The Hon Philip Ruddock MP
Attorney-General
Parliament House
CANBERRA ACT 2600

Dear Attorney-General

In accordance with subsection 115(9) 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 of 1 July 2004 to 30 June 2005.

Yours sincerely,

Professor Patrick Parkinson
Chairperson
Council members, observers and staff met with the Attorney-General in Canberra in November 2004

Seated: Ms Susan Purdon, Professor Patrick Parkinson (Chairperson), the Hon Philip Ruddock MP, the Hon Justice Susan Morgan, Mr Kym Duggan.

Standing: Ms Nicola Davies, Mr Tim MacKinnon, Ms Dianne Gibson, Mr Matthew Osborne, Ms Jennie Cooke, Justice Garry Watts, Ms Lani Blackman, Mr Bruce Smyth, Justice Stephen Thackray, Ms Josephine Akee, Mr Clive Price, Ms Yvonne Marsh, Mr Christopher Paul, Ms Di Kneebone.

Missing from the photo: Ms Christine Mead FM and Mr Peter May.
# Contents

1. YEAR IN REVIEW 1

2. COUNCIL MEMBERS AND OBSERVERS 3

3. MEETINGS AND CONSULTATIONS 6

4. ADVICE TO THE ATTORNEY-GENERAL 9

5. IMPLEMENTATION OF RECOMMENDATIONS 13

6. FINANCIAL REPORT 16

APPENDIX A: COUNCIL PUBLICATIONS 17

APPENDIX B: COUNCIL COMMITTEES 2004-05 19

APPENDIX C: COMPLIANCE WITH ANNUAL REPORT GUIDELINES 24
1. Year in Review

One of the focal points of Council’s work during the year has been providing submissions and advice in relation to the implementation of reforms outlined in the Government’s Discussion Paper, *A New Approach to the Family Law System* (10 November 2004). This followed on from the report, *Every picture tells a story*, by the House of Representatives Standing Committee on Family and Community Affairs following their inquiry into child custody arrangements in the event of family separation.

The Council lodged a submission with the Attorney-General’s Department on 20 December 2004 as part of the Government’s consultation process. A major focus of the submission was to provide suggestions on the operation of the 65 Family Relationship Centres to be established as the centrepiece of the reforms.

Council considered these critical issues at all three of its meetings. Discussions in September and in November 2004 provided the basis for Council’s submission on the Discussion Paper. It further considered the issues in light of proposed legislation and the outcomes of the consultation process at its March 2005 meeting. Based on these discussions Council reported its views to the Attorney-General.

The second half of 2004 saw the completion of several significant references, some of which originated in the groundbreaking Family Law Pathways Advisory Group 2001 Report, *Out of the Maze* (Pathways Report). These are summarised below.

On 5 November 2004 Council dispatched a letter of advice to the Attorney-General which reviewed the binding financial agreements provisions in Parts VIII and VIII A of the *Family Law Act 1975*.

On 17 November 2004 Council dispatched a letter of advice to the Attorney-General on the operation of Division 11 in Part VII of the *Family Law Act 1975*. Division 11 deals with cases in which there is an actual or potential conflict between a contact order made under the *Family Law Act 1975* and a family violence order made under State or Territory domestic violence legislation.

The Attorney-General, the Hon Philip Ruddock MP, launched the *Best practice guidelines for lawyers doing family law work* on 18 November 2004. This was the product of a joint committee of the Family Law Section of the Law Council of Australia and the Family Law Council. The Guidelines arose from a recommendation made by the Pathways Report. The Guidelines reflect the principles espoused in the Pathways Report and include a commitment to actively promote non-adversarial dispute resolution and other good practices.

On the same day1 the Attorney-General also launched *Pathways for Children: A review of children’s representation in family law*. The report reviews the role and the basis of appointment of child representatives, particularly in the light of Council’s 1996 report.

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1 18 November 2004.
Involving and Representing Children in Family Law\textsuperscript{2} and recommendation 21 of the Pathways Report.

On 22 December 2004 Council released its first discussion paper on the operation of the child paramountcy principle in family law. This paper explains the existing provisions of the \textit{Family Law Act 1975} and reviews how they have operated. It also outlined comparable legislation in the United Kingdom and New Zealand. The Discussion Paper invited comment on specific questions, such as whether the present approach of the Act should be retained or modified. Responses were initially due by 6 May 2005, but this was extended until 30 June 2005.

The Legal Practitioners’ Guide was developed by the Child Support Agency in association with the Family Law Council and the Family Law Section of the Law Council of Australia. The Guide contains useful precedents for court orders and child support agreements made under the \textit{Child Support (Assessment) Act 1989}.

On 10 January 2005 Council provided a report to the Attorney-General titled \textit{Recognition of Aboriginal and Torres Strait Islander child-rearing practices. Response to Recommendation 22: Pathways Report, Out of the Maze}. The report recommends four changes to the \textit{Family Law Act 1975} to assist courts to take into account the kinship obligations and child rearing practices of traditional Aboriginal and Torres Strait Islander peoples.

Also of note was the opportunity afforded to Council to meet the Attorney-General, the Hon Philip Ruddock MP, at its meeting in Canberra in November 2004. This gave Council an opportunity to hear the Attorney-General’s views on the recently announced Discussion Paper.

