

FAMILY LAW COUNCIL

ANNUAL REPORT

2003-04

ISSN 0155-2953  
ISBN 0 642 21109 4

© Commonwealth of Australia 2004

This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth available from the Department of Communications, Information Technology and the Arts. Requests and inquiries concerning reproduction and rights should be addressed to the Commonwealth Copyright Administration, Intellectual Property Branch, Department of Communications, Information Technology and the Arts, GPO Box 2154, Canberra ACT 2601 or posted at <http://www.dcita.gov.au/cca> .



## FAMILY LAW COUNCIL

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

**Telephone: 02-6234 4829  
Fax: 02-6234 4811**

17 August 2004

The Hon Philip Ruddock 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 2003 to 30 June 2004.

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

Yours sincerely,

John Dewar

A handwritten signature in black ink that reads 'John Dewar'.

Chairperson

# CONTENTS

Page

---

<b>1. THE YEAR IN REVIEW</b>	1
<b>2. ADVICE TO THE ATTORNEY-GENERAL 2003-04</b>	
Submissions	3
<b>3. IMPLEMENTATION OF COUNCIL'S RECOMMENDATIONS</b>	
Introduction	4
Recommendations to government	4
Monitoring implementation of recommendations	4
Government consideration of reports	5
Implementation of recommendations in letters of advice	6
<b>4. ADMINISTRATIVE MATTERS</b>	
Mode of operation of Council	7
Meetings 2003-04	7
Membership	8
Observers	8
Attorney-General	8
Relationship with other bodies in family law	8
- <i>The Family Court of Australia</i>	9
- <i>The Family Court of Western Australia</i>	9
- <i>The Federal Magistrates Court</i>	9
- <i>The legal profession</i>	9
- <i>Legal aid agencies</i>	10
- <i>The Australian Law Reform Commission</i>	10
- <i>Australian Institute of Family Studies</i>	10
- <i>National Alternative Dispute Resolution Advisory Council</i>	10
- <i>Family Law Pathways</i>	10
- <i>Federal Civil Justice Strategy</i>	10
- <i>Child Support Liaison Group</i>	11
Council staff	11
Financial resources	11
- <i>Program Costs</i>	11
- <i>Travelling Allowances</i>	11
- <i>Table 1: Family Law Council Members - Travel Allowance Rates 2003-04</i>	12
- <i>Sitting fees</i>	12
- <i>Consultancy Contract</i>	12

- Overall expenditure 2003-04	13
- Table 2: Family Law Council Expenditure 1992-93 to 2003-04	13
- Table 3: Family Law Council Expenditure 1999-00 to 2003-04	13
- Chart 1: Family Law Council - Total Expenditure 2003-04	14
Council publications	14
<i>Family Law Council News</i>	14
<i>Council minutes</i>	15
<i>Council meeting papers</i>	15
<i>Tabling of Council reports</i>	15
<i>On-line access to Council material</i>	15
<i>Communication with members and observers</i>	15
Acknowledgments	15

## APPENDICES

A. Powers, Functions, and Objectives: Section 115 of the Family Law Act	16
B. Council publications	19
C. Council Committees 2003-04	21
D. Persons or organisations who have met with Council 1.7.03 – 30.6.04	29
E. Implementation of Council’s recommendations	31
F. Compliance with Annual Report Guidelines	34
Enabling legislation	34
Responsible Minister	34
Membership and staff	34
Financial statement	35
Activities and reports	35
G. Access to Information – <i>Freedom of Information Act</i> , section 8	37
H. Council Members 2003-2004	39
I. Council Observers and Secretariat 2003-2004	40
<b>Index</b>	42



## 1. THE YEAR IN REVIEW

1.01 One of the focal points of Council's work during the year has been providing submissions and advice to the House of Representatives Standing Committee on Family and Community Affairs Inquiry into Child Custody Arrangements in the Event of Family Separation.

1.02 The Committee's terms of reference built on the Government's response in 2003 to the Report of the Family Law Pathways Advisory Group. The Committee focused on the issue of the time which parents should spend with their children post separation, and in particular whether there should be a presumption that children will spend equal time with each parent. The Committee was also asked to consider the circumstances in which a court should order that children of separated parents have contact with other persons, including their grandparents, and whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children.

1.03 Council considered these issues at their meetings in August and November 2003. Based on these discussions Council made two submissions to the Committee. The Chairperson appeared once before the Committee to expand on those submissions.

