the Registrar, the imposition of the fee would cause hardship. During 1997-98 there were 52,940 applications for divorce filed and an estimated 25,383 applicants were granted remissions or refunds. As data for the final quarter of the financial year are not available, this is an estimate based on the data for the first three quarters of the year. Up to March 1998 there were 19,045 remissions of fees.

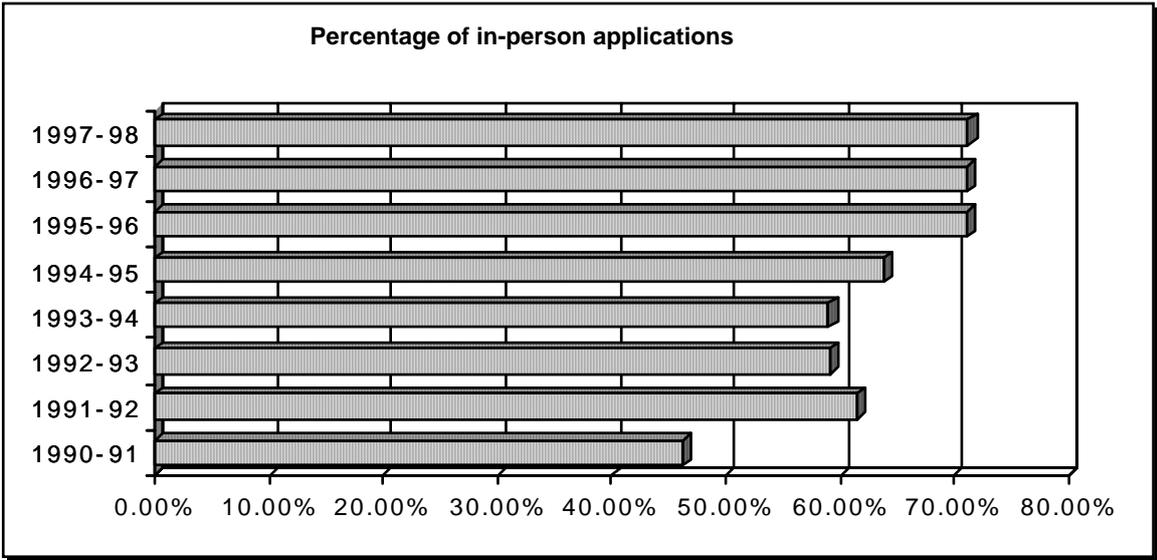
5.22 The Australia-wide average for remissions or refunds granted during 1997-98 was an estimated 47.9 per cent or almost half the total applications for divorce. Due to the unavailability of data for the whole of the financial year, it is not possible to fully examine rates of remission on a registry by registry basis.

Divorce applications made in person

5.23 Divorce applications made in person relate solely to the *lodgment* of divorce applications. They do not indicate the proportion of in person appearances before the Court. In person applications are made by the applicants themselves rather than through a lawyer. In 1997-98 there were 37,708 in person applications for divorce. The proportion of in person applications to total applications for divorce was 71 per cent, the same as in 1995-96 and 1996-97.

5.24 The proportion of in person to total applications for divorce varies widely between jurisdictions. In 1997-98 Western Australia led the other registries, with 86.9 per cent of applications being made in person. As in 1995-96 Hobart, Adelaide and Darwin also had over 80 per cent of applications in person. The main city registries of Sydney, Melbourne and Brisbane showed the lowest proportions of in person applications with 58.4 per cent, 61.8 per cent and 69.8 per cent respectively.

CHART 5: Percentage of in-person applications for divorce



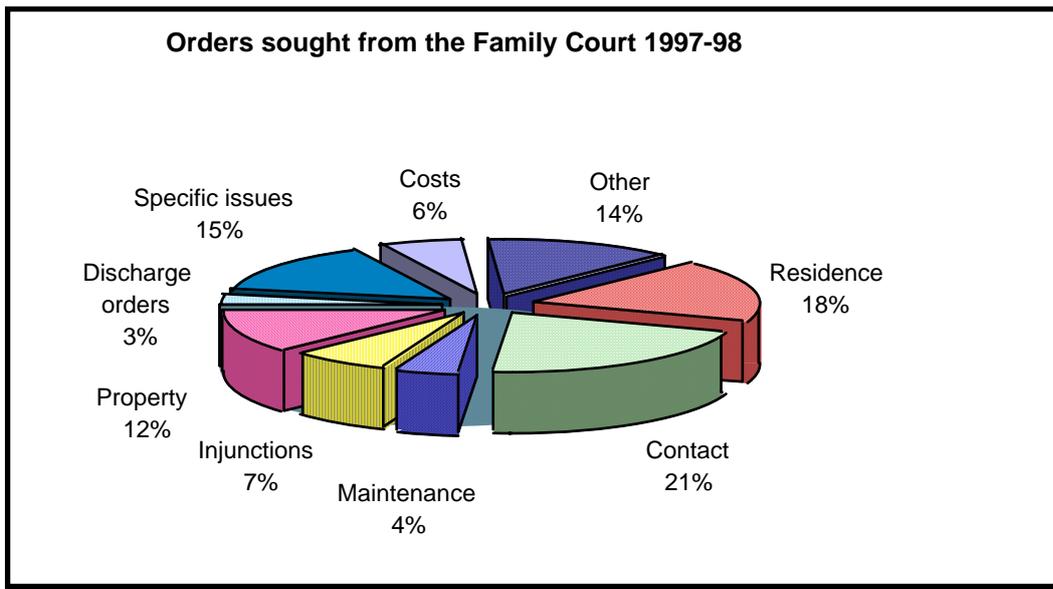
Court orders sought¹

5.25 Several new categories were introduced in the Family Court statistics for the reporting year. These related primarily to removal of the custody/access model and its replacement with the concept of parental responsibility. The *Family Law Act* now refers to the ‘residence’ of the child, ‘contact’ with the child and ‘specific issues’. A specific issues order can confer on a person who is not a parent the responsibility for the long-term care, welfare and development of a child or for the day-to-day care, welfare and development of the child. Specific issues orders may also deal with other matters such as the school which a child is to attend.

5.26 Of orders sought in 1997-98, the largest single categories were contact and residence, with property and ‘other’ matters making up most of the remainder (see Chart 6 below). Matters relating to children (residence, contact, specific issues and child support), combined to constitute the largest number of orders sought in 1997-98, with 64,338 cases or 55.6 per cent of all orders sought during the year. This was significantly down on the 72,162 (69 per cent) for the previous financial year.

CHART 6: Orders sought from the Family Court 1997-98

¹ Due to changes in the *Family Law Act* 1975, and consequent changes in the Family Court’s statistical breakdown, the categories below are not the same as those used in previous annual reports.



Ancillary applications

5.27 The number of residence applications in 1997-98, and the number of contact applications, were both higher than the previous year's figures. Residence applications were 13.2 per cent higher than in 1996-97 and contact orders were 9.41 per cent higher.

5.28 Although the number of residence and contact applications is high when compared with applications made under the custody and access arrangements which operated prior to June 1996, it is still too early to say whether this will continue or whether it is a temporary response to the changes in the legislation. The increase is possibly due to applicants wishing to bring their arrangements with regard to children under the new legislation and may also involve revisiting previously unsatisfactory arrangements. Council will continue to monitor this matter over the next few years.