The Attorney-General, in a letter dated 16 November 2004, gave his second reference to Council. The Attorney-General asked the Council to develop better processes in the family law system for dealing with contravention or variation issues involving children’s cases. The reference is titled \textit{Improving family law processes for dealing with post-parenting order conflict} and is provided in full in Appendix B.

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. Due to budgetary constraints Council met three times, rather than the usual four.

The September 2004 meeting on the Gold Coast had the theme \textit{initiatives for a less adversarial family law system}. The theme for the Canberra meeting in November 2004 was \textit{The Pathways Report – Progress on Implementation}. For the Hobart meeting in March 2005 the theme was \textit{grandparents and extended family and their interaction with the family law system}. Further information about Council’s meetings and consultations is provided in part 3.

This year marked significant changes in the composition of Council. In August 2004 Professor Patrick Parkinson from the University of Sydney was appointed as the Chairperson on the expiry of the term of Professor John Dewar. In September 2004 the Attorney-General announced the appointment of three new members: Mr Clive Price, Ms Susan Purdon and a former observer – Mr Garry Watts (who became a Family Court Judge in March 2005).

The members of the Council between 1 July 2004 – 30 June 2005 were as follows.

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>Date of first appointment</th>
<th>Expiry date of current term</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ms Josephine Akee</td>
<td>Indigenous Family Consultant Family Court of Australia Cairns, Queensland</td>
<td>10 July 2002</td>
<td>10 May 2005</td>
</tr>
<tr>
<td>Ms Nicola Davies</td>
<td>Senior Legal Consultant Family Law Legal Aid Queensland</td>
<td>7 October 2004</td>
<td>6 October 2007</td>
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<tr>
<td>Prof. John Dewar (Chairperson until 17/8/04)</td>
<td>Pro-Vice-Chancellor Business and Law Griffith University Brisbane, Queensland</td>
<td>4 March 1998</td>
<td>17 August 2004</td>
</tr>
<tr>
<td>Mr Kym Duggan</td>
<td>Assistant Secretary Family Law Branch Attorney-General's Department Canberra, Aus. Capital Territory</td>
<td>10 July 2002</td>
<td>23 August 2005</td>
</tr>
<tr>
<td>Ms Tara Gupta</td>
<td>Director of Legal Services Department for Community Development Western Australia</td>
<td>4 October 2001</td>
<td>3 October 2004</td>
</tr>
<tr>
<td>Ms Susan Holmes</td>
<td>Executive Director, Relationships Australia Tasmania</td>
<td>18 August 2001</td>
<td>3 October 2004</td>
</tr>
<tr>
<td>Ms Kate Hughes</td>
<td>Manager, Family Law NT Legal Aid Commission Darwin, Northern Territory</td>
<td>12 October 2001</td>
<td>11 October 2004</td>
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<td>Christine Mead FM</td>
<td>Federal Magistrates Court Adelaide, South Australia</td>
<td>1 December 2003</td>
<td>30 November 2006</td>
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<td>Justice Susan Morgan</td>
<td>Family Court of Australia Melbourne, Victoria</td>
<td>1 December 2003</td>
<td>30 November 2006</td>
</tr>
<tr>
<td>Prof. Patrick Parkinson (Chairperson from 18/8/04)</td>
<td>Faculty of Law University of Sydney Sydney, New South Wales</td>
<td>17 August 2001</td>
<td>16 August 2007</td>
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Observers

Council's observers play an important part in the management of Council’s workload. Observers participate fully in Council discussions, but Council members alone decide issues coming before Council in the event that there is not a consensus. 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.

There have been some changes to observers during the year. Mr John Mathieson became the new Chief Executive Officer of the Federal Magistrates Court of Australia in April 2005 and took the place of Mr Peter May as the observer for the Federal Magistrates Court. Acting Judge Stephen Thackray was appointed as a Justice of the Family Court of Western Australia in September 2004.

The following observers attended Council meetings during the year.

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Name</th>
<th>Date</th>
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</thead>
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<tr>
<td>Australian Institute of Family Studies</td>
<td>Mr Bruce Smyth</td>
<td>March 2005</td>
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<tr>
<td></td>
<td>Ms Catherine Caruana</td>
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<tr>
<td>Australian Law Reform Commission</td>
<td>Ms Lani Blackman</td>
<td>March 2005</td>
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<tr>
<td></td>
<td>Mr Jonathan Dobinson</td>
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<td>Child Support Agency</td>
<td>Ms Yvonne Marsh</td>
<td>March 2005</td>
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<td></td>
<td>Ms Cheryl Stevenson</td>
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<td>Family Court of Australia</td>
<td>Ms Jennie Cooke</td>
<td></td>
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<td></td>
<td>Ms Dianne Gibson</td>
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<td>Family Court of Western Australia</td>
<td>Justice Stephen Thackray</td>
<td></td>
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<td>Federal Magistrates Court of Australia</td>
<td>Mr Peter May</td>
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<tr>
<td>Law Council of Australia</td>
<td>Mr Garry Watts</td>
<td>March 2005</td>
</tr>
<tr>
<td></td>
<td>Ms Maurine Pyke</td>
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Council staff

The Attorney-General’s Department provides Council with resources, including staff. Council’s Secretariat is a Section of the Family Law Branch of the Attorney-General's Department. The current permanent Secretariat staffing profile comprises the Director of Research (Principal Legal Officer), a Research Officer (APS Level 6) and a shared Administrative Officer (APS Level 3).

