

FAMILY LAW COUNCIL

ANNUAL REPORT

2002-03

ISBN

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## FAMILY LAW COUNCIL

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30 August 2003

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 2002 to 30 June 2003.

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

Yours sincerely,

John Dewar  
Chairperson

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## 1. THE YEAR IN REVIEW

1.01 During 2002-03 the Council has devoted the bulk of its resources to progressing projects arising from the report *Out of the Maze – Pathways to the Future for Families Experiencing Separation* (the Pathways Report) which was launched in August 2001. As foreshadowed in the last Annual Report Council received references from the Attorney-General to investigate and report on three recommendations contained in the Pathways Report. These concern Child Representatives, Indigenous children, and Guidelines for Family Lawyers.

1.02 The Child Representatives Committee was tasked with revisiting the findings and recommendations of the Council's 1996 report, *Involving and Representing Children in Family Law*, in light of the significant social trends and judicial developments since its release.

1.03 The Aboriginal and Torres Strait Islander Issues Committee was asked to investigate implementation of a recommendation relating to kinship obligations and child-rearing practices in indigenous communities.

1.04 The Guidelines Committee was established as a joint Committee with the Family Law Section of the Law Council of Australia to examine a recommendation calling for 'the development of a national code of conduct for lawyers practising family law to reflect the principles outlined in this report and to include a commitment to actively promote non-adversarial dispute resolution and other good practices. Lawyers who subscribe to and observe the code should be readily identifiable to clients and service providers'.

1.05 Council's on-going work program also saw a significant milestone reached with the launch of its report *Family Law and Child Protection* by the Attorney-General the Hon Daryl Williams AM QC MP during his Ministerial Address at the *XVI World Congress of the International Association of Youth and Family Judges and Magistrates* in Melbourne on 27 October 2002. This report was the culmination of several years work by the Council.

1.06 The Council had been asked by the Attorney-General to consider options for reform relating to the efficient and effective integrated delivery of child and family law services in relation to the care and protection of children.

1.07 The final report outlines Federal involvement in child protection, and analyses the response of child protection authorities to abuse notifications in family law cases. It examines situations when neither Federal nor State systems protect children. A key recommendation relates to the establishment of a Federal Child Protection Service. The report also canvasses reforms aimed at improving coordination between State and Federal jurisdictions and addressing deficiencies in the confidentiality provisions relating to disclosures of child abuse.

1.08 In addition to the three projects arising from the Pathways project, two other matters remained under consideration by Council at year's end. The first project relates to the principle that the best interests of the child are the paramount consideration in family law proceedings. The second relates to the issue of violence and family law.

1.09 Where it was considered appropriate, Council also contributed to relevant projects and inquiries conducted by other government bodies. It prepared a submission to the Family Court of Australia concerning draft *Guidelines for Child Representatives*. Council also provided a submission with respect to DNA parentage testing to the Australian Law Reform Commission and the Australian Health Ethics Committee of the National Health and Medical Research Council in response to their discussion paper *Protection of Human Genetic Information* (ALRC DP 66) August 2002.

1.10 Council continued to have a theme at each regular meeting, in addition to the usual business of the meeting. The aim is to give Council an opportunity to explore particular issues with the assistance of invited participants in a panel discussion. The August 2002 meeting had two themes. The first theme was *Access to Regional Community Services and their Relationships with the Family Court*. The second theme was *Aboriginal and Torres Strait Islander Issues*. The theme for the November 2002 meeting was a *Re-examination of the Pathways Report*. For the March 2003 meeting the theme was *Family Law and Cultural Diversity, with a particular focus on the needs of non-English speaking clients*. For the June 2003 meeting the focus was *Contact orders and contact enforcement – the operation of the three-stage parenting compliance regime*. As usual, Council's discussions with the various panel participants were very informative and interesting. A list of people with whom Council met during the year is set out in Appendix D.

1.11 Council began the year with nine members. The term of Mr Mark McArdle expired on 5 March 2003. No new members were appointed, in contrast to the five members appointed the previous year. Hence, as at 30 June 2003 Council had eight members.

1.12 There was one change concerning observers. Mr Jonathan Dobinson from the Australian Law Reform Commission replaced Ms Lani Blackman on 13 March 2003.

1.13 Council met on four occasions during the year and there were also 18 committee meetings. The Council meeting on 13-14 March 2003 was scheduled to coincide with the meeting of the National Alternative Dispute Resolution Advisory Council in Adelaide.

1.14 Council maintained close contacts with a number of other related organisations and provided regular reports to the Attorney-General.

## **2. ADVICE TO THE ATTORNEY-GENERAL 1 JULY 2002 - 30 JUNE 2003**

2.01 As indicated in Part 1, during the period under review Council provided one major report to the Attorney-General, *Family Law and Child Protection*.

### **REPORTS**

#### ***Family Law and Child Protection***

2.02 This report followed on from two Council discussion papers. The first was *Principles and Minimum Standards* in 1998. The second was *The Best Interests of the Child? The Interaction of Public and Private Law in Australia*, in 2000. The recommendations contained in *Family Law and Child Protection* were as follows:

#### **Recommendation 1**

The Federal Government should establish a Child Protection Service.

#### **Recommendation 2**

The Child Protection Service should be a national service.

#### **Recommendation 3**

The objectives of the Child Protection Service should be:

1. To investigate child protection concerns and provide information arising from such investigation to courts exercising jurisdiction under the *Family Law Act*.
2. To ensure, in the course of its work, that children and families are not subjected to unnecessary investigation, assessment or stress.
3. To avoid unnecessary duplication of resources and effort in the investigation and determination of matters involving both family law and child welfare law issues.
4. To promote the development of a co-operative approach between State and Federal agencies in responding to concerns about child abuse and neglect.

#### **Recommendation 4**

The Child Protection Service should be an independent service staffed by people with a background in child protection and social welfare and should embrace a multi-disciplinary approach.

### **Recommendation 5**

The Child Protection Service should be comprised of a mix of core permanent staff and draw on a mix of contract, fee for service and part-time staff to service rural, regional and remote areas, the needs of indigenous communities and other cultural groups.

### **Recommendation 6**

The Child Protection Service should be co-located with appropriate matched services to maximise its effectiveness.

### **Recommendation 7**

The establishment of a Child Protection Service should be accompanied by the development of Protocols for co-operation between it and State or Territory child protection authorities.

### **Recommendation 8**

The establishment of a Child Protection Service should be accompanied by consequential modification to the mandatory notification system pursuant to s.67Z and s.67ZA of the *Family Law Act*, providing for the mandatory notification of specified child abuse concerns to State and Territory child protection authorities.

### **Recommendation 9**

Section 67ZA of the *Family Law Act* should be amended to provide that the courts exercising jurisdiction under the *Family Law Act* can share such information as is reasonably necessary with child protection authorities and the CPS whenever abuse issues arise in proceedings, and ensuring that there is no need for notification to a child protection authority as a precondition for such information sharing.

### **Recommendation 10**

The *Family Law Act* should be amended to allow Children's and Youth Courts to make consent orders regarding residence and contact in certain circumstances.