1.04 In a separate process, Council prepared a short submission for the Senate Legal and Constitutional Affairs References Committee pursuant to its inquiry into Legal Aid and Justice Arrangements.

1.05 Also of note was the opportunity afforded to Council to meet the Attorney-General, the Hon Philip Ruddock MP, at its meeting in Melbourne in March 2004. This was Council's first meeting with the current Attorney-General. It gave Council an opportunity to discuss the then recently released report of the House of Representatives Standing Committee on Family and Community Affairs, *Every Picture Tells A Story*.

1.06 The Attorney-General, in a letter dated 27 January 2004, gave his first reference to Council. The Attorney-General asked the Council to undertake a review of the provisions for binding financial agreements in Parts VIII and VIIIA of the *Family Law Act 1975*.

1.07 The Attorney-General announced in December 2003 the appointment of two new members: the Hon Justice Susan Morgan of the Family Court of Australia; and Federal Magistrate Christine Mead.

1.08 Council expects to shortly provide the Attorney-General with the much anticipated *Best practice guidelines for lawyers doing family law work*, developed in collaboration with the Family Law Section of the Law Council of Australia. The Child Representative Committee is very close to finalising its report on child representation in Australia, *Pathways for Children: a review of children's representation in family law*. The Paramouncy Committee and the Aboriginal and Torres Strait Islander Issues Committee are continuing work on their respective references.

1.09 The Attorney-General also announced the Government's response to the recommendations made by Council in its report *Cultural-community divorce and the Family Law Act 1975* (2001).

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 2003 meeting had the theme: *De facto relationships and property: the referral of powers to the Commonwealth and the situation in Western Australia*.

1.11 The theme for the November 2003 meeting was *Primary Dispute Resolution: the Quality Framework Process and the PDR review, with particular reference to unfunded outsourced services*. For the March 2004 meeting the theme was *the operation of the Superannuation reforms in Family Law legislation*.

1.12 For the June 2004 meeting there were two themes. The first theme was *Family law needs of people living in rural and remote areas and in particular Aboriginal and Torres Strait Islander issues*. The second theme was *The Inquiry into child custody arrangements in the event of family separation, and the operation of the child support formula: Formulation of responses to the Inquiry's Report*.

1.13 As usual, at each of its meetings Council's discussions with various panel participants were very informative and interesting. The input from these consultations informed Council's deliberations and subsequently formed the basis of the Chairperson's quarterly reports to the Attorney-General. A list of people with whom Council met during the year is set out in Appendix D.

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 2003 - 30 JUNE 2004**

2.01 Most of Council's work during the year was focused on providing submissions and advice, through the Attorney-General, to the House of Representatives Standing Committee on Family and Community Affairs (the Committee).

2.02 Council produced two submissions for the Committee. The first of these concluded that it is not desirable to introduce a statutory presumption as to the time that each parent should spend with their child(ren). It also noted that the provisions in the *Family Law Act 1975* provided some scope for contact with 'significant others', including grandparents. In relation to the issue of child support, Council indicated that they considered that there should be a clear line maintained between parents' financial obligations for their children and the conduct of parenting arrangements.

2.03 The second submission was drafted in response to questions posed by the Committee to the Chairperson at a public hearing on 17 October 2003 about alternative legal frameworks for managing child contact issues. The submission focused particularly on the Danish system which features an administrative, rather than judicial, approach to decision-making in relation to child contact.

2.04 The Committee's report, *Every Picture Tells a Story*, was tabled on 29 December 2003. On 29 July 2004 the Prime Minister announced proposals for changes to the family law system in response to this report, and sought community comment on them. The proposed changes include a national network of 65 family relationship centres to provide early intervention for separating couples and to assist separating parents to develop parenting plans. Other proposed initiatives include compulsory dispute resolution prior to filing proceedings in court, increased resources for counselling, mediation and family services and changes to the *Family Law Act* to promote shared parenting, achieve less adversarial court processes and a new combined registry for the Family Court and Federal Magistrates Court.

### **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 2004, 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 1976-2004. Full details of the results are given in Table 2 of Appendix E. Of the 698 recommendations made, government has considered 553 recommendations (79%). At present, 40 recommendations (6%) are still awaiting government consideration. A further 105 (15%) 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 553 recommendations that have been considered by government, 446 (81%) 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 21 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)
- *Cultural-Community Divorce and the Family Law Act 1975* (2001)

3.07 As noted in the Annual Report for 2002-03, Council's report *Involving and representing children in family law* (1996) was sent to the Attorney-General in August 1996, and 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.