During the year, Secretariat staff were:

<table>
<thead>
<tr>
<th>Role</th>
<th>Name</th>
<th>Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Director of Research</td>
<td>Mr Matthew Osborne</td>
<td>from 3 August 2001 – 9 May 2005</td>
</tr>
<tr>
<td>Research Officer</td>
<td>Mr Christopher Paul</td>
<td>from 22 April 2002 – 3 June 2005</td>
</tr>
<tr>
<td>Administrative Officer</td>
<td>Ms Di Kneebone</td>
<td>from 28 February 2002</td>
</tr>
</tbody>
</table>

The functions of the Secretariat are as follows.

- 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 1975*.
- 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.

Contact details

The Council’s Secretariat may be contacted at:

Robert Garran Offices  
National Circuit  
BARTON ACT 2600  

Phone 02 6234 4829  
Fax 02 6234 4811  
Email flc@ag.gov.au  

The Council’s homepage is &lt;http://www.law.gov.au/flc&gt;
3. Meetings and Consultations

Plenary sessions of Council are usually held on a quarterly basis. As a matter of policy, Council usually visits one regional centre as well as the main capital cities for its meetings. However, during the year only three meetings were held and there was no meeting in a regional centre. This was due to budgetary constraints.

As usual, each Council meeting had a theme and 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.

**23-24 September 2004   Gold Coast, Queensland**

The theme of the September meeting was *initiatives for a less adversarial family law system*. Council met with a number of visitors, including Professor Laurence Boulle, a former Chair of the National Alternative Dispute Resolution Advisory Council (NADRAC). One important issue that emerged was accreditation and quality assurance in the provision of mediation services.

It has long been Council’s practice to meet with judicial officers during the regular Council meetings to discuss current issues of interest or concern and, generally, to get an overview of how the family law system is functioning. The judicial visitors during the September meeting were Federal Magistrates Michael Jarrett and Jennifer Rimmer.

Council also met with
- Mr John Hodgins and Ms Bernadette Kasten from Legal Aid Queensland
- Mr Rob Davis from the Queensland Law Society
- Mr Andrew Davis and Mr Stephen Quinlan from Relationships Australia, and
- Mr Keith Slack, a representative from the Queensland Bar.

Council shared a working lunch with members of the Family Law Section of the Law Council of Australia to discuss current work programs and items of common interest with a particular focus on possible areas of collaboration.

**18-19 November 2004   Canberra, Australian Capital Territory**

A major topic of discussion at the November meeting was the government’s Discussion Paper, *A New Approach to the Family Law System*, which was released on 10 November 2004. Council met with the Attorney-General, the Hon Philip Ruddock MP, which gave Council an opportunity to hear the Attorney-General’s views on the Discussion Paper. The Attorney-General’s adviser, Mr Tim MacKinnon, also attended.

The Council also met with Deputy Chief Justice Faulks, Justice Finn and Federal Magistrate Jim Brewster to discuss the Discussion Paper.

The theme of the November meeting was *the Pathways Report – Progress on Implementation*. Council benefited greatly from a review of the key issues arising provided
by a panel of visitors from the Attorney-General's Department and the Department of Family and Community Services who were working on the Pathways Report. The panel included:

- Ms Sue Pidgeon Assistant Secretary
- Ms Serena Beresford-Whylie, Director, Policy, Research and Online Support Section
- Mr Fermin Lopez, Project Officer, Policy, Research and Online Support Section from the Attorney-General's Department, and
- Mr Tony Carmichael, Assistant Secretary, Family Relationship Services and Child Care Policy Branch, Department of Family and Community Services.

Council also learned about the Family Violence Intervention Network in the Australian Capital Territory (ACT). This appears to have been a very successful program and has had significant benefits in improving the system’s response to family violence. These insights will inform Council’s ongoing consideration of family violence. The network representatives were:

- Ms Linda Crebbin, Legal Aid Office, ACT
- Superintendent Anne McEvoy, Crime Prevention Unit, Australian Federal Police
- Ms Robyn Holder, Victims of Crime Coordinator, Magistrates Court, and
- Ms Dennise Simpson, Domestic Violence Crisis Service.

Council had discussions with Ms Lisa Campbell who is the Community of Defence Regional Director for the ACT/River Murray Region and Mr Nicholas Mills who is the Director of Personnel Policy in the Department of Defence.

**10-11 March 2005 Hobart, Tasmania**

In March 2005 Council met with the Chief Justice of the Family Court of Australia, the Hon Diana Bryant QC. The focus of the discussion was integrating the services of the Family Court and the Federal Magistrates Court. The other judicial visitors were Justice Hannon and Federal Magistrate Stuart Roberts.