TABLE 3a: Custody/guardianship and access (all children), 1989-90 to 1995-96

Year	Number of custody/guardianship applications	Number of access applications
1989-90	18,017	12,440
1990-91	19,433	12,735
1991-92	18,207	15,377
1992-93	15,485	14,971
1993-94	16,261	16,256
1994-95	13,315	14,144
1995-96	12,595	13,814

TABLE 3b: Residence and contact (all children), 1996-97² to 1997-98

Year	Number of residence applications	Number of contact applications
1996-97	18,503	21,897
1997-98	20,947	23,958

5.29 By comparison with the overall decline for much of the 1990s in total applications filed for custody/guardianship and access, applications in relation to ex-nuptial children had increased steadily (Table 4). Residence and contact applications for ex-nuptial children in 1996-97 were more than 50 per cent higher than 1995-96 applications for custody, guardianship and access, with contact applications for ex-nuptial children 76 per cent higher. There were slight increases again in 1997-98. In 1996-97 residence applications filed in relation to children of a formal marriage were also high, and contact applications resulting from formal marriages were about 50 per cent higher than the 1995-96 figure for access applications. In the new category of specific issues, applications filed for ex-nuptial children made up one-third of all specific issues applications, only slightly lower than the ex-nuptial proportion of residence and contact applications. Again there were also slight increases in 1997-98 over the previous financial year.

² 1996-97 is the first year of operation of the *Family Law Reform Act 1995* which introduced the concepts of 'residence' and 'contact'.

TABLE 4a: Custody and access (ex-nuptial children), 1989-90 to 1995-96

Year	Custody/ guardianship applications filed for all children	Custody/ guardianship applications filed for ex-nuptial children		Access applications filed for all children	Access applications filed for ex-nuptial children	
	No.	No.	%	No.	No.	%
1989-90	18,017	1,458	8.1%	12,440	1,073	8.6%
1990-91	19,433	1,983	10.2%	12,735	1,439	11.3%
1991-92	18,207	2,806	15.4%	15,377	2,400	15.6%
1992-93	15,766	3,173	20.1%	15,176	3,070	20.2%
1993-94	16,261	3,760	23.1%	16,256	3,633	22.3%
1994-95	13,315	4,042	30.4%	14,144	4,133	29.2%
1995-96	12,595	4,034	32.0%	13,814	4,350	31.5%

TABLE 4b: Residence, contact and specific issues applications (ex-nuptial children) 1997-98³ to 1997-98

Year	Residence applications filed for all children	Residence applications filed for ex-nuptial children		Contact applications filed for all children	Contact applications filed for ex-nuptial children	
	No.	No.	%	No.	No.	%
1996-97	18,503	6,427	34.7%	21,897	7,670	35.0%
1997-98	20,947	7,734	36.9%	23,958	8,733	36.5%

Table 4c: Specific issues orders (all children and ex-nuptial children), 1997-98

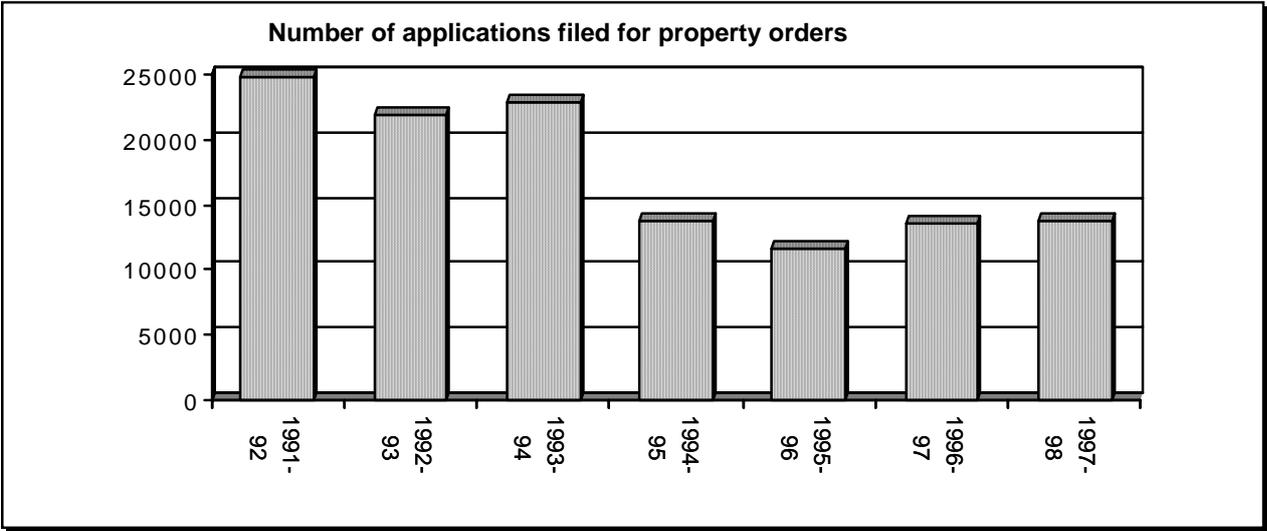
Year	Specific issues applications filed for all children	Specific issues applications filed for ex-nuptial children	
	No.	No.	%
1996-97	14,801	4,969	33.6%
1997-98	17,464	6,245	35.8%

Property

³ 1996-97 is the first year of operation of the *Family Law Reform Act 1995* which introduced the concepts of 'residence' and 'contact'.

5.30 The number of applications filed for property matters increased slightly in 1997-98 to 13,857, after a sharp decline during 1994-95 and 1995-96 and an increase in 1996-97. The increase in 1997-98 represented a 2.4 per cent increase on the figures for 1996-97. There was a significant drop (about 40 per cent) in the total number of property orders sought in ancillary applications in 1994-95 over the previous financial year, and a further drop in 1995-96. That number increased in the past two financial years and is now at around the 1994-95 level again.

CHART 7: Number of property applications filed 1991-92 to 1997-98



Conciliation conferences

5.31 In contested property matters, the parties are required to attend a conference with a Registrar or Deputy Registrar before an order can be sought from the Family Court. Such conferences are provided for in sub-section 79(9) of the *Family Law Act 1975* and are designed to enable couples to reach agreement on issues between themselves rather than having a decision imposed on them by the Court.

5.32 There were 6,812 conciliation conferences held in 1997-98. In 1996-97, 7,122 conciliation conferences were held, a drop of 4.3 per cent on the number in 1996-97. In 2,881 conciliation conferences all the issues were resolved without going before the Court. This represents a resolution rate of 42 per cent compared with 41.0 per cent in 1996-97, 39.1 per cent in 1995-96, 38.8 per cent in 1994-95 and 1993-94 and 43.4 per cent in 1992-93.

Pre-hearing conferences

5.33 The Court conducts pre-hearing conferences before a matter finally goes before the Court, to ensure that the matter is ready for a hearing and to give the parties a further opportunity to reach agreement without having to go to trial. The number of pre-hearing conferences held in 1997-98 was 6,782. This compares with the following figures for the preceding five years:

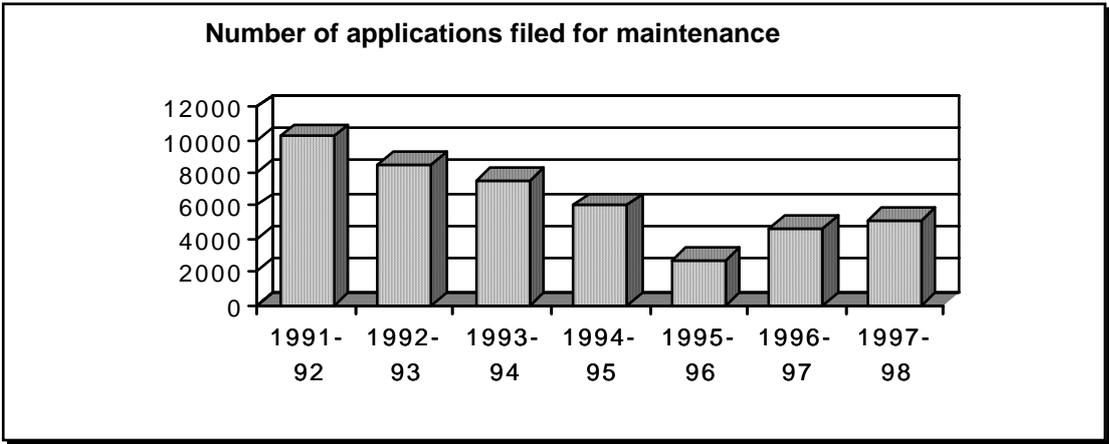
5,746	1996-97
7,577	1995-96
8,436	1994-95
7,644	1993-94
7,067	1992-93.