### **Recommendation 11**

Section 69ZK should be amended to make clear beyond doubt that residence and contact orders made pursuant to child welfare legislation as an outcome of proceedings brought by a child protection authority for the protection of a child are not inconsistent with the *Family Law Act 1975*.

### **Recommendation 12**

States and Territories should be encouraged to amend their laws to make it possible for Children's and Youth Courts to make orders concerning residence and contact as an outcome of child protection proceedings brought by the child protection authority.

### **Recommendation 13**

In child protection matters, duplication of effort between state and federal systems should be avoided, and a decision should be taken as early as possible whether a matter should proceed under the *Family Law Act* or under child welfare law with the consequence that there should be only one court dealing with the matter. This is to be known as the ‘One Court principle’.

### **Recommendation 14**

The Council of Community Services Ministers and Standing Committee of Attorneys-General should jointly appoint a Committee consisting of representatives of the child protection authorities in States and Territories, Children’s and Youth Courts, the Family Court of Australia, the Family Court of Western Australia, the Federal Magistrates Service and the CPS. The Committee shall:

- a) promote cooperation in ensuring the effectiveness of the One Court principle;
- b) endeavour to agree on the circumstances when the child protection authority should take responsibility for presenting the child protection concerns either under child welfare legislation or by becoming a party to family law proceedings and when it is appropriate for the matter to be left to others, such as the parents, to resolve in private proceedings under the *Family Law Act*;
- c) review the operation of the various Protocols between the Family Court and State and Territory child protection departments with a view to promoting as much consistency as is possible given the variations in state legislation and circumstances;
- d) encourage a high-level of commitment to the Protocols and their incorporation in all relevant agencies;
- e) explore all the practical issues of improving information sharing, examining how to better coordinate elements of the system, and further refining the role of the CPS;
- f) keep under review and progressively enhance the various Protocols and promote ongoing collaboration between the child protection authorities in the States and Territories and the Courts exercising jurisdiction under the *Family Law Act*.

### **Recommendation 15**

Children’s and Youth courts should be encouraged to collaboratively develop and implement a short form of reporting of their decisions.

## **Recommendation 16**

Section 19N(3) should be amended along the following lines:

“Subsection (2) does not apply to:

(a) any admission of an adult or disclosure of a child which indicates a child under eighteen years of age has been seriously abused; or

(b) any admission of an adult or disclosure of a child which indicates a child under eighteen years of age is at risk of serious abuse

unless in the opinion of the Court there is sufficient other evidence of an admission of the adult or disclosure of the child relating to such abuse which is available to the Court.”

## **Recommendation 17**

Sections 62F(8) and 70NI of the *Family Law Act* should be amended along the following lines so as not to apply to:

“(a) any admission of an adult or disclosure of a child which indicates a child under eighteen years of age has been seriously abused; or

(b) any admission of an adult or disclosure of a child which indicates a child under eighteen years of age is at risk of serious abuse

unless in the opinion of the Court there is sufficient other evidence of an admission of the adult or disclosure of the child relating to such abuse which is available to the Court.”

## **Government Response**

2.03 The Family Law Amendment Bill 2003 contains measures to substantially implement recommendations 16 and 17 dealing with the admissibility as evidence of disclosures relating to child abuse by children or admissions by adults in privileged counselling or mediation. That Bill was introduced in February 2003 and is expected to be debated in the current sitting.

2.04 In August 2003 it was announced that the Standing Committee of Attorneys-General had agreed to establish a working group to examine a number of recommendations from the report, which are designed to promote the “one court” principle.

2.05 The Attorney-General is currently considering the other recommendations of the Report.

### **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 2003, a total of 698 recommendations have been made. Of these 317 have been made in reports and 381 in letters of advice. More details are given in Table 1 of Appendix E.

#### **Recommendations to government**

3.02 Council's Secretariat has updated its summary of the results of recommendations made from 1976-2003. Full details of the results are given in Table 2 of Appendix E. Of the 698 recommendations made, government has considered 542 recommendations (78%). At present, 65 recommendations (9%) are still awaiting government consideration. A further 91 (13%) 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.

3.03 Of the 542 recommendations that have been considered by government, 445 (82%) have been either fully or partly implemented.

#### **Monitoring implementation of recommendations**

3.04 Council's secretariat reviews the progress of Council's recommendations each year. Monitoring progress in this way is expected to reduce the possibility of recommendations lapsing.

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 24 published reports and 3 published letters of advice submitted to the Attorney-General the following 20 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)
- *Patterns of Parenting After Separation* (1992)
- *Family Mediation* (1992)
- *Interaction of bankruptcy and family law* (1992)
- *Section 64A of the Family Law Act* (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)
- *Magistrates and Family Law* (1995)
- *Family law appeals and review* (1996)
- *Interim Report: Penalties and Enforcement* (1998)
- *Child Contact Orders: Enforcement and Penalties* (1998)

3.07 As noted above *Involving and representing children in family law* (1996) was sent to the Attorney-General in August 1996. As a result of a recommendation in the Pathways report, *Out of the Maze*, a reference was provided to Council to review the recommendations in this report given the significant developments which have taken place since it was drafted. Four other reports are still under consideration. Their current status is as follows:

- ***Parental Child Abduction (1998)***  
This report was transmitted to the Attorney-General on 2 February 1998 and is under consideration by the Government.
- ***Litigants in Person (2000)***  
This report was sent to the Attorney-General in August 2000. It is under consideration by the Government.

- ***Cultural-Community Divorce and the Family Law Act 1975 (2001)***  
This report was sent to the Attorney-General in August 2001. It is under consideration by the Government.
- ***Family Law and Child Protection (2002)***  
This report was sent to the Attorney-General in September 2002. The Family Law Amendment Bill 2003 contains measures to substantially implement two of the 17 recommendations in the final report. These recommendations deal with the admissibility as evidence of disclosures relating to child abuse by children or admissions by adults in privileged counselling or mediation. That Bill was introduced in February 2003 and is expected to be debated in the current sitting.

In August 2003 it was announced that the Standing Committee of Attorneys-General had agreed to establish a working group to examine a number of recommendations from the report, which are designed to promote the “one court” principle.

The Attorney-General is currently considering the other recommendations of the Report.

### **Implementation of recommendations made in letters of advice**

3.08 At 30 June 2003, nine recommendations made in letters of advice (including two published letter of advice – *Parenting Plans*, and *Violence and Property Proceedings*) were 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 2002-03

4.02 During the year Council met as follows:

- 22-23 August 2002 Rockhampton, Queensland
- 21-22 November 2002 Canberra, Australian Capital Territory
- 13-14 March 2003 Adelaide, South Australia
- 5-6 June 2003 Newcastle, New South Wales

4.03 The following dates were set for meetings in 2003-04:

- 28-29 August 2003 Brisbane, Queensland
- 13-14 November 2003 Launceston, Tasmania
- 4-5 March 2004 Canberra, Australian Capital Territory
- 6-7 May 2004 Mildura, Victoria

4.04 During 2002-03, six committees were active, with Children and Family Services Committee concluding its work on the completion of the final report in September 2002. Committee meetings, including teleconferences, held during the year were as follows:

<b>Name of committee</b>	<b>Number of meetings</b>
Aboriginal and Torres Strait Islander Issues	4
Child Representatives	8
Guidelines	3
Paramountcy	2
Violence	1

4.05 The number of committee meetings in 2002-03 was 18. Much committee work is now conducted using teleconference facilities on the papers out of session, without formal meetings.