The theme of the March meeting was *grandparents and extended family and their interaction with the family law system*. Council met with a number of representatives of organisations supporting grandparents in Tasmania and also held discussions with judicial officers and legal practitioners on the needs of grandparents. The outcome of those deliberations were some practical proposals on ways in which the Government’s reforms to the family law system to support grandparents could be given particular focus.

Council met with the following people:

- Mr Michael Foster, Chair, Law Society of Tasmania
- Ms Eve Murray, PDR Coordinator, Legal Aid Commission of Tasmania
- Mr Malcolm Cunningham, Aboriginal Health Services
- Ms Gail Evans, Coordinator, ‘Good Beginnings’³
- Ms Linda Johnson, Early Support for Parents (which incorporates grandparents raising grandchildren)
- Ms Georgina McLagan, Centacare, and
- Mr John MacKean, President, Tasmanian Council of the Ageing.

³ ‘Good Beginnings’ is a service funded by Centacare. It was originally a pilot project initiative in 1998 funded by Federal Family Services through State Government Family Child and Youth Health Service.
Acknowledgments

Council wishes to record its appreciation to persons who met with them during the year and others who gave assistance in various ways.

Committees

Council also appoints ad hoc committees, using outside expertise as well as Council members and observers, to consider specific topics requiring in-depth examination. Committees meet as required between Council meetings, usually by teleconference. Details about the work of committees during the year are provided in Appendix B.

Relationship with other bodies in family law

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.

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. Complementing this input, Council member Ms Nicola Davies provides a valuable perspective on legal aid based on her experience in Legal Aid Queensland.

Council exchanges relevant papers with National Alternative Dispute Resolution Advisory Council (NADRAC) and the Councils’ secretariats maintain close contact about mutually relevant issues. The relationship continues to develop and as opportunities arise, the two Councils meet.

Council was kept informed about developments in Family Law Pathways projects through a number of channels, especially through liaison between Council Secretariat and officers in the Family Pathways Branch in the Attorney-General's Department.

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.
As indicated in Part 1, during the year Council provided two reports and two letters of advice to the Attorney-General. Council also made a submission on the Government’s Discussion Paper, *A New Approach to the Family Law System*. A number of committees were constituted to prepare this advice. Full details of committee membership are provided in Appendix B. A full list of Council publications since 1976 is detailed in Appendix A.

**Children’s representation report**

Council’s *Pathways for Children: A Review of children’s representation in family law* report reviews the role and the basis of appointment of child representatives. Council believes that more can be done to clarify the role of child representatives. As a result, Council made a range of recommendations designed to clarify and strengthen the role of the child representative. The 10 recommendations made in the report are listed below.

**Recommendation 1:** The basic elements of the role of the child representative, as set down by the Full Court in *P and P*, should be incorporated into the *Family Law Act*.

**Recommendation 2:** The Commonwealth Attorney-General’s Department should commission research into how the discretion to appoint a child representative is exercised, including:
- the influence of the various grounds set out in *Re K*;
- whether or not the *Re K* grounds are applied consistently;
- whether alternative grounds influence the discretion to make an appointment; and
- whether or not the appointment of the child representative contributed positively to the outcome of the proceedings.

**Recommendation 3:** The grounds for appointment of child representatives set out in *Re K* not be set out in legislation, but remain flexible and part of the common law, subject to the results of the research recommended by Council.

**Recommendation 4:** The Australian Institute of Family Studies be commissioned to conduct research into the views of children about their experiences, expectations, and competence in family law proceedings and to evaluate children’s experiences of child representatives.

**Recommendation 5:** The Attorney-General’s Department monitor the impact of different legal aid approaches relating to funding children’s direct representatives in order to assess appropriate legal aid funding.

**Recommendation 6:** The *Family Law Act* should be amended to specifically state that child representatives are best interests advocates.

**Recommendation 7:** The *Family Law Act* should be amended to change the name from the Child Representative to the Independent Lawyer.
Recommendation 8: The Commonwealth Attorney General’s Department, Courts exercising jurisdiction under the *Family Law Act 1975*, organisations specialising in counselling and mediation in family law matters and Legal Aid Commissions should:

a) endorse a team based approach to the representation of children, so that the appointed legally trained child representative is supported by a social scientist

b) develop a protocol for cooperation between lawyers acting as child representatives and family and child counsellors; and

c) provide sufficient funds to allow implementation of the protocol.

Recommendation 9: The *Family Law Act* should be amended to state that the child representative cannot be required, by any party or the court, to disclose information communicated to the child representative by the child. The *Family Law Act* should also include a provision stating that the child representative may, where the child representative considers it is in the child’s best interests, disclose to the court or relevant authority, information provided by the child against the child’s wishes.

Recommendation 10: The *Family Law Act* should be amended to provide child representatives with a statutory immunity similar to that provided for family and child mediators and arbitrators by section 19M of the *Family Law Act*.

**Recognition of Aboriginal and Torres Strait Islander child-rearing practices report**

This report recommends four changes to the *Family Law Act 1975* to assist courts to take into account the kinship obligations and child rearing practices of traditional Aboriginal and Torres Strait Islander peoples. These recommendations have been substantially incorporated in the exposure draft of the Family Law Amendment (Shared Parental Responsibility) Bill 2005, which was released on 23 June 2005. The recommendations are as follows.