5.34 In 1,686 cases in 1997-98, or 24.9 per cent of cases for the year, all of the issues were resolved without the need for the matter to go to court. This represents a slight increase on the figures for 1992-93 to 1996-97 inclusive, which ranged from 21.0 per cent to 23.9 per cent of cases resolved at the pre-hearing conference.

5.35 The total number of cases which went either to conciliation conferences or pre-hearing conferences was 13,594, an increase over the previous year (12,868) but still lower than the figures for 1995-96 (16,160) and 1994-95 (17,474). Of the total number for the year, 4,567 were resolved through conference mechanisms. This represented an average of approximately one-third of cases in which a conference was used.

Maintenance

CHART 8: Number of applications filed for maintenance 1991-92 to 1997-98



5.36 During 1997-98 there were 3,126 spousal maintenance claims and 1,969 child maintenance claims - a total of 5,095 maintenance claims. This was 418 higher than in the previous financial year. The number is half the number of maintenance claims lodged in 1991-92. The decline in maintenance claims, which bottomed at 2,646 in

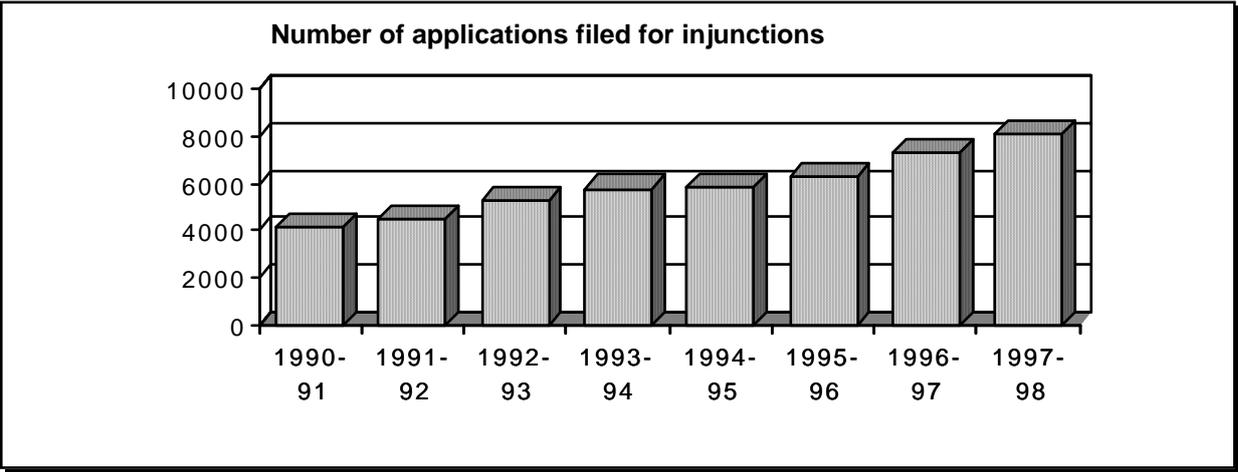
1995-96, has, however, been arrested and there has now been an increase in the past two years. There were 352 maintenance claims for ex-nuptial children in 1997-98, which was slightly down on the 1996-97 figure. The overall number of child maintenance claims was 191 fewer than the previous year.

5.37 Applications for spousal maintenance have been uneven. The Council is currently examining the circumstances in which spousal maintenance applications are made in its project on Section 81 - the 'Clean Break' Principle. This may result in a clearer understanding of the reasons for the uneven pattern in recent years. The slight increase in applications for spousal maintenance in 1993-94 (an increase of 112 over the previous year) was offset in 1994-95 by a drop of 568; and the major decline in 1995-96 of 58 per cent was offset by an increase in 1996-97 of 33 per cent. There was a further increase of 609 (24 per cent) in 1997-98.

Injunctions

5.38 The steady increase in the number of applications for injunctions, since 1990-91 continued in 1997-98. Figures for the past three years have been 6,268 (1995-96), 7,298 (1996-97) and 8,069 in 1997-98. Available statistics do not provide a breakdown of the type of injunction sought.

CHART 9: Number of applications filed for injunctions



Costs

5.39 Although the *Family Law Act 1975* anticipates that each party to proceedings will bear his or her own costs (section 117(1)), it also provides for situations where the Court is of the opinion that there are circumstances that justify an order for costs (section 117(2)). In 1997-98 there were 6,833 applications made for costs. These represented 7 per cent of the total orders sought compared with 6 per cent in the previous year.

Discharge orders

5.40 Orders made under section 112AD with regard to sanctions for failure to comply with orders may be discharged by an order under section 112AK. The Family Court received 3,612 applications for orders to be discharged in 1997-98.

Consent orders

5.41 Under Order 14 Rule 6 of the Family Law Rules, a Judge or Registrar may make an order if both parties file written consents to that order being made. This provision does not apply to dissolution or nullity of a marriage, approval of a maintenance

agreement under section 87 of the *Family Law Act* 1975, appeals or special cases for the opinion of the Full Court.

5.42 There were 15,131 consent orders sought in the Family Court under Order 14 Rule 6 during 1997-98. This was 1,352 (or around 8 per cent) less than in 1996-97.

Parenting plans

5.43 The *Family Law Reform Act* 1995 provides for the use and, if required, the registration of parenting plans with the court under section 63E of the *Family Law Act* 1975. During the reporting year there were 438 parenting plans filed for registration with the Court. A total of 352 parenting plans were registered during 1997-98. There were 36 parenting plans revoking previous parenting plans. The number of parenting plans registered during the year was slightly less than in the previous year.

5.44 Council has been closely monitoring the registration of parenting plans under section 63E of the *Family Law Act* and has advised the Attorney-General that it considers registration of plans in the Family Court was contrary to the original intention that these plans should offer a flexible alternative to the Court's processes where there was an adequate level of cooperation between the separating couple to do so. Council expects to be further examining this issue during the next year.

Contested matters

5.45 In 1996-97 the Family Court changed to a system of simplified procedures which resulted in some differences in the way its statistics were recorded. One change was to the recording of contested or defended matters. Contested matters are now recorded as 'direct track', 'standard track' and 'complex track' defended matters. Despite these changes, differences in the actual number of contested cases finalised were relatively small.

5.46 During 1997-98 a total of 3,808 issues were reported as finally determined by a listed contested case, 66 fewer cases than in 1996-97. The extent to which different kinds of applications were contested and resolved is indicated in Table 5. By comparison with 1991-92, the percentage of access and property matters finalised over the years was relatively stable up to 1995-96, though the percentage of custody/guardianship matters resolved within that year doubled and the percentage of resolved cases involving injunctions halved. In 1996-97 a change in the recording method, which counted residence and contact together, and the marked increase in the number of applications relating to children, gave a figure of only 5 per cent for finalisation of listed contested cases in the residence/contact category. The figure for 1997-98 was also 5 per cent.