3.08 Three 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.
- ***Family Law and Child Protection: Final Report (2002)***  
The former Attorney-General, the Hon Daryl Williams AM QC MP referred a number of the report's recommendations to the Standing Committee of Attorneys-General (SCAG). SCAG agreed that a working group will examine a number of the recommendations from the report which are designed to promote the "one court" principle.

Council noted that the Government adopted recommendations 16<sup>1</sup> and 17<sup>2</sup> when amending the *Family Law Act 1975* through the *Family Law Amendment Act 2003*.

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

3.09 At 30 June 2004, eight 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.

---

<sup>1</sup> To amend s.19N of the Act to provide for a limited exception to the rule that nothing said in counselling or mediation conducted pursuant to the Family Law Act should be admissible in court.

<sup>2</sup> The amendments to s.62F and 70NI were intended to complement the amendment to s.19N.

## 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 2003-04

4.02 During the year Council met as follows:

- 27-29 August 2003 Brisbane, Queensland
- 12-14 November 2003 Launceston, Tasmania
- 3-5 March 2004 Melbourne, Victoria
- 2-4 June 2004 Mildura, Victoria

4.03 The following dates are set for meetings in 2004-05:

- 23-24 September 2004 Gold Coast, Queensland
- 18-19 November 2004 Canberra, Australian Capital Territory
- 10-11 March 2005 Hobart, Tasmania

4.04 During 2003-04, six committees were constituted. 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	2
Child Representatives	6
Financial Agreements	2
Guidelines	1
Paramountcy	3
Violence	1

4.05 The number of committee meetings in 2003-04 was 15. 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, including committee membership, terms of reference of active projects, and current status of projects, are set out in Appendix C.

## **Membership**

4.07 The year saw the appointment of two new members from the Family Court of Australia and the Federal Magistrates Court, the Hon Justice Morgan and Federal Magistrate Mead. This meant Council started the year with seven members and had nine members on 30 June 2004.

## **Observers**

4.08 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 Federal Magistrates Court, 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.

4.09 In August 2003 the Attorney-General also approved the accordance of observer status to representatives of the Family Law Section of the Law Council of Australia and the Federal Magistrates Court. Mr Garry Watts became the Family Law Section of the Law Council of Australia's representative. Mr Peter May was appointed an observer for the Federal Magistrates Court. Ms Sheila Bird resigned as the Child Support Agency's observer in January 2004 as she left Australia to take up a post in England. Ms Bird was replaced by Ms Yvonne Marsh. Also around this time, Ms Ruth Weston resigned as Australian Institute of Family Studies' observer and was replaced by Mr Bruce Smyth.

4.10 March 2004 was also Ms Margaret Harrison's final meeting as the Family Court's observer. She was replaced by Ms Dianne Gibson.

## **Attorney-General**

4.11 Council met with the Attorney-General in Melbourne in March 2004. 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**

4.12 It is important to Council that close contact is maintained with a number of bodies in the family law field. To an extent, the most important and enduring stakeholder relationships are reflected in the origin of Council's members and observers. The Council also maintains broader sectoral relationships by organising consultations with relevant and informed organisations and individuals wherever it meets.

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

4.13 The former Chief Justice of the Family Court, the Hon Justice A B Nicholson AO RFD, had a standing invitation to meet with Council and did so when circumstances permitted. Council is appreciative of the authoritative and up-to-date advice and information it receives at such meetings, and looks forward to forging a similarly strong relationship with the new Chief Justice, the Hon Diana Bryant.

4.14 A number of judges and staff of the Family Court of Australia have a close and ongoing contact with Council. Council met a number of the Court's judicial and other personnel during its regular meetings (see Appendix D).

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

4.15 Acting Judge Stephen Thackray is the observer from the Family Court of Western Australia on Council. Acting Judge Thackray ensures that the unique arrangements characterising the Family Court of Western Australia's perspective is taken into account in Council's deliberations.

- ***The Federal Magistrates Court***

4.16 Federal Magistrate Christine Mead, who replaced Federal Magistrate Judy Ryan as the Federal Magistrates Court's representative, keeps Council informed on a regular basis about issues concerning the Federal Magistrates Court. In addition, Council meets with local Federal Magistrates during each regular meeting (see Appendix D). Council also benefited from having the Chief Executive Officer of the Federal Magistrates Court, Mr Peter May, attend meetings during the year as an observer.