**Recommendation 1:** To amend the *Family Law Act* by inserting a new s 61F at the end of Division 2 of Part VII of the Act along the lines of:

> In applying Part VII of the Act to the circumstances of an Aboriginal and Torres Strait Islander child, and in identifying a person or persons who have exercised or may exercise parental responsibility for a child, the court shall have regard to the kinship obligations and child-rearing practices of Aboriginal and Torres Strait Islander culture.

**Recommendation 2:** That the Attorney-General consider raising the matter of how best to promote the functional recognition by the different arms of government of parental responsibility in Aboriginal and Torres Strait Islander communities with the Minister for Immigration and Multicultural and Indigenous Affairs.

**Recommendation 3:** To amend the *Family Law Act* in the manner proposed in recommendation 22(b) such that:

> s 60B(2) 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.

**Recommendation 4:** To amend s 68F(2) to provide:
(1) a new subparagraph (f) along the lines: “the maturity, sex and background of the child, and of either parent of the child, and any other characteristics of the child that the court thinks are relevant” and;

(2) a new subparagraph (fa) along the lines “the likely effect of any particular parenting order on the need of every Aboriginal or Torres Strait Islander child to maintain a connection with the lifestyle, culture and traditions of his or her peoples”,

with a definition of ‘a connection with the lifestyle, culture and traditions of his or her peoples’ to be inserted in s 68F(4) along the lines of:

the extent to which orders determined on a case-by-case basis may provide:

i) the support and opportunity necessary to explore the full extent of the child's indigenous cultural heritage, consistent with the child's age, developmental level, and wishes, and

ii) the support and encouragement necessary to derive a positive sense of indigenous cultural heritage.

**Recommendation 5:** That a modified version of s 86 of the *Native Title Act 1993* (Cth) be inserted into Part VII of the *Family Law Act*.

**Recommendation 6:** That the Attorney-General bring the issue of admissibility of evidence relating to cultural practices to the attention of the Australian Law Reform Commission in the context of its current reference concerning the *Evidence Act 1995* (Cth).

**Recommendation 7:** To expand the Aboriginal and Torres Strait Islander family consultant program as recommended by the *Out of the maze* report, and in the recent report *Every picture tells a story*.

**Advice on binding financial agreements**

On 5 November 2004 Council dispatched a letter of advice to the Attorney-General which reviewed the binding financial agreements provisions in Parts VIII and VIIIA of the *Family Law Act 1975*. The advice made the following recommendations.

**Recommendation 1:** That no changes other than those already proposed in legislation be made to the law concerning binding financial agreements at this time.

**Recommendation 2:** That time should be given to assess the effectiveness of the recent and proposed changes to the law on financial agreements, before considering any further amendments to protect creditors.

**Recommendation 3:** That the possible use of financial agreements in intact relationships to avoid stamp duty be brought to the attention of State and Territory Attorneys-General.

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Advice on Division 11 of Part VII of the *Family Law Act 1975*

On 17 November 2004 Council dispatched a letter of advice to the Attorney-General on the operation of Division 11 in Part VII of the *Family Law Act 1975*. Division 11 deals with cases in which there is an actual or potential conflict between a *contact order* made under the Act and a *family violence order* made under State or Territory domestic violence legislation. The recommendations in that advice were as follows.

**Recommendation 1:** Redraft Division 11 into clear, concise language that can be readily understood by the people who must use and implement it.

**Recommendation 2:** Redraft s 68P be to provide a new definition of *contact order*.

**Recommendation 3:** Repeal s 68Q(c) and amend s 68T along the lines set out below in order to provide a clearer and more succinct statement of the principles to be applied by State and Territory courts when exercising their powers under s 68T.

**Recommendation 4:** Amend s 68T so that there shall be no power for a court of a State or Territory to *make* a contact order as part of family violence proceedings.

**Recommendation 5:** Retain the currently specified period of 21 days with respect to the operation of an order in relation to contact made under s 68T(5).
5. Implementation of Recommendations

Council makes recommendations to the Attorney-General in either reports on major issues, or letters of advice on specific matters. 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.

From 26 November 1976, when Council was established, to 30 June 2005, a total of 723 recommendations have been made. Of these, 334 have been made in reports and 389 in letters of advice. Table 1 sets out the number of recommendations that have been made each year since 1976.

Table 1: Recommendations in reports and letters of advice 1976-2005

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<thead>
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<th>Year</th>
<th>Reports</th>
<th>Letters of advice</th>
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</tr>
<tr>
<td>1992-93</td>
<td>6</td>
<td>9</td>
<td>15</td>
</tr>
<tr>
<td>1993-94</td>
<td>27</td>
<td>10</td>
<td>37</td>
</tr>
<tr>
<td>1994-95</td>
<td>16</td>
<td>5</td>
<td>21</td>
</tr>
<tr>
<td>1995-96</td>
<td>32</td>
<td>12</td>
<td>44</td>
</tr>
<tr>
<td>1996-97</td>
<td>14</td>
<td>1</td>
<td>15</td>
</tr>
<tr>
<td>1997-98</td>
<td>23</td>
<td>7</td>
<td>30</td>
</tr>
<tr>
<td>1998-99</td>
<td>0</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>1999-2000</td>
<td>0</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>2000-01</td>
<td>18</td>
<td>2</td>
<td>20</td>
</tr>
<tr>
<td>2001-02</td>
<td>2</td>
<td>4</td>
<td>6</td>
</tr>
<tr>
<td>2002-03</td>
<td>17</td>
<td>-</td>
<td>17</td>
</tr>
<tr>
<td>2004-05</td>
<td>17</td>
<td>8</td>
<td>25</td>
</tr>
<tr>
<td>TOTAL</td>
<td>334</td>
<td>389</td>
<td>723</td>
</tr>
</tbody>
</table>