Contested matters finalised

TABLE 5: Matters finalised by agreement or judgment, as a percentage of total applications in that category 1992-93 to 1997-98

Category	1992-93 %	1993-94 %	1994-95 %	1995-96 %	1996-97 %	1997-98 %
Custody/ guardianship	8	9	10	12		
Access	9	10	11	11		
Total custody and access	17	19	21	23		
Total residence and contact	not applicable	Not applicable	Not applicable	Not applicable	5	5
Specific issues	Not applicable	Not applicable	Not applicable	Not applicable	5	6
Property	8	8	13	14	12	12
Maintenance	11	12	12	27	11	9
Injunctions	6	6	5	4	4	3

Appeals

5.47 The number of appeals from the Family Court to the Full Court has been variable over the last decade. Following a decline in the early 1990s of between 15 and 38 per cent each year (by comparison with the average between 1984 and 1989), the number of appeals increased by almost 45 per cent in 1993-94, then stabilised at the same level between 1993-94 and 1995-96. In 1996-97 it increased again, by 14 per cent, to a total for the year of 281 and there was a further increase of 7.5 per cent in 1997-98 to 302 appeals.

CHART 10: Number of appeals filed

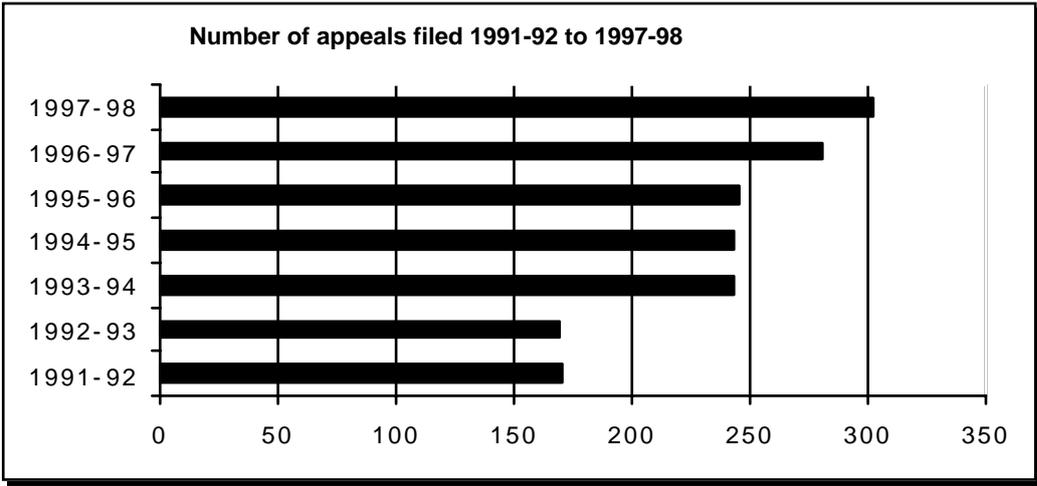


TABLE 6: Disposal of appeals

Year	Heard⁴	Withdrawn	Finalised
1989-90	174	89	263
1990-91	139	60	199
1991-92	100	55	155
1992-93	96	46	142
1993-94	170	81	251
1994-95	157	49	206
1995-96	152	61	179
1996-97	148	70	189
1997-98	180	24	204

5.48 The number of appeals finalised during the year was 204, an increase of 15, or about 8 per cent, on the previous year. Of the 302 appeals filed during 1997-98, men filed 171 applications, women filed 125 and corporations or other applicants filed 6. The proportion of male appellants decreased by 6 per cent from 62 per cent of all appellants in 1996-97 to 56 per cent in 1997-98. The number of female appellants increased from 89 last year to 125 this year - an increase of 40 per cent. Appeals in 1997-98 involved 35.8 per cent litigants in person.

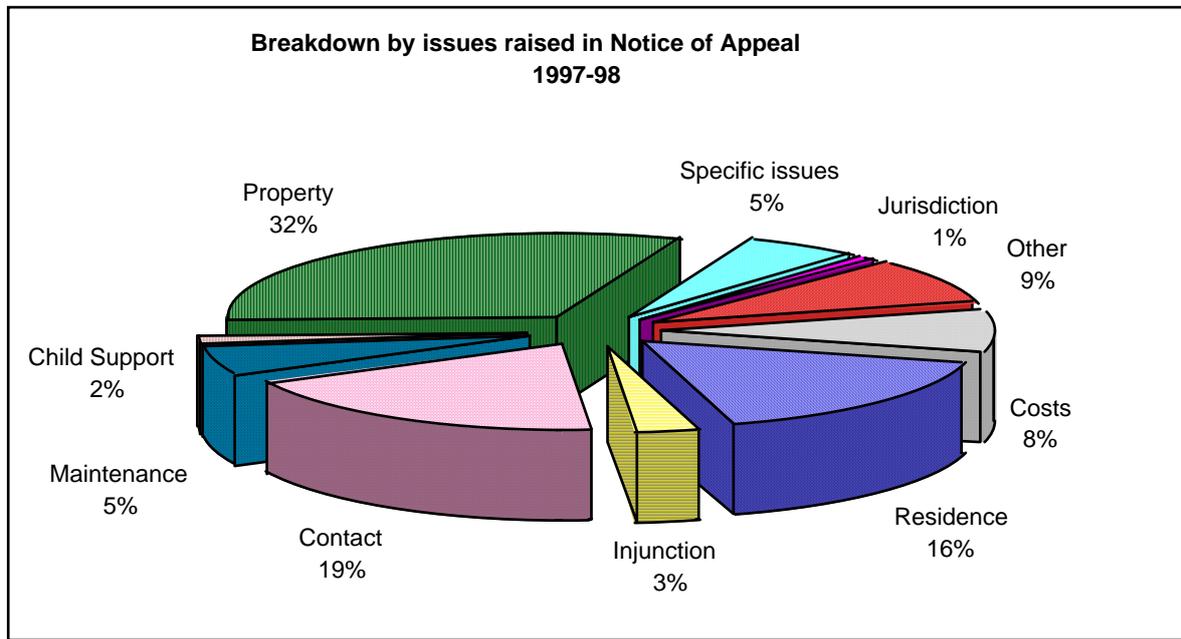
5.49 During the year the filing fee was collected on 53 per cent of the 302 appeals lodged. This compares with 60 per cent in 1996-97, 71.5 per cent in 1995-96, 69.5 per cent in 1994-95, 65 per cent in 1993-94, 67 per cent in 1992-93 and 64 per cent in 1991-92. The proportion of applications having fees waived increased from 34 per cent in 1996-97 to 45 per cent in 1997-98.

Division of issues litigated on appeal

5.50 An appeal may be a single issue case or involve multiple issues. As in previous years, the highest single issue appealed was in relation to property, though residence and contact combined made up a higher proportion of cases. Property, residence and contact issues in 1997-98 collectively represented two-thirds of the issues appealed. Specific issues represented 5 per cent of the issues while maintenance matters, at 5 per cent, showed a decrease.

⁴ Indicates appeals which are stood over generally or otherwise settled.

CHART 11: Categories of issues litigated on appeal 1997-98⁵



COURT COUNSELLING SERVICES

Amalgamation of court counselling statistics

5.51 Due to differences in the method of recording statistics between the Family Court of Western Australia and the Family Court of Australia, counselling statistics for the two Courts were presented separately up to and including 1995-96. Some differences, such as the Western Australian use of telephone counselling, made comparison of the two sets of statistics difficult and in some cases the figures were not comparable. Counselling statistics were standardised and presented for the first time in 1996-97 in amalgamated form. For previous figures refer to the Council's *Annual Report 1995-96*.