- ***The legal profession***

4.17 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, Mr Garry Watts, attend Council meetings. Council met with a significant number of family law practitioners at its meetings during the year (see Appendix D).

- ***Legal Aid agencies***

4.18 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 Council meetings throughout the year (see Appendix D). Complementing this input, Council member Ms Kate Hughes provides a valuable perspective on legal aid based on her experience in Legal Aid (ACT), and more recently in the Legal Aid Commission of the Northern Territory.

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

4.19 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 current observer is Ms Lani Blackman.

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

4.20 Similarly, Council is greatly assisted by the presence of an observer from the Institute. Ms Ruth Weston and Mr Bruce Smyth have both been during the year, 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 (NADRAC)***

4.21 Council exchanges relevant papers with NADRAC and the Councils' secretariats maintain close contact about mutually relevant issues. The relationship continues to develop and as opportunities arise, Councils meet. A joint seminar on judicial mediation was held in Melbourne during Council's March 2004 meeting.

- ***Family Law Pathways***

4.22 Council was kept informed about developments in other Family Law Pathways projects through a number of channels, and especially through liaison between Council Secretariat and officers in the Family Pathways Branch in the Department.

- ***Federal Civil Justice System Strategy***

4.23 Council was kept informed of Government's work on options to reform the Federal Civil Justice system. Senior officers of the Attorney-General's Department attended Council's meeting in August 2003 to consult with Council.

- ***Child Support Liaison Group***

4.24 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**

4.25 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 shares an Administrative Officer (APS Level 3).

### **Financial resources**

4.26 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.

4.27 ***Program Costs.*** For the 2003-04 financial year Council's notional allocation for program costs was \$111,500.

4.28 ***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 2003-04**

	<b>2003-04</b>
<b>Sydney, Brisbane, Melbourne &amp; Perth</b>	\$370
<b>Adelaide, Canberra, Darwin, and Hobart</b>	\$300
<b>Other than a capital city</b>	\$196

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.

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

4.30 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.

4.31 **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. From 5 April 2003, these rates increased to \$708 and \$583 respectively. Sitting fees will be increased on 1 July 2004 to \$743 (Chairperson) and \$612 (Member).

4.32 In 2003-04 three members were entitled to sitting fees. There were four Council meetings as well as 15 committee meetings. There were also five occasions where members represented Council at other meetings relating to Council business.

4.33 Expenditure on sitting fees in 2003-04 was \$17,782. This compares with \$35,031 in 2002-03, \$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.

4.34 **Consultancy Contract.** An editing consultant was hired to edit the *Best Practice Guidelines for lawyers doing family law work*. This is a project that is being brought to conclusion by the Guidelines Committee. The consultancy was completed at a cost of \$1,750.

4.35 *Overall expenditure 2003-04.* Table 2 below sets out expenditure for the last 11 financial years.

**Table 2: Family Law Council expenditure 1992-93 to 2003-04**

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>
2003-04	\$17,782	4	\$4,445.50	\$85,926	<b>\$103,708</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.

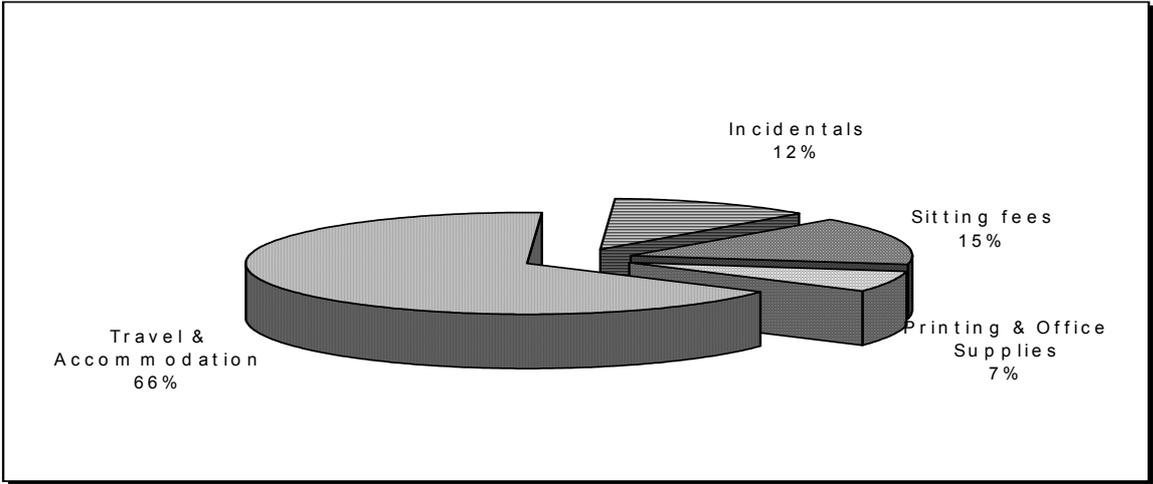
4.36 Total expenditure by the Family Law Council in 2003-04 was \$103,708. Table 3 below compares expenditure for 2000-01, 2001-02, and 2003-04 under the main expenditure headings.