Government response to recommendations
Of the 723 recommendations made, government has considered 568 recommendations (78.5%). Table 2 shows the government’s response to those recommendations. Of the 568 recommendations that have been considered by government, 448 (79%) have been either fully or partly implemented. A further 120 (21%) 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, or
(e) failure of the relevant authority to pass advice on to the appropriate agency within a reasonable time.

Table 2: Government response to recommendations 1976 - 30 June 2005

<table>
<thead>
<tr>
<th>Implemented</th>
<th>Reports</th>
<th>Letters of advice</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>137</td>
<td>260</td>
<td>397</td>
</tr>
<tr>
<td>Partly</td>
<td>137</td>
<td>260</td>
<td>397</td>
</tr>
<tr>
<td>implemented</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Not</td>
<td>80</td>
<td>40</td>
<td>120</td>
</tr>
<tr>
<td>implemented</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>249</td>
<td>319</td>
<td>568</td>
</tr>
</tbody>
</table>

“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 under consideration

In addition to the recent advice to the Attorney-General outlined in part 4, the government is still considering the recommendations made in 3 reports.

The report *Parental Child Abduction* was sent to the Attorney-General on 2 February 1998. There has not yet been a response from the Government.

In August 2000, the Council sent the Attorney-General a report titled *Litigants in Person*. In the media release dated 19 January 2001 to coincide with the formal release of the report, the Attorney-General noted that the recommendations would be considered in the context of the

The Council is reconsidering both of the above reports in order to advise the Attorney-General whether the recommendations have ongoing relevance.

The former Attorney-General, the Hon Daryl Williams AM QC MP, referred a number of recommendations of the report *Family Law and Child Protection: Final Report* (2002) to the Standing Committee of Attorneys-General (SCAG). In August 2003 SCAG agreed that a working group will examine recommendations 10-14 from the report which are designed to promote the ‘one-court’ principle.

Council’s meeting and program costs are met each year by the Family Law Branch of the Attorney-General’s Department (from 1 December 2004 the Family Law Branch became part of the Civil Justice Division. It was previously part of the Family Law and Legal Assistance Division). This includes the costs for staff of the Secretariat, fares, cab-charges and travelling allowances for Council members. All observer costs are covered by their respective organisations.

Table 3: Family Law Council Total Expenditures for 2004-05

<table>
<thead>
<tr>
<th>Item</th>
<th>Expenditure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sitting Fees (including superannuation)</td>
<td>19,348.21</td>
</tr>
<tr>
<td>Venue Hire &amp; Incidentals</td>
<td>1,402.73</td>
</tr>
<tr>
<td>Meeting Costs</td>
<td>7,478.37</td>
</tr>
<tr>
<td>Domestic Airfares</td>
<td>16,624.71</td>
</tr>
<tr>
<td>Travel Allowance</td>
<td>22,674.63</td>
</tr>
<tr>
<td>Memberships</td>
<td>177.27</td>
</tr>
<tr>
<td>Car/Taxi Hire</td>
<td>3,631.90</td>
</tr>
<tr>
<td>Car Parking</td>
<td>15.91</td>
</tr>
<tr>
<td>Bank/Credit Card Fees</td>
<td>15.00</td>
</tr>
<tr>
<td>Printing</td>
<td>5,970.49</td>
</tr>
<tr>
<td>Stationery</td>
<td>1,120.74</td>
</tr>
<tr>
<td>Library Books</td>
<td>86.36</td>
</tr>
<tr>
<td>Newspapers/Gazettes</td>
<td>29.09</td>
</tr>
<tr>
<td>Communication Charges</td>
<td>135.07</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$78,710.48</strong></td>
</tr>
</tbody>
</table>
Appendix A: Council Publications

Family Law Council News

During the year an Autumn/Winter 2004 and Spring/Summer 2005 issue of the Family Law Council News were produced and distributed. The publication gives brief and informative advice on Council’s activities. 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.

Reports and papers

In addition to its Annual Reports, Council has published the following reports and papers (including letters of advice) since it commenced operation in November 1976. Many of Council’s more recent publications are available online at <http://www.law.gov.au/flc>.