4.06 Further details relating to the operation of Council's committees are set out in Appendix C as follows:

Committee membership  
Terms of reference of active projects  
Current status of projects

### **Membership**

4.07 The year was characterised by relative stability in Council membership. The term of Mr Mark McArdle expired on 5 March 2003. No new members were appointed.

### **Observers**

4.09 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, the Child Support Agency, the Law Council of Australia, 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**

4.10 Council did not meet with the Attorney-General during the year. As usual, Council followed its established practice of providing written reports to the Attorney-General after each of its meetings.

### **Relationship with other bodies in family law**

4.11 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; the Family Court of Western Australia; the Federal Magistrates Court, the legal profession; legal aid agencies; the Australian Law Reform Commission; the Australian Institute of Family Studies; and other advisory bodies.

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

4.12 The Chief Justice of the Family Court, the Hon Justice A B Nicholson AO RFD, has a standing invitation to meet with Council and does so when circumstances permit. Chief Justice Nicholson was able to meet with Council during the course of its meeting in Canberra on 22 November 2002. Council is appreciative of the authoritative and up-to-date advice and information it receives at such meetings.

4.13 A number of judges and staff of the Family Court of Australia have a close and ongoing contact with Council. Ms Jennie Cooke and Ms Margaret Harrison are observers. Council also met a number of the Court's judicial and other personnel during its regular meetings (see Appendix D).

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

4.14 Principal Registrar Stephen Thackray is the observer from the Family Court of Western Australia on Council. Mr Thackray ensures that the Western Australian perspective is taken into account in Council's deliberations.

- ***The Federal Magistrates Service***

4.15 Federal Magistrate Judy Ryan keeps Council informed on a regular basis about issues concerning the Federal Magistrates Service. In addition, Council tries to meet with local Federal Magistrates during each regular meeting (see Appendix D). Council also benefited from having the Chief Executive Officer of the Federal Magistrates Service, Mr Peter May, attend meetings during the year.

- ***The legal profession***

4.16 Council's contacts with the legal profession are maintained through meetings with representatives of the profession, legal organisations and authorities. The Family Law Section of the Law Council of Australia has an Observer, Ms Anne Rees, attend Council meetings. Council met with a number of family law practitioners at its meetings during the year (see Appendix D).

- ***Legal Aid agencies***

4.17 Council continued to maintain its links with legal aid agencies during the year. Discussions were held with legal aid agencies' senior management and family law specialists at most Council meetings throughout the year (see Appendix D). Complementing this input, Ms Kate Hughes provides a valuable perspective on Legal Aid based on her experience in Legal Aid (ACT).

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

4.18 The presence of an observer from the Commission at Council meetings ensures that close links between the two bodies are maintained and each body is aware of relevant aspects of the work program of the other. The Commission's Observer for the first two meetings was Ms Lani Blackman, and for the last two meetings of the year, Mr Jonathan Dobinson.

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

4.19 Similarly, Council is greatly assisted by the presence of an observer from the Institute. Ms Ruth Weston is the Institute's Observer. Much of the Institute's work program is of direct relevance to Council's work and the observer contributes valued expertise to Council's meetings and committees.

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

4.20 Council exchanges relevant papers with NADRAC and the Councils' secretariats maintain close contact about mutually relevant issues. This year a joint meeting with NADRAC was held in Adelaide to exchange views and enhance future areas of collaboration.

- ***Family Law Pathways Task Force***

4.21 Council was kept informed about developments in Family Law Pathways developments through a number of channels. The Chairperson Professor Dewar and Ms Holmes were members of the Advisory Group. At its meeting in Canberra in November 2002 the Council arranged briefings from key government stakeholders in the Pathways implementation process. Subsequently, the Council reviewed the Government response to the Pathways Report released on 13 May 2003. Professors John Dewar and Patrick Parkinson attended the National Research Agenda Workshop on 11 June 2003. Ms Susan Holmes and Ms Kate Hughes represented Council at the Pathways Forum held on 19-20 June 2003. Council is taking an active role in the implementation phase of the Pathways project.

- ***Child Support Liaison Group***

4.22 The Child Support Liaison group provides a forum for liaison between bodies dealing with issues relating to child support. It meets in Canberra and comprises representatives of the Child Support Agency, the Department of Family and Community Services, the Family Court of Australia, the Attorney-General's Department, the Family Law Section of the Law Council of Australia, the Legal Aid Office (ACT), Community Legal Services, and the Family Law Council. Council's delegate is Mr Matthew Osborne, Director of Research in Council's secretariat.

## Council staff

4.24 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 staffing profile comprises the Director of Research (Principal Legal Officer), a Research Officer (APS Level 6) and an Administrative Officer (APS Level 3).

## Financial resources

4.25 Council receives a notional 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.

4.26 **Program Costs.** For the 2002-03 financial year Council's notional allocation for program costs was \$111,500.

4.27 **Travelling allowances.** Travelling allowances for members and staff of Council are paid out of Council's program costs appropriation. Members generally receive travelling allowances to cover the costs of travel and accommodation associated with Council meetings:

**Table 1: Family Law Council Members - Travel Allowance Rates 2002-03**

	<b>From 1 January 2001</b>
<b>Sydney</b>	\$350
<b>Other Capital Cities</b>	-
<b>Brisbane, Melbourne, and Perth</b>	\$360
<b>Adelaide, Canberra, Darwin, and Hobart</b>	\$290
<b>Other than a capital city</b>	\$190

Staff travelling allowances are paid at the relevant public service rates. Further details of expenditure are provided in Tables 2 and 3 and Chart 1 below. Generally speaking, members, staff and observers travel economy class.

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

4.29 The Attorney-General's Department provides Council's staff with access to computers, printers, Mainframe facilities, and accompanying computer software. The Department also meets the costs of accommodation, equipment, Departmental training, and most day to day administrative expenses of Council's Secretariat.

4.30 **Sitting Fees.** Council is allocated funds by the Attorney-General's Department to meet the costs of sitting fees, where eligible, for the Chairperson and members of Council. The first determination of the Remuneration Tribunal that awarded sitting fees to Council

members was made in 1983. Sitting fees are not payable to members who are Judges, Magistrates or full-time employees of Commonwealth Departments or Authorities. From 5 April 2002 the daily sitting fees were \$680 (Chairperson) and \$560 (Member). From 5 April 2003, these rates increased to \$708 and \$583 respectively.

4.31 At the start of 2002-03 five Council members were entitled to sitting fees, decreasing to four members upon the expiry of the term of Mr McArdle on 5 March 2003. There were four meetings of Council during the year as well as 16 committee meetings.