**Table 3: Family Law Council expenditure 2001-02 to 2003-04**

Item	2001-02	2002-03	2003-04
Sitting fees	\$44,075	\$35,031	\$17,782.00
Travel & accommodation	\$78,483	\$72,123	\$67,488
Printing and office supplies	\$6,625	\$10,813	\$6664
Incidentals and other	\$18,917	\$10,751	\$11,774
<b>TOTALS</b>	<b>\$148,100</b>	<b>\$128,718</b>	<b>\$103,708</b>

4.37 During 2003-04 about 66 per cent of Council’s expenditure was on travel and accommodation costs. 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 2003-04.

**CHART 1: Family Law Council - Total Expenditures 2003-04**



**Explanatory Notes:**

- (1) **Sitting Fees** - In 2003-04 four members were entitled to sitting fees. There were four Council meetings and 15 committee and other meetings. **Total = \$17,782.**
- (2) **Travel and accommodation** - Covers the cost of fares, cabcharge and travelling allowances for Council members, committee members, observers and staff, as applicable. **Total = \$67,488.**
- (3) **Printing and office supplies** This mainly covers the costs of Council’s printing of reports, discussion papers, and newsletters. **Total = \$6,664.**
- (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 = \$11,774.**

**Council publications**

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

- ***Family Law Council News***

4.39 During the year an Autumn/Winter 2003 and Spring/Summer 2003-04 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***

4.40 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***

4.41 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***

4.42 The Council's *Annual Report 2002-2003* was tabled in Parliament on 28 October 2003.

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

4.43 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***

4.44 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**

4.45 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 2003-04**

*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 2004.

**1. Aboriginal and Torres Strait Islander Issues Committee**

**A. Members** as at 30 June 2004

Mr Kym Duggan *Convenor*

Ms Josephine Akee  
Ms Jennie Cooke  
Professor John Dewar  
Ms Tara Gupta

Mr Chris Paul *Secretariat*

**B. Project**

This project is to investigate implementation of recommendation 22 of the Pathways report, *Out of the Maze*.

That the Family Law Act be amended so that:

- a. section 61 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".

**C. Terms of reference**

The terms of reference of the committee are:

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*, 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.

### **D: Current status of project**

The committee is continuing its work on a letter of advice to the Attorney-General. The committee is consulting with interested groups and considering their submissions.

## **2. Child Representative Committee**

### **A. Members** as at 30 June 2004

Mr Kym Duggan *Convenor*

Ms Lani Blackman  
 Ms Jennie Cooke  
 Ms Susan Holmes  
 Ms Kate Hughes

Mr Chris Paul *Secretariat*

### **B. Project**

The Committee has been 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, and also in response to Family Law Pathways Advisory Group's report, *Out of the Maze*, and its recommendation 21, calling for:

"...the development of clearly defined roles for, and responsibilities of, child representatives be given urgent priority, with adequate funding allocated to support implementation."

### **C. Terms of Reference**

The Terms of Reference for this project has been guided by recommendation 21 of the Pathways Advisory Group's report *Out of the Maze*. The terms of reference are:

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*, 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.
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 its report taking into account developments since Council's 1996 report, *Involving and Representing Children in Family Law*.

### **3. Child Support Committee**

**Members** as at 30 June 2004

Ms Yvonne Marsh *Convenor*

Ms Christine Mead  
Mr Stephen Thackray  
Mr Garry Watts

Mr Matthew Osborne *Secretariat*

#### **B. Project**

Specific projects are being considered by Council in consultation with the Child Support Agency.

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

To monitor the operation of the Child Support Scheme.

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

This committee is currently negotiating with the Child Support Agency on a project to draft the *Legal Practitioner's Guide: Precedents for Child Support Agreements and Court Orders*. The Child Support Agency is planning a launch of the Guide in the near future.