1976 – 1979
- 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)

1980 – 1984
- Wardship, Guardianship, Custody, Access, Change of Name - Watson Committee Report (1982)

1985 – 1989
- 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)
- Access - Some Options for Reform (1987)
- Arbitration in Family Law (1988)
- Child Sexual Abuse (1988)
- Representation of children in Family Court proceedings (1989)

1990 – 1994
- 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)
- The Operation of the (UK) Children Act 1989 (1994)
- Female Genital Mutilation (1994)
- Sterilisation and Other Medical Procedures on Children (1994)

1995 - 1999
- Magistrates in family law (1995)
- Family law appeals and review (1996)
- Involving and representing children in family law (1996)
- Parental child abduction (1998)
- Child Contact Orders: Enforcement and Penalties (1998)

2000 – 30 June 2005
- Parenting Plans (2000)
- Litigants in Person (2000)
- Statistical Snapshot of Family Law 2000-01

* Discussion papers were also issued for consultation purposes on each of these matters.
Appendix B: Council Committees 2004-05

Unless otherwise stated, committee members serve in their capacity as members or observers of the Family Law Council. Members’ names are included whether they served for the full reporting year or not. Project status details are correct as at 30 June 2005.

Aboriginal and Torres Strait Islander issues committee

On 10 January 2005 the Aboriginal and Torres Strait Islander Issues committee completed a report titled *Recognition of Aboriginal and Torres Strait Islander child-rearing practices. Response to Recommendation 22: Pathways Report, Out of the Maze.*

Members of the committee were as follows:

- Mr Kym Duggan, Convenor
- Ms Josephine Akee
- Ms Jennie Cooke
- Professor John Dewar
- Ms Tara Gupta
- Mr Matthew Osborne, Secretariat
- Mr Christopher Paul, Secretariat

Child representative committee

On 18 November 2004 the Attorney-General launched the child representative committee’s report titled *Pathways for Children – A review of children’s representation in family law.*

Members of the committee were as follows:

- Mr Kym Duggan, Convenor
- Ms Lani Blackman
- Ms Jennie Cooke
- Ms Susan Holmes
- Ms Kate Hughes
- Mr Christopher Paul, Secretariat

Child support committee

This committee worked with the Child Support Agency on a project to draft the *Legal Practitioner's Guide.* The Committee also provides Council with information on the operation of the Child Support Scheme.

Members of the committee are as follows:

- Ms Yvonne Marsh, Convenor
- Ms Christine Mead FM
• Justice Stephen Thackray
• Mr Matthew Osborne

Financial agreements committee

On 5 November 2004 the financial agreements committee completed a letter of advice to the Attorney-General titled *Review of binding financial agreement provisions in Parts VII and VIIIA of the Family Law Act.*

Members of the committee were as follows:
• Mr Kym Duggan
• Justice Susan Morgan
• Professor Patrick Parkinson
• Justice Garry Watts
• Mr Matthew Osborne

Government Discussion Paper on family law reform committee

This committee developed a response to the Government Discussion paper *A New Approach to the Family Law System* which was submitted to the Attorney-General's Department on 20 December 2004.

Members of the committee were as follows:
• Professor Patrick Parkinson
• Mr Kym Duggan
• Ms Dianne Gibson
• Mr Clive Price
• Justice Garry Watts
• Matthew Osborne

Guidelines committee

The guidelines committee, along with the Family Law Section of the Law Council of Australia, prepared *Best practice guidelines for lawyers doing family law work.* The guidelines were launched on 18 November 2004.

Members of the committee were as follows:
• Professor John Dewar
• Ms Lani Blackman
• Ms Susan Holmes
• Justice Susan Morgan
• Justice Garry Watts
• Mr Martin Bartfeld QC
• Mr Matthew Osborne
**Improving post-parenting order processes committee**

The improving post-parenting order processes committee is working on terms of reference given by the Attorney-General in a letter dated 16 November 2004. The reference is titled *Improving family law processes for dealing with post-parenting order conflict* and is:

In the light of the *Every picture tells a story* report and the Government’s proposed response to that report outlined in the discussion paper released on November 2004 and entitled *A New Approach to the Family Law System*, the Family Law Council consider:

(a) how family law processes can better deal with the need to vary parenting orders from time to time as family circumstances change; and

(b) the need to distinguish variation issues from situations of serious non-compliance with court orders,

taking into consideration:

1. The proposed changes to the family law system in response to the *Every picture tells a story* report, as outlined in the discussion paper released on 10 November 2004, particularly the potential role of Family Relationship Centres in assisting families to resolve parenting order variation and compliance issues;
2. The role of court orders generally in structuring post-separation parenting arrangements and whether courts need greater flexibility in dealing with post separation parenting arrangements;
3. How court orders might be better drafted to reduce the likelihood of subsequent disputes;
4. The desirability of court orders including alternative processes, particularly primary dispute resolution processes for dealing with changes in circumstances and resolving subsequent disputes, such as a contact orders program or post separation parenting program;
5. The desirability of encouraging parties to include in their agreements primary dispute resolution processes for dealing with changes in circumstances and resolving subsequent disputes;
6. The procedural and cost barriers to bringing contravention applications in relation to serious non-compliance matters; and
7. Any other matter that may be relevant.

The members of the committee are as follows:

- **Mr Kym Duggan**  
  *Convenor*
- **Ms Jennie Cooke**
- **Ms Christine Mead FM**
- **Ms Dianne Gibson**
- **Ms Yvonne Marsh**
- **Ms Nicola Davies**
- **Mr Matthew Osborne**  
  *Secretariat*
The paramountcy principle committee

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.