4.32 Expenditure on sitting fees in 2002-03 was \$35,031. This compares with \$44,075 in 2001-02, \$42,159 in 2000-01, \$31,102 in 1999-2000, and \$52,555 in 1998-99. 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.

4.33 **Overall expenditure 2002-03.** Table 2 below sets out expenditure for the last ten financial years.

**Table 2: Family Law Council expenditure 1992-93 to 2002-03**

Year	Sitting fees	No. paid sitting fees	Amount paid <i>per capita</i>	Program costs	Total
1993-94	\$40,413	5	\$ 8,082.60	\$148,973	<b>\$189,386</b>
1994-95	\$18,072	4	\$ 4,518.00	\$157,153	<b>\$175,225</b>
1995-96	\$48,462	6	\$ 8,077.00	\$138,280	<b>\$186,742</b>
1996-97	\$27,370	5	\$5,474.00	\$146,756	<b>\$174,126</b>
1997-98	\$46,071	7	\$6,581.57	\$148,207	<b>\$194,278</b>
1998-99	\$52,555	6	\$8,759.16	\$134,217	<b>\$186,772</b>
1999-00	\$31,102	7	\$4,976.39	\$116,941	<b>\$148,043</b>
2000-01	\$42,159	7*	\$7,665.27	\$83,756	<b>\$125,915</b>
2001-02	\$44,075	4**	\$9,794.00	\$104,027	<b>\$148,102</b>
2002-03	\$35,031	5***	\$7,784.67	\$93,687	<b>\$128,718</b>

\* As one member's term expired in July 2000 taking the number of members paid sitting fees from 7 to 6, and three other members' terms expired in March 2001, taking that number to 4, the amount paid per capita was calculated by dividing total fees by 5.5.

\*\* As three members terms expired and four other members were appointed during the reporting period this took the number of members paid sitting fees to 5, the amount paid per capita was calculated by dividing total fees by 4.5.

\*\* As one member's term expired during the reporting period this took the number of members paid sitting fees to 4, the amount paid per capita was calculated by dividing total fees by 4.5.

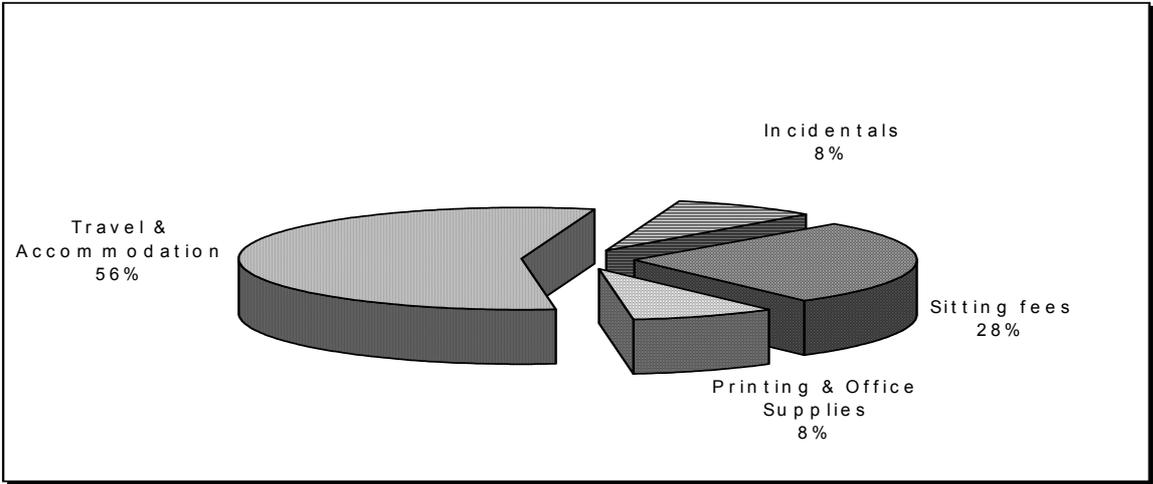
4.34 Total expenditure by the Family Law Council in 2002-03 was \$128,718. Table 3 below compares expenditure for 2000-01, 2001-02, and 2002-03 under the main expenditure headings.

**Table 3: Family Law Council expenditure 2000-01 to 2002-03**

Item	2000-01	2001-02	2002-03
<b>Sitting fees</b>	\$42,159	\$44,075	\$35,031
<b>Travel &amp; accommodation</b>	\$62,617	\$78,483	\$72,123
<b>Printing and office supplies</b>	\$16,712	\$6,625	\$10,813
<b>Incidentals and other</b>	\$4,427	\$18,917	\$10,751
<b>TOTALS</b>	<b>\$125,915</b>	<b>\$148,100</b>	<b>\$128,718</b>

4.35 During 2002-03 about 56 per cent of Council’s expenditure was on travel and accommodation costs. This is approximately the same percentage which applied in 2001-02 (53%). This and other expenditure items tend to vary from one year to the next, depending on factors such as the number of meetings, the number of members and where meetings are held. The manner in which Council’s funds are expended is considered appropriate for an advisory body that meets regularly and operates a committee system to do much of its detailed work. Chart 1 below shows the main items of expenditure for 2002-03.

**CHART 1: Family Law Council - Total Expenditures 2002-03**



**Explanatory Notes:**

- (1) **Sitting Fees** - In 2002-03 initially five members, then four were entitled to sitting fees. There were four Council meetings and 18 committee meetings. **Total = \$35,031.**
- (2) **Travel and accommodation** - Covers the cost of fares, cabcharge and travelling allowances for Council members, committee members, observers and staff, as applicable. **Total = \$72,123.**
- (3) **Printing and office supplies** This mainly covers the costs of Council’s printing of reports, discussion papers, and newsletters. **Total = \$10,813.**
- (4) **Incidentals and other** - This mainly covers items such as venue hire and other meeting costs, photocopying, staff training, subscriptions, and nomination fees for attendance at conferences. **Total = \$10,751.**

## **Council publications**

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

- ***Family Law Council News***

4.37 During the year an Autumn/Winter 2002 and Spring/Summer 2002-03 issue of the *Family Law Council News* were produced and distributed. The publication gives brief and informative advice on Council's activities. Its preparation and distribution does not place a large additional workload on Council and its Secretariat. The *News* is distributed to persons and organisations on Council's general mailing list. In all, about 1,100 persons and organisations currently receive the *News*.

- ***Council minutes***

4.38 A bound set of Council minutes up to the end of 2002 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 in the Family Law Branch of the Attorney-General's Department. Unbound copies of minutes since the beginning of 2003 are held in the Secretariat.

- ***Council meeting papers***

4.39 A bound set of Council meeting papers for the period 1976-1996 is held by National Archives of Australia in Canberra. A further bound set is held by the Director of Research covering the period 1976 to 22 November 2002 in Canberra, who also holds unbound copies of meeting papers since November 2002.