5.52 The following tables now include the figures for both the Family Court of Australia and the Family Court of Western Australia.

5.53 The caseload of counsellors is divided into three groups: Court ordered privileged cases, reportable cases and voluntary privileged cases.

5.54 **Privileged cases.** Cases in which evidence of what is said in a counselling session is not admissible in any court proceedings are called privileged cases.

⁵ One appeal may involve more than one issue.

5.55 *Voluntary privileged cases.* These are cases where counselling was instigated other than by court referral (sections 15 and 16 of the *Family Law Act 1975*).

5.56 *Court ordered privileged cases* occur to aid reconciliation (section 14 of the *Family Law Act*), where an injunction is ordered by the court, where the welfare of a child is relevant in any proceedings (section 62F) and in other instances where the court or the registrar orders it.

5.57 *Reportable cases.* Reportable cases are those where the counsellor is required to report to the court where the welfare of a child is relevant or by orders of the court under subsections 55A(2) or 62F(6), or sections 62G or 65G of the *Family Law Act 1975*.

5.58 A comparison of cases opened in each of the three categories (voluntary, privileged and reportable) is made in the table below.

TABLE 7: Voluntary, privileged and reportable cases

Year	Voluntary privileged	Telephone counselling**	Court ordered privileged	Reportable
	OPENED	OPENED	OPENED	OPENED
1989-90	10,667		8,836	2,140
1990-91	12,575		9,724	1,891
1991-92	14,806		10,571	1,512
1992-93	14,521		11,160	1,298
1993-94	14,518		13,125	1,207
1994-95	16,279		12,535	1,538
1995-96	18,482		10,367	1,190
1996-97*	13,362**	16,025**	13,290	1,541
1997-98*	10,930**	18,072**	14,166	1,784

* Includes figures for Western Australia

** Following the new system for collection of court counselling statistics, a category for telephone counselling was introduced. This included interventions previously recorded as Voluntary Privileged Counselling.

5.59 Up to 1995-96 voluntary counselling consistently made up around half of the caseload of counsellors. In 1996-97 the total, including the new category of telephone counselling, was 29,387. This fell slightly to 29,002 in 1997-98. The last few years have seen significant increases in the number of voluntary cases coming before the Family Court of Australia. Excluding the Western Australian figures, the increase was 12 per cent in 1994-95, a further 13 per cent in 1995-96, and an additional 41 per cent in 1996-97 with a fall of 385 in 1997-98. The number of court-ordered cases also

increased from 13,290 in 1996-97 to 14,166 in 1997-98. Reportable cases, which had also declined in number since the early 1990s, increased by 7 per cent in 1996-97 and a further 15.7 per cent in 1997-98. The following table sets out the cases in each category as a proportion of all cases.

TABLE 8: Opened counselling cases by category as percentage of total cases

Year	Voluntary	Privileged	Reportable	Total number of cases
1989-90	49%	41%	10%	21,643
1990-91	52%	40%	8%	24,190
1991-92	55%	39%	6%	26,889
1992-93	54%	41%	5%	26,979
1993-94	50%	45%	5%	28,850
1994-95	54%	41%	5%	30,352
1995-96	62%	34%	4%	30,039
1996-97*	66%	30%	3%	44,218
1997-98*	64.5%	31.5%	4%	44,952

* Includes figures for Western Australia

Type of assistance

5.60 Family counselling in 1997-98 involved a total for the Family Court of Australia of 93,794 interviews and for the Family Court of Western Australia of 9,598 interviews. For the Family Court of Australia this was an increase of 0.7 per cent on the number for 1995-96. Information sessions and group counselling in the Family Court of Australia increased from 2,361 hours in 1996-97 to 3,057 hours in 1997-98.

5.61 Counselling interviews in relation to contact enforcement totalled 1,088 in 1997-98 (892 in 1996-97), of which 979 (747) or 90 per cent (84 per cent) were in the Family Court of Australia and 109 (145) or 10 per cent (16 per cent) were in the Family Court of Western Australia.

SECTION 115 OF THE FAMILY LAW ACT 1975

(1) **[Family Law Council]** The Attorney-General may establish a Family Law Council consisting of persons appointed by the Attorney-General in accordance with sub-section (2).

(2) **[Composition]** The Council shall consist of a Judge of the Family Court and such other judges, officers of the Australian Public Service or of the Public Service of a State, representatives of organisations that provide family and child counselling and other persons as the Attorney-General thinks fit.

(3) **[Function]** It is the function of the Council to advise and make recommendations to the Attorney-General, either of its own motion or upon request made to it by the Attorney-General, concerning -

- (a) the working of this Act and other legislation relating to family law;
- (b) the working of legal aid in relation to family law; and
- (c) any other matters relating to family law.

(4) **[Chairperson]** The Attorney-General shall appoint one of its members to be Chairperson of the Council.

(5) **[Remuneration]** A member of the Council shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, the member shall be paid such remuneration as is prescribed.

(5A) **[Allowances]** A member of the Council shall be paid such allowances as are prescribed.

(5B) **[Remuneration Tribunal Act]** Sub-sections (5) and (5A) have effect subject to the *Remuneration Tribunal Act 1973*.

(5C) **[Term of office]** Subject to this section, a member of the Council holds office for such period, not exceeding 3 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

(6) **[Resignation]** A member (including the Chairperson) may resign by writing signed and delivered to the Attorney-General.

(6A) [**Termination of appointment**] The Attorney-General may terminate the appointment of a member by reason of the misbehaviour, or physical or mental incapacity, of the member.

(6B) [**Bankruptcy**] If a member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, the Attorney-General shall terminate the appointment of the member.

(7) [**Meetings**] Meetings of the Council shall be convened by the Chairperson or the Attorney-General.

(8) [**Records**] The Council shall cause records to be kept of its meetings.

(9) [**Report to be furnished**] The Council shall, as soon as practicable after 30 June in each year, prepare and furnish to the Attorney-General a report of the operations of the Council during the year that ended that 30 June.

(10) [**Report to be laid before Parliament**] The Attorney-General shall cause a copy of a report furnished under sub-section (9) to be laid before each House of Parliament within 15 sitting days of that House after receipt of the report by the Attorney-General.

COUNCIL PUBLICATIONS

In addition to its Annual Reports, Council has published the following reports and papers since it commenced to operate in November 1976:

- *Birth Certificate Revision of the Sexually Reassigned* (1978)
- *Childrens Wishes: Section 64(1)(b) of the Family Law Act 1975* (1978)
- *Migrants and the Family Court* (1978)
- *Maintenance enforcement under the Family Law Act 1975* (1979)
- *Property and Maintenance After Death* (1979)
- *Jurisdiction of Magistrates under the Family Law Act 1975* (1979)
- *Lending policies of Banks and Building Societies* (1979)
- *Superannuation and Family Law* (1979)
- *Wardship, Guardianship, Custody, Access, Change of Name - Watson Committee Report* (1982)
- *Ministers of Religion and Admissible Evidence under section 18 of the Family Law Act 1975* (1982)
- *Report on Maintenance Assessment and Collection* (1985)
- *Creating Children: A uniform approach to the law and practice of reproductive technology in Australia* (1985) *
- *Administration of Family Law in Australia* (1985) *
- *Cinderella Re-visited: Rights and Responsibilities in Step-families* (1986) *
- *Access - Some Options for Reform* (1987) *
- *Arbitration in Family Law* (1988) *
- *Child Sexual Abuse* (1988) *
- *Representation of children in Family Court proceedings* (1989) *
- *Spousal Maintenance Discussion Paper* (1989)
- *Patterns of Parenting After Separation* (1992) *
- *Family Mediation* (1992) *
- *Interaction of Bankruptcy and Family Law* (1992) *
- *Section 64A of the Family Law Act* (1992)
- *Choices - A Paper on Superannuation* (1992)
- *Comments on the Report of the Joint Select Committee on the Operation and Interpretation of the Family Law Act* (1993)
- *The Operation of the (UK) Children Act 1989* (1994)
- *Female Genital Mutilation* (1994) *
- *Sterilisation and Other Medical Procedures on Children* (1994) *
- *Parent child contact and the Family Court Issues Paper 14* (1994) Joint Issues Paper with the Australian Law Reform Commission
- *Magistrates in family law* (1995) *
- *Family law appeals and review* (1996)
- *Involving and representing children in family law* (1996) *
- *Parental child abduction* (1998) *
- *Child and Family Services Principles and Standards Discussion Paper No 1* (1998)