#### **4. Financial Agreements Committee**

**Members** as at 30 June 2004

Mr Kym Duggan *Convenor*

Justice Susan Morgan  
Professor Patrick Parkinson  
Mr Garry Watts

Mr Matthew Osborne *Secretariat*

#### **B. Project**

The Attorney-General, in a letter dated 27 January 2004, asked the Council to undertake a review of the provisions for binding financial agreements in Parts VIII and VIIIA of the *Family Law Act 1975*.

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

That Council:

- a) consider whether the original intention of the legislature is being fulfilled given that the purpose of the provisions relating to binding financial agreements was to allow people to have greater control and choice over their own affairs in the event of marital breakdown
- b) review the extent to which binding financial agreement provisions are being used to defeat the legitimate interests of creditors
- c) consider alternatives to the current amendments, including whether the legislation should *only* allow agreements relating to maintenance to come into effect in cases of marriage breakdown, and

2 That Council have regard to:

- a) the issues identified by the Family Court in *Australian Securities Investment Commission and Rich and Rich* (No. SY 5067 of 2002), and
- b) relevant amendments contained in the *Family Law Amendment Act 2003* which passed both Houses of Parliament on 5 December.

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

Council is finalising a letter of advice to the Attorney-General.

#### **5. Guidelines Committee**

## **A. Members** as at 30 June 2004

Professor John Dewar	<i>Convenor</i>
Ms Lani Blackman	
Ms Susan Holmes	
Justice Susan Morgan	
Mr Garry Watts	
Mr Martin Bartfeld QC	Law Council of Australia
Mr Matthew Osborne	<i>Secretariat</i>

## **B. Project**

This Committee has been established as a result of the Family Law Pathways Advisory Group's report, *Out of the Maze*, and its recommendation 4 (a), 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."

## **C. Terms of reference**

Terms of reference of the Committee are:

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*, 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
- (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**

Draft *Best practice guidelines for lawyers doing family law work* were sent to over fifty organisations for their comment. The committee is in the process of preparing a final draft of the guidelines for publication.

## **6. The Paramouncy Principle Committee**

### **A. Members** as at 30 June 2004

Justice Susan Morgan	<i>Convenor</i>
Ms Tara Gupta	
Ms Susan Holmes	
Professor Patrick Parkinson	
Mr Stephen Thackray	
Justice Richard Chisholm	Family Court of Australia
Mr Matthew Osborne	<i>Secretariat</i>

### **B. Project**

A letter of advice will be prepared which considers the merits of how the paramouncy principle applies in family law proceedings.

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

In May 2000 the Family Law Council discussed the amendments made to the *Family Law Act 1975* by the *Family Law Reform Act 1995*, in relation to the paramouncy principle (the rule that the best interests of the child must be regarded as the paramount consideration when making specified decisions in the *Family Law Act 1975*). Council decided to consider further a project to consider the principle, the circumstances in which it applies, whether it should apply more generally and whether the relevant provisions in the *Family Law Act 1975* should be amended.

Council appointed a committee to develop draft terms of reference which were approved by the Attorney-General on 9 October 2000. On 3 June 2003 the Attorney-General agreed to extend the terms of reference to include an examination of relocation cases. The terms of reference are:

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**

The project was agreed to at the May 2000 Council meeting. On 3 June 2003 the Attorney-General agreed to extend the terms of reference to include an examination of relocation cases. Work on the drafting of a discussion paper is proceeding.

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

#### **A. Members** as at 30 June 2004

Professor John Dewar	<i>Convenor</i>
Ms Kate Hughes Professor Patrick Parkinson	
Dr Juliet Behrens	Australian National University
Dr Grania Sheehan	Griffith University
Mr Chris Paul	<i>Secretariat</i>

#### **B. Project and Status**

The Violence Committee is considering terms of reference for a review following a report released by the Family Court of Australia on its Family Violence Policy. The committee is also drafting a short letter of advice on possible options for reforming Division 11 in Part VII of the *Family Law Act 1975*.