- ***Tabling of Council reports***

4.40 The Council's *Annual Report 2001-2002* was tabled in Parliament on 30 October 2002.

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

4.41 Since mid-1997, Council has had a home page on the Internet. The home page provides access to Council reports, discussion papers, annual reports and other material on-line. The home page may be viewed at <<http://www.law.gov.au/flc>>

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

4.42 All Council members and observers are now linked by e-mail to the Council's Secretariat, which greatly enhances communication with members and observers.

## **Acknowledgments**

4.43 Council wishes to record its appreciation to persons who met with them during the year (these persons are listed in Appendix D) and others who gave assistance in various ways.

### 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. 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 matters 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.

## 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 subsection (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.

(11) **[Federal Magistrate]** For the purposes of this section , a Federal Magistrate is taken to be a judge.

### COUNCIL PUBLICATIONS

In addition to its Annual Reports, Council has published the following reports and papers (including two letters of advice) since it commenced to operate in November 1976:

- *Birth Certificate Revision of the Sexually Reassigned* (1978)
- *Children's 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)

- *Violence and the Family Law Act: financial remedies* Discussion Paper (1998)
- *Parenting Plans* (2000)
- *Litigants in Person* (2000)
- *The Best Interests of the Child? – The Interaction of Public and Private Law in Australia* Discussion Paper No 2 (2000)
- *Cultural-Community Divorce and the Family Law Act 1975*(2001)\*\*
- *Family Law and Child Protection* (2002)\*\*

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

\*\* Available on Council's website at <<http://www.law.gov.au/flc>>

## FAMILY LAW COUNCIL COMMITTEES 2002-03

*Unless otherwise stated, Committee Members serve in their capacity as Members or Observers of the Family Law Council. Persons marked with an asterisk are former Members of Council. Members' names are included whether they served for the full reporting year or not. Project status details are correct at 30 June 2003.*

### 1. Child and Family Services (CAFS) Committee

#### A. Members

Professor Patrick Parkinson	<i>Convenor</i>
Mr Kym Duggan	
Ms Tara Gupta	
Ms Kate Hughes	
Dr Belinda Fehlberg	University of Melbourne
Ms Margaret Harrison	
Mr Matthew Osborne	<i>Secretariat</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:
  - i. the interaction of Commonwealth family law with other child and family legislation;
  - ii. the interaction of agencies which give effect to that legislation and related services; and
  - iii. protocols, procedures, practices, standards and principles in implementing the legislation,
  - iv. in order to identify factors that result in duplication, gaps, ambiguity, unintended consequences or confusion in responsibility.
2. To examine overseas examples of systems of child and family welfare and family law to determine aspects of possible application in the Australian context.\*
3. To consider options for reform for the efficient and effective integrated delivery of child and family law services in relation to the care and protection of children.

\* Council subsequently decided that this was not necessary, given that overseas examples are unlikely to have relevance to the Australian experience.

#### **D. Current status of project**

On 27 October 2002, the Attorney-General, The Hon Daryl Williams AM QC MP, launched the Family Law Council's final Report, *Family Law and Child Protection*.

The Family Law Amendment Bill 2003 contains measures to substantially implement two recommendations of the final report. These recommendations deal with the admissibility as evidence of disclosures relating to child abuse by children or admissions by adults in privileged counselling or mediation. That Bill was introduced in February 2003. In August 2003 it was announced that the Standing Committee of Attorneys-General had agreed to establish a working group to examine a number of recommendations from the report, which are designed to promote the "one court" principle. The Attorney-General is currently considering the other fifteen recommendations of the Report.

### **2. Child Support Committee**

#### **A. Members**

The membership and Terms of Reference are being considered in light of possible specific issues that might be examined. Pending the outcome of this examination the Child Support Committee has not been re-constituted.

#### **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 in the past monitored the operation of the Child Support Scheme. An observer from the Child Support Agency attends Council meetings. Council has membership on the Child Support Liaison Group which enables it to meet with officers of the Child Support Agency, the Department of Family and Community Services, the Attorney-General's Department, the Family Court and the Family Law Section of the Law Council on a regular basis. Matthew Osborne is Council's delegate on the Liaison Group. The Committee provides Council with information on the operation of the Child Support Scheme.

### **3. Violence and the Family Law Act Committee**

#### **A. Members**

Professor John Dewar *	<i>Convenor</i> - From 18 August 2001
Dr Juliet Behrens	<i>Australian National University</i>
Ms Kate Hughes	From 21 March 2003
Mr Mark McArdle*	Until 5 March 2003
Professor Patrick Parkinson	From 21 March 2003
Dr Grania Sheehan	<i>Griffith University</i>
Ms Ruth Weston	
Mr Chris Paul	<i>Secretariat</i>

#### **B. Project**

The Violence Committee is examining the operation of Division 11 of Part VII of the Family Law Act. This deals with the relationship between contact orders, that is, an order dealing with contact between a child and another person or other persons and family violence orders. The objectives of the Division are to resolve inconsistencies between contact orders and family violence orders; ensure contact orders do not expose anyone to family violence; and respect a child's rights to have regular contact with both parents where a family violence order has reduced contact with one of them and it is in the child's best interests to have regular contact with both.

#### **C. Terms of reference**

Terms of reference dealing with the operation of Part 11 of Part VII of the Family Law Act are being developed.

#### **D. Current status of project**

The Violence Committee has turned its attention to the operation of Division 11 of Part VII of the Family Law Act. This deals with the relationship between contact orders, that is, an order dealing with contact between a child and another person or other persons and family violence orders. The committee is currently reviewing the Family Court of Australia's *Family Violence Consultation Report*.

#### **4. The Paramouncy Principle Committee**

##### **A. Members**

Professor Patrick Parkinson	<i>Convenor</i> - From 5 June 2003
Ms Tara Gupta	<i>Convenor</i> – Until 4 June 2003
Ms Susan Holmes	
Ms Judy Ryan	
Mr Stephen Thackray	From 6 March 2003
Mr Chris Paul	<i>Secretariat</i> Until 20 November 2002
Mr Matthew Osborne	<i>Secretariat</i> from 21 November 2002

##### **B. Project**

The paramouncy principle and how the law treats a parent's application to move from one location to another, often inter-state or overseas ('relocation cases').

##### **C. Terms of reference**

1. To examine the nature and application of the legal principle that the child's best interests must be regarded as the paramount consideration in family law litigation concerning children and to consider whether the *Family Law Act 1975* should be amended in this respect.

The Council shall have particular regard to:

- the law before and after the *Family Law Reform Act 1995*; and
- the nature and scope of similar provisions in other jurisdictions.

2. To examine:

- (1) How the best interests of the child principle set out in section 65E of the *Family Law Act* operates in relation to other legitimate interests in a relocation case;
- (2) How best to take account of the interests of other children who may be affected by the relocation decision but are not the subject of proceedings;
- (3) How best to take account of the interests of other people affected by the relocation decision;
- (4) The significance of section 92 of the *Constitution* for the law of relocation;
- (5) Approaches to the problem of relocation in other jurisdictions; and
- (6) Whether the *Family Law Act* should be amended to provide specific criteria for making relocation decisions.