The committee prepared a discussion paper titled the Child Paramountcy Principle in the Family Law Act which was released on 22 December 2004. Comments were initially sought by 6 May 2005, but this was extended until 30 June 2005. The committee is considering the feedback received on the discussion paper.

Member of the committee have included:

- Justice Susan Morgan  
  Convenor
- Mr Kym Duggan
- Ms Tara Gupta
- Ms Susan Holmes
- Professor Patrick Parkinson
- Ms Susan Purdon
- Justice Stephen Thackray
- Justice Richard Chisholm  
  Family Court of Australia
- Mr Matthew Osborne  
  Secretariat
Violence and the Family Law Act committee

The violence and the Family Law Act committee completed a letter of advice to the Attorney-General on 17 November 2004. The advice was on the operation of Division 11 of Part VII of the Family Law Act 1975 which deals with cases in which there is an actual or potential conflict between a contact order made under the Family Law Act 1975 and a family violence order made under State or Territory domestic violence legislation.

Members of the committee were as follows:

- Professor John Dewar  
  Convenor until August 2004
- Ms Nicola Davies  
  Convenor
- Ms Jennie Cooke
- Mr Kym Duggan
- Ms Kate Hughes
- Professor Patrick Parkinson
- Mr Clive Price
- Dr Juliet Behrens  
  Australian National University
- Dr Grania Sheehan  
  Griffith University
- Mr Christopher Paul  
  Secretariat

Statistical reference group

Council is preparing its Statistical Snapshot of Family Law 2002-04 with the assistance of the statistical reference group.

Members of the reference group are as follows:

- Ms Jennie Cooke
- Mr Bruce Smyth
- Justice Stephen Thackray
- Mr Christopher Paul  
  Secretariat
Appendix C: 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

The Family Law Council was established by section 115 of the Family Law Act 1975, which provides:

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

(2) The Council shall consist of a Judge of the Family Court and such other judges, persons appointed or engaged under the Public Service Act 1999, officers 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) 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) The Attorney-General shall appoint one of its members to be Chairperson of the Council.

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

(5B) Subsections (5) and (5A) have effect subject to the Remuneration Tribunal Act 1973.

(5C) 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) A member (including the Chairperson) may resign by writing signed and delivered to the Attorney-General.

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

(6B) 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 that member.

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

(8) The Council shall cause records to be kept of its meetings.

(9) 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 on that 30 June.

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

(11) For the purposes of this section, a Federal Magistrate is taken to be a judge.
Responsible Minister

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 an Annual Report to the Attorney-General for presentation to Parliament as soon as practicable after 30 June each year (subsection 115(9)). Subsection 115(10) requires that the Annual Report be tabled within 15 sitting days of its receipt by the Attorney-General. The Council's Annual Report 2003-2004 was tabled in the Senate on 16 November 2004.

Powers, functions and objectives

The powers, functions and objectives of Council are set out in subsection 115(3) of the Family Law Act 1975 provided above.

Membership and staff

Members of the Family Law Council are appointed by the Attorney-General under subsection 115(2) of the Family Law Act 1975. Appointment is for a period of up to 3 years and members may be re-appointed. Details of appointments for 2004-05 and Council members are provided in part 2.

The Family Law Act 1975 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. Other judges, including Federal Magistrates, may also 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.

There are no provisions in the Family Law Act 1975 relating to the appointment of observers on Council. However, Council currently has observers from seven agencies who may attend meetings. The names of observers and the organisations for which they work are given in part 2 of this report.

Staff members during the reporting year are listed in part 2. The Attorney-General’s Department provides staff for the Council’s Secretariat.

Financial statement

A financial report is provided in part 6 of this report.

Activities and reports

Details of Council meetings during the reporting year are given in part 2. Council’s 2004-05 committee based projects are detailed in Appendix B. Advice given to the Attorney-General
during the year is summarised in part 4 of the report. Part 5 summarises the current position in relation to the implementation of Council recommendations.

A report on Council’s relationship with other bodies is provided in part 2 of this report, along with persons and organisations with which Council met during the reporting year.

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 2000-01 Council decided to publish and upload the collected statistics on Council’s website separately.

**Access to information**

The Family Law Council is an agency for the purposes of the *Freedom of Information Act 1982* and the following information is provided under section 8 of that Act.

Council’s Secretariat maintains a general mailing list of persons interested in family law and related issues. Persons or organisations 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 people 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.

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 A. That list also indicates the matters on which discussion papers have been issued.


Hard copies of reports and letters of advice to the Attorney-General (categories (a) and (c)), 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. Bound copies of minutes to the end of 2002 are available and unbound copies of minutes since the beginning of 2003 are also held.

A bound set of Council meeting papers (category (f)) 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. The Director of Research also holds unbound copies of meeting papers since November 2002.

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 1982 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 (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 1982. 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.

There were no requests for access to Council documents under the Freedom of Information Act 1982 during 2004-05.

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 4829  
Fax: 02 6234 4811

Office hours are 9.00am - 5.00pm Mondays to Fridays (excluding public holidays).