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

**27-29 August 2003, Brisbane**

Mr Ian Govey and Ms Karen Moore	Commonwealth Attorney-General's Department
The Hon Justice May	Family Court of Australia
Mr Michael Frame	Family Court of Australia
Mr Michael Baumann FM	Federal Magistrates Court
Ms Jennifer McArdle	Legal Aid Queensland
Ms Nicky Davies	Legal Aid Queensland
Mr John Hodgins	Legal Aid Queensland
Ms Katrina Finn	Queensland Law Society

**12-14 November 2003, Launceston**

Mr Tim Henry	Relationships Australia
Mr Kim Paterson	Tasmanian Law Society
Mr Norman Reaburn	Legal Aid Commission of Tasmania
Ms Eve Murray	Relationships Australia
Ms Debbie Evans	Relationships Australia
Ms Shanna Quinn	
The Hon Justice Hannon	

**3-5 March 2004, Melbourne**

The Hon Philip Ruddock MP	Attorney-General
Mr Tony Parsons	Victoria Legal Aid
Ms Judith Sharples	Victoria Legal Aid
Ms Judy Crundall	Victoria Legal Aid
Mr Michael Wighton	Victoria Legal Aid
Ms Margot Rogers	Relationships Australia
Dr Bryan Rodgers	Australian National University
Ms Elly Robinson	Australian National University
The Hon Justice Susan Morgan	Family Court of Australia
Federal Magistrate(s) Connelly and Walters	

**2-4 June 2004, Mildura**

Ms Rebecca Boreham	Murray Mallee Community Legal Service/Women's Legal Service
Mrs May Connelly	Murray Mallee Child Contact Service
Ms Bernadette Edmanson	Murray Mallee Child Contact Service
Ms Kay Martin	Martin Irwin & Richards Solicitors
Ms Cynthia Toose	Ryan Maloney Anderson Solicitors
Mr Joe Watson	Watson & McLeod Solicitors

Ms Myra Grintner  
Ms Sally Scherger  
Ms Kerry Muir  
Ms Kay Tulloch

Alcohol & Drug Abuse Program  
Family Services Unit  
Stolen Generation Program  
Counsellor

## IMPLEMENTATION OF COUNCIL'S RECOMMENDATIONS

## Statistical summary 1976-2004

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 1976-2004

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
2003-04	-	-	-
<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 2004, a total of 105 recommendations (15%) 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 40 recommendations (6%) were still under consideration by government at 30 June 2004. Government has considered a total of 553 recommendations (79%) and the Government’s response to those recommendations is summarised in Table 2 below.

**Table 2: Government responses to recommendations Nov. 1976 - 30 June 2004**

Category	Reports	Letters of advice	Total
Implemented	137	258	395
Partly implemented	32	19	51
Not implemented	71	36	108
<b>Totals</b>	<b>240</b>	<b>313</b>	<b>553</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).

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

At 30 June 2004 there were 5 recommendations in letters of advice which were still under consideration. The outstanding recommendations are set out below, with an explanation of their current status:

**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><u>Action:</u> The Attorney-General thanked Council for its advice, but has not yet indicated the Government’s intentions.</b></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><u>Action:</u> As above.</b></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>

## 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 2003-04 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. However it does require that amongst a range of other members a judge of the Family Court be appointed. 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 2003-04.** Council members for 2003-04, 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 2003-04 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 paragraph 4.29. Expenditure on sitting fees is reported on in paragraph 4.32. The rates for sitting fees are set by the Remuneration Tribunal. The explanatory notes for Table (paragraphs 4.36-4.38) 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 4.36 - 4.38. Total expenditure for the past 11 years, including 2003-04, 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 2003-04 on travel and allowances is set out in the explanatory notes for Chart 1.

**Printing and office supplies.** Expenditure on printing and office supplies is given in the explanatory notes for Chart 1 (paragraph 4.38).

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

**Work Program 2003-04.** Council's 2003-04 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 (detail is set out in Appendix E).

**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.*** Reports to the Attorney-General (category (a)), 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 2003-04.

**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: 02-6234 4827  
Fax: 02-6234 4811

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

**MEMBERS OF COUNCIL 1 JULY 2003 - 30 JUNE 2004**

**CHAIRPERSON**

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

**APPOINTMENT**

4 March 1998 – 3 March 2001  
18 August 2001 - 17 August 2004

**MEMBERS**

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

10 July 2002 – 10 May 2005

Mr Kym Duggan  
Assistant Secretary  
Family Law Branch  
Attorney-General's Department  
Canberra, Australian Capital Territory

10 July 2002 – 10 May 2005

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

12 October 2001 - 11 October 2004

Ms Susan Holmes  
Executive Director  
Relationships Australia  
Hobart, Tasmania