## **D. Current status of project**

On 3 June 2003 the Attorney-General notified an addition to the terms of reference, requesting a consideration of relocation issues. This will entail a review of how the law treats a parent's application to move from one location to another, often inter-state or overseas.

## **5. Guidelines for Family Lawyers**

### **A. Members**

Professor John Dewar	<i>Convenor</i>
Mr Martin Bartfeld QC	<i>Law Council of Australia</i>
Ms Lani Blackman	Until 12 March 2003
Mr Jonathan Dobinson	From 13 March 2003
Ms Susan Holmes	
Ms Anne Rees	
Ms Judy Ryan	
Mr Garry Watts	<i>Law Council of Australia</i>
Mr Matthew Osborne	<i>Secretariat</i>

### **B. Project**

In cooperation with the Family Law Section of the Law Council of Australia, to draft national Guidelines for lawyers practising in family law which reflect best practice for family law practitioners in all aspects of family law practice, including the principles outlined in the Pathways Report; and to develop a scheme for readily identifying lawyers who subscribe to and observe the Guidelines to prospective clients and service providers.

### **C. Terms of reference**

That Council, as part of the Government response to recommendation 4 of the report of the Family Law Pathways Advisory Group, *Out of the Maze*<sup>1</sup>, in cooperation with the Family Law Section of the Law Council of Australia:

- (i) draft national Guidelines for lawyers practising in family law which reflect best practice for family law practitioners in all aspects of family law practice, including the principles outlined in the Pathways Report; and

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<sup>1</sup> Recommendation 4(a): That all professionals and key staff working in the family law system adopt a multidisciplinary approach to resolving issues for families, and that priority be given to the following strategies to support such a holistic approach:

- (a) development of a national code of conduct for lawyers practising in family law to reflect the principles outlined in this report and to include a commitment to actively promote non-adversarial dispute resolution and other good practices. Lawyers who subscribe to and observe the code should be readily identifiable to clients and service providers.

(ii) develop a scheme for readily identifying lawyers who subscribe to and observe the Guidelines to prospective clients and service providers.

2. That the Council and Family Law Section ensure that the national Guidelines for lawyers practising in family law are developed in the light of international best practice as evidenced by existing Guidelines or Codes of Conduct in Australia and relevant overseas jurisdictions.

3. That Council in cooperation with the Family Law Section of the Law Council, and taking account of the progress with implementing other relevant Pathways recommendations, propose a timetable and means of implementation for:

- (i) promulgating the national Guidelines for Australian family lawyers; and
- (ii) a campaign to achieve a significant level of recognition amongst lawyers, prospective clients and service providers concerning the meaning of and benefits arising from adopting the Guidelines.

#### **D. Current status of project**

The joint Committee agreed to take as a model a recently released publication from the Law Society of the United Kingdom, *Family Law Protocol* (The Law Society, 2001). Having obtained the Law Society's permission to use the *Family Law Protocol*, the Committee began its work of collating material and drafting chapters to adapt the United Kingdom content to reflect Australian circumstances.

Council considered a draft of the *Best Practice Guidelines for Lawyers Doing Family Law Work* (the *Guidelines*) in June 2003 at its Newcastle meeting. Subsequently the Family Law Section of the Law Council of Australia considered a revised draft of the *Guidelines*. Following final sign-off a consultation phase will commence.

## **6. Indigenous children**

### **A. Members**

Mr Kym Duggan	<i>Convenor</i>
Ms Josephine Akee	
Ms Jennie Cooke	
Professor John Dewar	<i>Chairperson</i>
Ms Tara Gupta	
Mr Chris Paul	<i>Secretariat</i>

### **B. Project**

As part of the Government response to recommendation 22 of the report of the Family Law Pathways Advisory Group, *Out of the Maze*, review the rationale for and consequences of the proposed amendments to sections 60B, 61C, and 68F of the Family Law Act 1975.

### **C. Terms of reference**

That Council, as part of the Government response to recommendation 22 of the report of the Family Law Pathways Advisory Group, *Out of the Maze*<sup>2</sup>, review the rationale for and consequences of the proposed amendments to sections 60B, 61C, and 68F of the Family Law Act 1975.

2. That the review take into account the view of indigenous Australians.
3. That the review determines the relevance of the operation of kinship obligations and range of child-rearing practices and shared values of indigenous Australians.
4. That the review considers the proposed amendments in terms of the child's best interests as the paramount consideration.
5. That the review take account of the on-going community discussion about the desirability, or otherwise, of recognising indigenous customary laws.

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<sup>2</sup> Recommendation 22: That the Act be amended so that:

a section 61 (sic) acknowledges unique kinship obligations and child-rearing practices of indigenous culture:

b section 60B(2) (which relates to principles underlying a child's right to adequate and proper parenting) includes a new paragraph stating that children of indigenous origins have a right, in community with other members of their group, to enjoy their own culture, profess and practice their own religion, and use their own language; and

c in section 68F(2)(f) the phrase 'any need' is replaced by 'the need of every indigenous child'.

## **D. Current status of project**

The committee has commenced work on a Letter of Advice to the Attorney-General and is consulting with interested groups and considering their submissions.

## **7 Child Representatives**

### **A. Members**

Ms Judy Ryan	<i>Convenor</i>
Ms Lani Blackman	
Ms Jennie Cooke	
Mr Kym Duggan	
Ms Susan Holmes	
Ms Kate Hughes	
Mr Mark McArdle	Until 5 March 2003
Ms Anne Rees	
The Hon Justice Jan Stevenson	<i>Family Court of Australia</i>
Mr Chris Paul	<i>Secretariat</i>

### **B. Project**

As part of the Government response to recommendation 21 of the report of the Family Law Pathways Advisory Group, *Out of the Maze*, the Committee will, in light of the Council's 1996 report *Involving and Representing Children in Family Law*, review the role of child representatives, and the basis for appointing child representatives.

### **C. Terms of reference**

That Council, as part of the Government response to recommendation 21 of the report of the Family Law Pathways Advisory Group, *Out of the Maze*<sup>3</sup>, review as a matter of urgency:

- (i) the role of child representatives; and
- (ii) the basis for appointing child representatives

in light of the Council's 1996 report *Involving and Representing Children in Family Law*.

2. That the review consider Australian case-law and practice, reports, and research relating to the role of the child representative, following the publication of Council's 1996 report.

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<sup>3</sup> Recommendation 21: That the development of clearly defined roles for, and responsibilities of, child representatives be given urgent priority, with adequate funding allocated to support implementation.

3. That the role of the child representative be examined from the perspective of the child's rights and best interests taking into account, *inter alia*, the UN Convention on the Rights of the Child.
4. That the review take into account, where appropriate, any work concerning child representatives being undertaken concurrently by other bodies such as the Family Court of Australia.
5. That options for reform of the role, and means of appointment, of the child representative be identified including, but not restricted to:
  - (i) the manner in which the role is to be performed;
  - (ii) the qualifications of the person performing the role;
  - (iii) guidelines for the appointment and conduct of child representatives; and
  - (iv) options for required training.