- Interim Report: *Penalties and Enforcement* (1998)
- *Child Contact Orders: Enforcement and Penalties* (1998)

* Discussion papers were also issued for consultation purposes on each of these matters.

FAMILY LAW COUNCIL COMMITTEES 1997-98

Unless otherwise stated, Committee Members are Members or Observers of the Family Law Council. Persons marked with an asterisk are former Members of Council.

1. Child and Family Services (CAFS) Committee

A. Members

Mr Des Semple	<i>Convenor</i>
Ms Jenny Bedlington *	
Mrs Jennifer Boland	<i>FLC Chairperson</i>
Ms Dale Bagshaw	
Dr Kate Funder	
Ms Margaret Harrison	
Mr Bill Hughes	<i>Director of Research</i>

B. Project

Interaction between family law and child and family services legislation.

C. Terms of reference

The terms of reference of the committee are:

1. To examine the interaction of family law with other child and family legislation and minimum standards of practice and legislative practices and procedures in Australia, identifying factors which result in duplication, gaps, ambiguity, unintended consequences or confusion in responsibility and identifying examples of best practice principles.
2. To examine overseas examples of systems of child and family welfare and family law to determine aspects of possible application in the Australian federal context.
3. How to best influence the principles of practice and standards that should be implemented in relation to the care of children.

4. To consider how to enhance the best interests of children and the functioning of families in accordance with the principles identified.

In fulfilling these terms of reference the Committee will consult fully and refer to relevant reports.

D. Current status of project

The project has been broken down into 3 stages: (1) Discussion Paper No 1 - Principles and Standards, (2) Discussion Paper No 2 - Evaluation of existing system using the principles and standards developed in Stage 1, and (3) Discussion Paper No 3 - Options for Reform, followed by a report to the Attorney-General.

Discussion Paper No 1 was released in January 1998 and submissions are currently being examined by the committee.

2. Child Support Committee

A. Members

Ms Annemaree Lanteri	<i>Convenor</i>
Mr Rod Burr	
Ms Margaret Harrison	
Mr Garry Watts	<i>Practitioner</i>
Ms Jenny Degeling	<i>Secretariat</i>

B. Project

The Child Support Scheme.

C. Terms of reference

To monitor the operation of the Child Support Scheme.

D. Current status of project

This committee has been monitoring the operation of the Child Support Scheme. Council now has membership on the Child Support Liaison Committee which enables it to meet with officers of the Child Support Agency, the Department of Social Security and the Family Law Section of the Law Council on a quarterly basis. Annemaree Lanteri, Convenor of Council's Child Support Committee, is Council's delegate on the Liaison Committee. Jenny Degeling, from Council's Secretariat, is her deputy. The Committee provides Council with reports on the operation of the Child Support Scheme.

3. Violence and the *Family Law Act*

A. Members

Mrs Jennifer Boland	<i>Co-Convenor</i>
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The Hon Justice Michelle May *	<i>Co-Convenor</i>
Ms Dale Bagshaw	
Dr Juliet Behrens	<i>Australian National University</i>
Professor John Dewar	
The Hon Justice John Faulks *	
Ms Louise Hansen *	
Ms Jenny Degeling	<i>Secretariat</i>

B. Project

Violence and the *Family Law Act*.

C. Terms of reference

The Family Law Council decided at its October 1994 meeting to establish a committee to commence work on a project on violence and family law. The general aim of the project is to examine how the operation of the *Family Law Act 1975*, and those who make decisions under the Act, should take account of violence in marriage and other marriage like relationships.

Some of the issues under consideration include:

- To what extent should violence and its consequences be taken into account by decision makers under the Family Law Act?
- By what means, if any, should compensation be available for personal injury resulting from violence from a spouse? What is, or should be, the relationship between any such action for compensation and proceedings under the Family Law Act?
- To what extent and from what sources should the court inform itself about issues relating to violence? What changes, if any, should be made to rules of evidence and procedures to facilitate this?
- To what extent are the processes of the Family Court responsive to clients who are, or have been, affected by violence?
- What changes, if any, are required to legal aid policies in family law cases which involve violence?
- What is/should be the relationship between Family Court proceedings and orders for personal protection made under State and Territory domestic violence laws (eg. restraining orders and apprehended violence orders)?

Other issues which were raised in early discussions included:

- What are, and what should be, the role, responsibilities and methods of operation for counselling services attached to the Family Court in dealing with cases involving violence?
- What are the key factors to be considered in administration of the family law system to protect the interests of the children who have been or could be exposed to violence in the home?
- To what extent, if at all, are some social groups, such as NESB communities, indigenous Australians, people with disabilities and young people, particularly disadvantaged in dealing with the family law system when they have been the targets of violence in their relationships?

D. Current status of project

A discussion paper was approved by Council in June 1998.

4. Penalties Project

A. Members

Mr Rod Burr	<i>Convenor</i>
Ms Elaine Atkinson	
Ms Margaret Harrison	
The Hon Justice Carolyn Martin	
Ms Annemaree Lanteri	
Mr Bill Hughes	<i>Director of Research</i>

B. Project

A review of penalties applied by the Family Court of Australia in cases of non-compliance with orders and injunctions which come before the Family Court

C. Terms of reference

The aims of the project, as agreed by Council, are to:

- identify all matters which are liable to the imposition of a penalty and which come before the Family Court during the collection period;
- identify the penalty imposed or other determination made by the Court in each case; and

- extract relevant information from each case which will enable the Council to obtain a clear picture of the facts, issues and determination in each case.

D. Current status of project

Judges' Associates collected the required data and forwarded it to the Family Law Council Secretariat for compilation over the 2 year period from the beginning of 1996 to the end of 1997. Information from other sources, and anecdotal evidence, was also collected. On completion of the data collection phase an interim report was prepared and transmitted to the Attorney-General in March 1998. The interim report was also circulated for public comment. A final report was to the Attorney-General at the end of June 1998.

5. The 'clean break': section 81 of the *Family Law Act*

A. Members

Mrs Jennifer Boland	<i>Convenor</i>
Professor John Dewar	
Dr Kate Funder	
The Hon Justice Michael Hannon	
Ms Margaret Harrison	
Ms Annemaree Lanteri	
Ms Jenny Degeling	<i>Secretariat</i>

B. Project

An examination of the operation of section 81 of the *Family Law Act* and its on-going relevance, including spousal maintenance and superannuation issues.