18 August 2001 - 17 August 2004

Ms Kate Hughes  
Manager, Family Law  
NT Legal Aid Commission  
Darwin, Northern Territory

12 October 2001 - 11 October 2004

Ms Christine Mead FM  
Federal Magistrates Court  
Adelaide, South Australia

5 December 2003 – 4 December 2006

The Hon Justice Susan Morgan  
Family Court of Australia  
Melbourne, Victoria

5 December 2003 – 4 December 2006

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

18 August 2001 - 17 August 2004

**COUNCIL OBSERVERS AND SECRETARIAT 1 JULY 2003 - 30 JUNE 2004**

**Australian Institute of Family Studies**

Ruth Weston – until the November 2003 meeting

Bruce Smyth – August and November 2003 meetings

Bruce Smyth – from the March 2004 meeting

**Australian Law Reform Commission**

Mr Jonathan Dobinson – until the November 2003 meeting

Ms Lani Blackman - from the March 2004 meeting

**Child Support Agency**

Ms Sheila Bird – until the November 2003 meeting

Ms Yvonne Marsh – August 2003 meeting

Ms Dolores Schneider – November 2003 meeting

Ms Yvonne Marsh – from the March 2004 meeting

**Family Court of Australia**

Ms Margaret Harrison - until March 2004 meeting

Ms Jennie Cooke

Ms Virginia Buring – June 2004 meeting

Ms Dianne Gibson – from June 2004 meeting

**Family Court of Western Australia**

Acting Judge Stephen Thackray

**Federal Magistrates Court**

The Federal Magistrates Court was approved as Observer status by the Attorney-General in August 2003.

Mr Peter May – from August 2003 meeting

**Law Council of Australia**

Mr Garry Watts – from August 2003 meeting

## SECRETARIAT

Director of Research	Mr Matthew Osborne	from 3 August 2001
Research Officer	Mr Christopher Paul Ms Elizabeth Carter	from 22 April 2002 from January until June 2004
Administrative Officer	Ms Di Kneebone	from 28 February 2002

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

**Telephone:** 02-6234 4829  
**Fax:** 02-6234 4811  
**Email:** [flc@ag.gov.au](mailto:flc@ag.gov.au)  
**Web site:** <<http://www.law.gov.au/flc>>

## A

*Annual Report*, iii, 14, 7  
*Appointment*, 7  
Attorney-General, iii, iv, 2, 4, 5, 8, 10, 11, 14, 16, 17, 3,  
5, 6, 7, 8, 9, 10, 11  
**Australian Institute of Family Studies**, iv, 8, 10, 13  
**Australian Law Reform Commission**, iv, 8, 9, 18, 5, 13

## C

Child Representatives, 7  
**Child Support Agency**, 8, 10, 13  
*children*, 5, 18  
*committee*, 7, 13, 14, 8, 9, 10, 11  
Council meeting papers, v, 14, 11  
Council minutes, v, 14

## D

Director of Research, 10, 11, 14, 8, 11, 14  
*Divorce*, 5, 19

## F

**Family Court of Australia**, iv, 8, 9, 10, 9, 13  
Family Court of Western Australia, iv, 8, 9, 13  
Family Law Act, iii, v, 15, 18, 19, 5, 6, 7, 8  
*Family Law Council News*, v, 14, 10  
Federal Magistrates Service. See , See ,  
*Freedom of Information Act 1982*, 9, 10

## G

Guidelines, 7

## L

Law Council of Australia, 8, 9, 10, 13  
legal aid, 9, 15, 16, 5  
legal profession, iv, 9  
**legislation**  
Section 115, 15, 16, 7  
letters of advice, iv, 5, 6, 15, 18, 3, 4

## M

*Meetings*, iv, 7, 17, 8  
*Members*, iv, 11, 20, 7, 8  
membership, 8

## N

NADRAC, 10

## O

*Observers*, iv, 8, 20, 8

## P

Pathways, iv, 5  
*Payments*, 8  
*Printing*, 13, 8  
Professor John Dewar, 12  
program costs, 11, 8  
*Publications*, 9

## R

recommendations, iv, v, 4, 5, 6, 15, 16, 3, 4, 9  
reports, iv, v, 2, 4, 5, 8, 13, 14, 15, 18, 3, 8, 9, 10

## S

*salaries*, 11, 8  
**Secretariat**, iii, 4, 11, 14, 15, 8, 10, 11  
Staff, 11, 8  
*Statistics*, 9

## V

violence, 6

## W

work program, 9, 10