#### **D. Current status of project**

The Committee is finalising a report to the Attorney-General.

**PERSONS AND ORGANISATIONS WHO HAVE MET WITH COUNCIL  
1 JULY 2002 - 30 JUNE 2003**

**22-23 August 2002 Rockhampton**

Ms Anne Demack	Barrister
Ms Marie Downing	Centacare
Ms Fiona Bailey	Relationships Australia
Mr Ross McLellan	President, Family Law Practitioner's Association
Mr Peter Swarbrick	Family Court Mediator
Mr Jack Gela	Saima Torres Strait Islander Corporation
Mr Clem Beasley	Central Queensland Aboriginal and Islander Child Care Agency
Ms Ailsa Weazel	Woorabinda Family Centre

**21-22 November 2002 Canberra**

The Hon Chief Justice Alistair Nicholson	Family Court of Australia
The Hon Justice John Faulks	Family Court of Australia
The Hon Justice Mary Finn	Family Court of Australia
Ms Cathy Argall	General Manager, Child Support Agency
Mr Tony Carmichael Services	Assistant Secretary, Family and Community
Mr Dennis Farrar	Law Society of the ACT
Ms Helen Hambling Cabinet	First Assistant Secretary, Prime Minister and
Ms Philippa Lynch	First Assistant Secretary, Attorney-General's Department (AGD)
Mr Fermin Lopez	Family Pathways Branch, AGD
Mr Chris Staniforth	Legal Aid Office (ACT)

**13-14 March 2003 Adelaide**

The Hon Justice Burr	
The Hon Justice Strickland	
The Hon Justice Dawe	
Mr Andrew Forbes	Judicial Registrar
Mr Hamish Gilmore	Chief Executive Officer, Legal Services Commission (SA)
Mr Graham Russell	Family Law Division, Legal Services Commission
Ms Judith Cocks	Chair, Family Law, Law Society of South Australia
Ms Pam Hemphill	Director, Court Counselling, Family Court
Ms Enaam Oudih	Multicultural Communities Manager, Centre of Personal Education (COPE), Relationships Australia (RA)
Ms Rosemary Thompson	RA

The following members of the National Alternative Dispute Resolution Advisory Council (NADRAC) also met with Council:

Prof Laurence Boulle – Chair  
Ms Helen Bishop  
Mr Alan Campbell  
Dr Mary Edmunds  
Mr Ian Govey  
The Hon John Hannaford  
Ms Norah Hartnett  
Mr Warwick Soden  
Prof Tania Sourdin  
Mr John Spender QC  
Ms Lynn Stephen  
Mr David Syme

**5-6 June 2003 Newcastle**

Mr Warren Donald FM      Federal Magistrates Service  
The Hon Justice David Collier  
The Hon Justice La Poer Trench

Ms Jenny Kell	Relationships Australia
Mr Richard Fletcher	The Family Action Centre, University of Newcastle
Mr Robert Benjamin	President, Law Society of NSW
Ms Kim O'Rourke	Newcastle Legal Aid Office
Professor Frank Bates	University of Newcastle

## IMPLEMENTATION OF COUNCIL'S RECOMMENDATIONS

## Statistical summary 1976-2003

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 24 major reports containing recommendations to the Attorney-General.

Table 1: Recommendations in reports and letters of advice 1976-2003

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	12	44
1996-97	14	1	15
1997-98	23	7	30
1998-99	0	2	2
1999-2000	0	7	7
2000-01	18	2	20
2001-2002	2	4	6
2002-03	17	-	17
<b>TOTAL</b>	<b>317</b>	<b>381</b>	<b>698</b>

**Lapsed and outstanding recommendations.** Of the 698 recommendations made from 26 November 1976 to 30 June 2003, a total of 91 recommendations (13%) 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 65 recommendations (9%) were still under consideration by government at 30 June 2003. Government has considered a total of 542 recommendations (78%) and the Government’s response to those recommendations is summarised in Table 2 below.

**Table 2: Government responses to recommendations Nov. 1976 - 30 June 2003**

Category	Reports	Letters of advice	Total
Implemented	136	258	394
Partly implemented	32	19	51
Not implemented	61	36	81
<b>Totals</b>	<b>229</b>	<b>313</b>	<b>542</b>

In Table 2 the terms used have the following meanings:

“Implemented” means that the basic aim of the proposal has been substantially achieved, or comments have been accepted.

“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.** The oldest outstanding recommendation made in a report was made in 1996-97. The oldest recommendation in a letter of advice still under consideration was made in 1999-2000.

**Recommendations in Letters of Advice still under consideration**

At 30 June 2003 there were 9 recommendations in letters of advice which were still under consideration. The outstanding recommendations are set out below, with an explanation of their current status:

**1999-00**

<p><b><i>Parenting Plans: joint letter of advice with the National Alternative Dispute Resolution Advisory Council</i></b></p>	
<p>That Division 4 of Part VII of the <i>Family Law Act 1975</i> should be amended to:</p> <ul style="list-style-type: none"> <li>• encourage the use of parenting plans, and the use of consent orders where a party requires an element/s of the plan to be enforceable; and</li> <li>• repeal the registration provisions.</li> </ul>	<p><b>Action:</b> The Family Law Amendment Bill 2003 contains measures to repeal the registration provisions. That Bill was introduced in February 2003.</p>
<p>That the use of an integrated parenting plan/consent orders package be encouraged through information and education through existing funding services, such as counselling and mediation services, legal aid bodies and community legal services and through other appropriate means (eg. clinical legal education).</p>	<p><b>Action:</b> As above.</p>
<p>To assist parties to develop parenting plans (and obtain consent orders, if required), the existing kits and information be reviewed and modified to reflect the above recommended approach.</p>	<p><b>Action:</b> As above.</p>

**2000-01**

<p><b><i>Recommendation 109 of the Australian Law Reform Commission Report, Managing Justice</i></b></p>	
<p>Council recommended that the <i>Family Law Act 1975</i> not be amended in accordance with the ALRC recommendation to provide specifically that whenever the best interests of children are being determined, the Court may have regard to any relevant, accredited and published research findings.</p>	<p><b>Action:</b> The Attorney-General thanked Council for its advice, but has not yet indicated the Government's intentions.</p>
<p>Council also recommended that consideration be given to the preparation and maintenance of a database summarising relevant social research and associated issues.</p>	<p><b>Action:</b> As above.</p>

2001-02

<p><b><i>Violence and Property Proceedings - Letter of Advice</i></b></p>	
<p>There should be an amendment to s79 to include a new subsection (s79(4A)) which directs the court to have regard to the effects of family violence on the contributions of both parties.</p>	<p><b><u>Action:</u> The Attorney-General is considering amendments to the <i>Family Law Act 1975</i>.</b></p>
<p>There should be an amendment to s75(2) to add the following new paragraph to the list of matters to be considered:</p> <p>“the extent to which the financial circumstances of either party have been affected by family violence perpetrated by a party to the marriage.”</p>	<p><b><u>Action:</u> As above.</b></p>
<p>The definition of family violence in Part VII FLA (s60D(1)) should be adopted for Part VIII.</p>	<p><b><u>Action:</u> As above.</b></p>

<p><b><i>The Family Law Act and State and Territory Child and Family Services Legislation – Creation of Federal Child Protection Service</i></b></p>	
<p>Council’s recommendation relates to the ability of the Family Court of Australia and the Federal Magistrates Service to deal with the particular needs of children arising in family law proceedings.</p>	<p><b><u>Action:</u> Incorporated in later report. On 27 October 2002, the Attorney-General, The Hon Daryl Williams AM QC MP, launched the Family Law Council’s final Report, <i>Family Law and Child Protection</i> which contains a recommendation to the same effect. The Attorney-General has not yet indicated the Government’s intentions.</b></p>

## COMPLIANCE WITH ANNUAL REPORT GUIDELINES

The following information is provided in compliance with the Senate's 1982 *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 in Appendix A 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. Appointments for 2002-03 are discussed at paragraph 4.07.