C. Terms of reference

The terms of reference for the project are:

1. To examine the operation and effect of section 81 of the *Family Law Act 1975* and to consider its ongoing relevance.
2. To examine the operation and effect of the spousal maintenance provisions of the *Family Law Act* with particular reference to the financial and rehabilitative needs of the economically weaker party.
3. In considering these matters the committee will have regard to any relevant issues including such matters as social security and related legislation, any changes proposed in relation to the treatment of superannuation under the *Family Law Act*, relevant reports of the ALRC, the operation of the Child Support Scheme, the income tax system and the provisions of overseas schemes.

D. Current status of project

The Committee developed a questionnaire for legal practitioners concerning spousal maintenance issues which was published in September 1997 in the *Australian Family Lawyer* (Winter 1997, Vol 12, No 1). Results of the survey of legal practitioners have been collated. An additional survey is being undertaken to obtain the views of judicial officers. At present the committee is working on a discussion paper for public consultation purposes.

6. Parental child abduction

A. Members

Mr Richard Morgan	<i>Convenor</i>
Mr John Hodgins *	
The Hon Justice Joseph V. Kay *	
Mr Geoff McDonald	<i>Senior Adviser, Attorney- General's Department</i>
Mr John McGinness	<i>Attorney-General's Department</i>
Sgt Gerold Knight	<i>Australian Bureau of Criminal Intelligence</i>
Mr Bill Hughes	<i>Director of Research</i>

B. Project

To consider whether parental child abduction should be made a criminal offence and related issues.

C. Terms of reference

The Attorney-General asked the Council to consider and report on the following matters:

1. Should it be a criminal offence for a person with parental responsibility for a child to remove the child from Australia, or retain the child in a foreign country, in breach of the custody, guardianship or access rights of another person?
2. Should it be a criminal offence for a person with parental responsibility for a child to remove a child from his or her country of habitual residence to Australia, or to retain the child in Australia, in breach of the custody, guardianship or access rights of another person?
3. Should it be a criminal offence for a person with parental responsibility for a child to do the following within Australia:
 - to remove the child from the care of a person, or
 - to refuse or fail to deliver or return a child to a personwith intent to prevent the exercise or performance of any of the powers, duties or responsibilities of another person who has parental responsibility for the child?
4. Should it be an offence to aid or abet the commission of any such offence?

5. Should any such offence apply to parental abduction regardless of the age of the child?
6. What exceptions or defences should apply in relation to any such offence?
7. Should the consent of the Attorney-General be required for the commencement of a prosecution for parental child abduction?
8. Should the prosecution policy of the Commonwealth apply to the institution of such prosecutions?
9. Should any such offence provisions be in the *Family Law Act 1975* or in some other legislation?
10. Should any such offences be tried in the Family Court or some other court?
11. Should police have powers to intercept telephone communications and use listening devices to locate a child who has been removed or retained by a person in breach of any such offences?
12. Should proceeds of crime legislation apply to any such offences?

The Attorney-General added:

I would be grateful if the Council would make recommendations to me on these questions and any other issues it considers relevant.

D. Current status of project

A discussion paper was released in February 1997. The committee received 29 submissions and transmitted a final report to the Attorney-General in January 1998.

7. Step-parent Adoptions

A. Members

Mr Richard Morgan	<i>Convenor</i>
Ms Elaine Atkinson	
The Hon Justice Carolyn Martin	
Mr Rod Burr	
Mr Bill Hughes	<i>Director of Research</i>

B. Project

To examine and report on the operation of the existing legislative framework in relation to step-parent adoptions in light of problems identified by members of the judiciary.

C. Terms of reference

In a letter dated 2 January 1998 the Attorney-General asked Council for advice, by 30 June 1998, about “a letter from His Honour Justice Chisholm raising concerns about the operation of the *Family Law Act* provisions dealing with step-parent adoptions”. Justice Chisholm’s letter raised several important issues concerning the interaction between Commonwealth and State laws.

D. Current status of project

Council’s letter of advice on this issue was transmitted to the Attorney-General in May 1998.

8. ALRC Issues Paper No 22 Adversarial reference

A. Members

Ms Dale Bagshaw	<i>Convenor</i>
The Hon Justice Rod Burr	
Ms Margaret Harrison	
Mr Des Semple	
Mr Bill Hughes	<i>Director of Research</i>

B. Project

To draft Council’s submission in response to Issues paper No 22.

C. Terms of reference

At its meeting on 19-20 February 1998 the Council formed this committee and directed it to prepare Council’s submission for Council’s consideration and completion by the end of June 1998.

D. Current status of project

Council's letter of advice on this issue was transmitted to the Attorney-General in June 1998.

9. Primary dispute resolution services in family law

A. Members

Mrs Jennifer Boland

Convenor

Ms Dale Bagshaw

Mr Des Semple

Dr Kate Funder

Ms Margaret Harrison

Mr Bill Hughes

Director of Research

B. Project

To prepare Council's submission on the Attorney-General's Department's discussion paper *Delivery of primary dispute resolution services in family law* (August 1997).

C. Terms of reference

At Council's meeting in April 1997 a committee was established, in anticipation of the release of the departmental discussion paper (DP), to examine the DP on its release and to draft Council's submission.

D. Current status of project

Council's submission was forwarded to the Attorney-General on 5 December 1997.

10. Civil and religious divorce

A. Members

Mr Richard Morgan	<i>Convenor</i>
Ms Annemaree Lanteri	
Ms Jenny Degeling	<i>Secretariat</i>

B. Project

To draft Council's advice to the Attorney-General on civil and religious divorce.

C. Terms of reference

A preliminary draft advice, prepared in Council's Secretariat, was examined at Council's meeting in July 1997 and referred to a subcommittee for further consideration. The issue was further considered at subsequent Council meetings and settled at the meeting in May 1998.

D. Current status of project

Council's advice was forwarded to the Attorney-General in June 1998.

**PERSONS AND ORGANISATIONS WHO HAVE MET WITH COUNCIL 1
JULY 1997 - 30 JUNE 1998**

17 - 18 July 1997 - Coffs Harbour

Ms Jane Corcoran	<i>NSW Legal Aid Commission, Coffs Harbour</i>
Ms Jean Roach	<i>NSW Legal Aid Commission, Coffs Harbour</i>
Mr Jack Blaxland	<i>Coffs Harbour Family Law Practitioners</i>
Ms Heather McKinnon	<i>Coffs Harbour Family Law Practitioners</i>
Mr Simon Caldwell	<i>Coffs Harbour Family Law Practitioners</i>
Ms Belinda Burgess	<i>Coffs Harbour Family Law Practitioners</i>
Ms Susan Green	<i>Coffs Harbour Family Law Practitioners</i>

16-17 October 1997 - Wellington, New Zealand

The Hon D A (Doug) Graham MP	<i>Minister for Justice and Minister for Courts</i>
The Rt Hon Justice Sir Ivor Richardson	<i>President of the New Zealand Court of Appeal</i>
The Hon Judge Patrick D Mahony	<i>Principal Family Court Judge</i>
The Hon Judge M David Robinson	<i>Administrative Judge - Auckland</i>
The Hon Judge Alex J Twaddle	<i>Administrative Judge - Waikato</i>
The Hon Judge Paul von Dadelszen	<i>Administrative Judge - Central</i>
The Hon Judge Marion A Frater	<i>Administrative Judge - Wellington</i>
The Hon Judge John J D Strettell	<i>Administrative Judge - Christchurch</i>
The Hon Judge Oke Blaikie	<i>Administrative Judge - Dunedin</i>

Judges of the Wellington Registry of the Family Court

Ms Vivienne Aldrich	<i>Legal practitioner</i>
Ms Margaret Casey	<i>Chair, Family Law Committee, NZ Law Society</i>
Mr Murray Cochrane	<i>Legal practitioner</i>
Mr Murray Earl	<i>Legal practitioner</i>
Mr David Howman	<i>Legal practitioner</i>
Ms Isobel Mitchell	<i>Legal practitioner</i>
Mr John Priestley QC	<i>Legal practitioner</i>
Mr Gerard Winter	<i>Legal practitioner</i>
Ms Kate Bicknell	<i>Legal Officer, NZ Law Society</i>
and other members of the Family Law Committee of the NZ Law Society	

Dr Joanne Morriss
Ms Michelle Vaughan

*New Zealand Law Commission
New Zealand Law Commission*

Ms Jacqui Wilson

Family Court Counselling Coordinator

Mr Colin King
Mr Martin Scott
Mr Ian Webber
Ms Margaret Thompson
Ms Angela Lee
Ms Maria Bradshaw
Ms Gillian Hartin
Ms Maureen Costello
Ms Marti Eller
Ms Heather Tavasolli
Ms Isobel Mitchell
Mr Dave Smith
Ms Virginia Lynch
Ms Julie Nind
Ms Belinda Fletcher
Ms Mary Iwanek
Ms Judy Dell

*Secretary, Ministry for Justice
Inland Revenue (Child Support)
Inland Revenue (Child Support)
Legal Adviser, Department for Courts
Legal practitioner
Executive Director, Legal Services Board
Ministry for Justice
Ministry for Justice
Department of Social Welfare
Department of Social Welfare
Department of Social Welfare*

20-21 November 1997 - Canberra

The Hon Daryl Williams AM QC MP
The Hon Justice A B Nicholson AO RFD
Mrs Judith Roberts AM
Ms Pru Goward
Mr Philip Moss
Mr Chris Crowley

*Attorney General
Chief Justice of the Family Court of Australia
Chair, Family Services Council
Head, Office of the Status of Women
Department of the Prime Minister & Cabinet
Family Law Section, Law Council of Australia*

19-20 February 1998 - Sydney

Ms Judith Ryan
Mr Gary Watts

*Legal Aid Commission NSW
Family Law Section, Law Council of Australia*

21-22 May 1998 - Alice Springs

Ms Nardine Collier
Ms Tiarni McNamee
Ms Annabell Cartwright
Ms Vicki Gillick
Ms Jane Lloyd

*Family Law Practitioner
Family Law Practitioner
Family Law Practitioner
Pitjantjatjara Women's Council
Pitjantjatjara Women's Council*

Ms Winnie Woods
Ms Cherie Jones
Ms Michelle Stevens

Pitjantjatjara Women's Council
Pitjantjatjara Women's Council
Central Australian Women's Legal Service

IMPLEMENTATION OF COUNCIL'S RECOMMENDATIONS

Statistical summary 1976-1998

Table 1 below summarises the number of recommendations made financial year by financial year since Council first met on 26 November 1976. Advice is provided to the Attorney-General in either letters of advice or in major reports, and the table provides separate data on the two forms of advice. During the period covered by Table 1 Council published 22 major reports containing recommendations to the Attorney-General.

Table 1: Recommendations in reports and letters of advice 1976-98

RECOMMENDATIONS MADE IN:			
Year	Reports	Letters of advice	Total
1976-77	0	14	14
1977-78	0	29	29
1978-79	0	15	15
1979-80	0	11	11
1980-81	0	17	17
1981-82	0	45	45
1982-83	6	29	35
1983-84	0	18	18
1984-85	59	23	82
1985-86	10	17	27
1986-87	8	14	22
1987-88	12	18	30
1988-89	30	19	49
1989-90	0	6	6
1990-91	0	28	28
1991-92	37	19	56
1992-93	6	9	15
1993-94	27	10	37
1994-95	16	5	21
1995-96	32	13	45
1996-97	14	1	15
1997-98	23	7	30
TOTAL	280	367	647

Lapsed and outstanding recommendations. Of the 647 recommendations made from 26 November 1976 to 30 June 1998, a total of 85 recommendations (13.1%) have lapsed. ("Lapsed" means that because of delay or developments outside Council's control the matter has not been considered by government.) A total of 89

recommendations (13.7%) were still under consideration by government at 30 June 1997. The remaining 473 recommendations (73.1%) have been considered by government and the Government's response to those recommendations is summarised in Table 2 below.

Table 2: Government responses to recommendations 1976-30 June 1998

Category	Reports	Letters of advice	Total
Implemented	121	257	378
Partly implemented	19	17	36
Not implemented	26	33	59
Totals	166	307	473

In Table 2 the terms used have the following meanings:

“Implemented” means that the basic aim of the proposal has been substantially achieved.

“Partly implemented” means that one or more aspects of the basic aim of the proposal have been achieved.

“Not implemented” means that the recommendation was rejected or no aspect of the proposal has been achieved or the proposal has not been implemented within a period of 5 years (except where it is known that the proposal is still under consideration).

Matters still under consideration. Of the 89 recommendations still under consideration, 83 were made in reports and 6 in letters of advice. The oldest outstanding report recommendation was made in 1994-95. Two recommendations made in letters of advice were made in 1991-92. In both cases legislation is being prepared which will implement the 2 recommendations. Apart from those 2 recommendations, the oldest recommendation in a letter of advice still under consideration was made in 1993-94.

Recommendations in Letters of Advice still under consideration

At 30 June 1998 there were 6 matters in letters of advice which were still under consideration. The outstanding recommendations are set out below, with an explanation of their current status.

1991-92

Two recommendations made in letters of advice in 1991-92 are under consideration in relation to legislation which is currently being prepared. The 2 recommendations are:

Where a custodial parent, but for section 66BA of the Family Law Act, would be entitled to maintenance, and the non-custodial parent is about to leave Australia, the Family Court should have the power to make an order for the payment of maintenance in respect of the child.	Action: Currently being examined in relation to the preparation of the Government's response to the JSC Report on Child Support, which is expected during 1997.
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<i>Domestic Violence</i>	
Where there is an injunction in force under section 114 of the Family Law Act for the personal protection of a person, and a police officer believes on reasonable grounds that a person against whom the injunction is directed has breached that injunction, the police officer should have the power to arrest that person.	Action: This recommendation was being implemented in Family Law Reform Bill (No.2) 1994, which lapsed with the 1996 Federal Elections. A new property bill is understood to be currently under consideration.

1993-94

A recommendation relating to the division of matrimonial property is still under consideration in relation to proposed matrimonial property legislation.

<i>Property division under the Family Law Act</i>	
A number of concerns were expressed about the recommendations of the Joint Select Committee on <i>The Family Law Act: Aspects of its Operation and Interpretation</i> (November 1992), particularly the departure proposals set out in recommendation 73 of that report.	Action: Council's views are being considered in relation to the new property bill, which is understood to be currently under consideration.

1997-98

<i>Family Court - Alice Springs</i>	
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<p>That the possibility of using video conferencing facilities at Alice Springs be further examined as a means of overcoming problems associated with isolation.</p>	<p><u>Action:</u> No action to date. Recommendations were transmitted to the Attorney-General at the end of the 1997-98 financial year.</p>
<p>That the possibility of appointing an Aboriginal mediator in Alice Springs be given consideration to overcome the problems being experienced by the Aboriginal communities.</p>	<p><u>Action:</u> No action to date. Recommendations were transmitted to the Attorney-General at the end of the 1997-98 financial year.</p>
<p><i>Civil and Religious Divorce</i></p>	
<p>That the <i>Family Law Act</i> should not be amended to overcome problems associated with the granting of religious divorce.</p>	<p><u>Action:</u> No action to date. Recommendations were transmitted to the Attorney-General at the end of the 1997-98 financial year.</p>