**Composition of the Family Law Council.** The Family Law Act does not specify the number of Members of Council. The Council has usually consisted of the Chairperson and nine or ten 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 2002-03.** Council members for 2002-03, their occupational details at the end of their term or 30 June 2003 (for continuing members) and terms of appointment are listed in Appendix H 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 Observers from six agencies who may attend meetings. The names of Observers and the organisations for which they work are given in Appendix I of this report.

**Council's Staff.** Staff members during the reporting year are listed in Appendix I. The Attorney-General's Department provides staff for the Council's Secretariat.

## **Financial statement**

**General information.** The Attorney-General's Department allocates funds to Council for two purposes: **Program Costs** and **Sitting Fees**. Details of Council's budgetary allocations and its expenditure for 2002-03 are provided in Part 4.

**Payments to Members.** The rates of travelling allowances and sitting fees payable to the Chairperson and Members are set out at paragraphs 4.27 and 4.30 respectively. Expenditure on sitting fees is reported on in paragraphs 4.30 - 4.32. The rates for sitting fees are set by the Remuneration Tribunal. The explanatory notes for Chart 1 (paragraph 4.35) 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 4.33 - 4.35. Total expenditure for the past 10 years, including 2002-03, is summarised in Table 2. Table 3 compares expenditure for this year with the 2 previous financial years.

**Staff salaries.** Council's Secretariat is a section in the Family Law Branch of the Attorney-General's Department. The Secretariat currently comprises the Director of Research (Principal Legal Officer), a Research Officer (APS Level 6) and an Administrative Officer (APS Level 3). Staff salaries are met by the Attorney-General's Department. Staff travel and allowances are funded out of Council's program costs, and expenditure during 2002-03 on travel and allowances is set out in the explanatory notes for Chart 1 (paragraph 4.35).

**Printing and office supplies.** Expenditure on printing and office supplies is given in the explanatory notes for Chart 1 (paragraph 4.35).

## **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 - 4.06. Membership of committees, the terms of reference of active projects and the current status of projects are set out in Appendix C.

**Work Program 2002-03.** Council's 2002-03 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 4.11 - 4.23 of this report. Persons and organisations with which Council met during the reporting year are listed at Appendix D.

**Statistics.** In past years, Council collated statistical data on family law and related matters in its Annual Report from a number of sources such as the Australian Bureau of Statistics, the Family Court of Australia and the Family Court of Western Australia. From the year 2000-01 Council decided to publish and upload the collected statistics on Council's website separately.

**Publications.** Council's discussion papers and reports are listed at Appendix B. A statement under section 8 of the *Freedom of Information Act 1982* is provided in Appendix G.

**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 in Appendix A 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 the quarterly newsletter are distributed free to persons on the mailing list.

Supplementary mailing lists are usually 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 Council 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 Government Info Bookshops and may be inspected at Council's Secretariat in Canberra. Discussion papers and the Council's 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 22 November 2002. A set of meeting papers is held by the Director of Research (including papers for meetings held since 22 November 2002) and the papers 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. This is unless a person making a submission specifically requests that the confidentiality provisions of the Freedom of Information Act should apply 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 Council under the Freedom of Information Act. It is Council's policy to release such information, wherever possible.

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://www.law.gov.au/flc>>

There were no requests for access to Council documents under the Freedom of Information Act during 2002-03.

**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: 02-6250 6905  
Fax: 02-6250 6521

Office hours are 8.30 a.m. - 5.00 p.m. Mondays to Fridays (excluding public holidays).

**MEMBERS OF COUNCIL 1 JULY 2002 - 30 JUNE 2003**

**CHAIRPERSON**

Professor John Dewar  
Pro-Vice-Chancellor, Business and Law, Griffith University  
Queensland

**APPOINTMENT**

18 August 2001 - 17 August 2004

**MEMBERS**

Ms Josephine Akee  
Indigenous Family Consultant  
Family Court of Australia, Cairns

10 July 2002 – 10 May 2005

Mr Kym Duggan  
Family Law and Legal Assistance Division  
Attorney-General's Department  
Canberra

10 July 2002 – 10 May 2005

Ms Tara Gupta  
Director of Legal Services  
Department for Community Development  
Western Australia

12 October 2001 - 11 October 2004

Ms Susan Holmes  
Executive Director  
Relationships Australia, Tasmania

18 August 2001 - 17 August 2004

Ms Kate Hughes  
Head of Family Law Section  
Legal Aid Office  
Australian Capital Territory

12 October 2001 - 11 October 2004

Mr Mark McArdle  
Family lawyer, Boyce Garrick Lawyers  
Queensland

6 March 2000 -5 March 2003

Professor Patrick Parkinson  
Faculty of Law, University of Sydney  
New South Wales

18 August 2001 - 17 August 2004

Federal Magistrate Judy Ryan  
New South Wales

22 August 2000 -21 August 2003

**COUNCIL OBSERVERS AND SECRETARIAT 1 JULY 2002 - 30 JUNE 2003**

**Australian Institute of Family Studies**

Ruth Weston

Catherine Caruana - March 2003 meeting

**Australian Law Reform Commission**

Ms Lani Blackman until the November 2002 meeting

Mr Jonathan Dobinson from March 2003 meeting

**Child Support Agency**

Ms Sheila Bird

Ms Yvonne Marsh - August 2002 meeting

Ms Dolores Schneider - June 2003 meeting

**Family Court of Australia**

Ms Margaret Harrison

Ms Jennie Cooke

**Family Court of Western Australia**

Principal Registrar Stephen Thackray

**Law Council of Australia**

Ms Anne Rees

**SECRETARIAT**

Director of Research	Mr Matthew Osborne	from 3 August 2001
Research Officer	Mr Christopher Paul	from 22 April 2002
Administrative Officer	Ms Di Kneebone	from 28 February 2002

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

**Telephone:** 02-6250 6842  
**Fax:** 02-6250 6521  
**Email:** flc@ag.gov.au  
**Web site:** <<http://www.law.gov.au/flc>>

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