



FAMILY
● LAW ●
COUNCIL

ANNUAL REPORT
● 2005 - 2006 ●

FAMILY LAW COUNCIL

ANNUAL REPORT

2005–06

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FAMILY LAW COUNCIL

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20 September 2006

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 2005 to 30 June 2006.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'P. N. Parkinson', written over a light blue horizontal line.

Professor Patrick Parkinson
Chairperson

**Council members, observers and staff met with
the Attorney-General in Melbourne in May 2006**



Seated (left to right): Federal Magistrate Christine Mead, Ms Nicky Davies, The Hon Susan Morgan, Ms Angela Filippello, Ms Maurine Pyke.

Standing (left to right): Ms Dolores Schneider, Mr John Mathieson, Ms Sue Purdon, Mr Alan Anderson, Ms Anita Mackay, Justice Garry Watts, Professor Patrick Parkinson, Ms Kate Connors, The Hon Philip Ruddock Attorney-General, Professor Alan Hayes, Mr Kym Duggan, Dr Bruce Smyth, Ms Sarah Christensen, Ms Carole Caple.

Missing from the photo: Ms Dianne Gibson, Mr Clive Price, Mr David Monaghan, Ms Yvonne Marsh.

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1. Year in Review

This year has been marked by significant changes to family law in Australia. The *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Shared Parenting Act) came into force on 1 July 2006. The first 15 of the 65 promised Family Relationship Centres opened on 3 July 2006 and the *Child Support Legislation Amendment (Reform of Child Support Scheme – Initial Measures) Act* was passed on 15 June 2006 and came into effect on 1 July 2006. The government has announced that this package of reforms is designed to achieve a generational shift in family law by refocussing the energies of separating couples toward agreements about arrangements for their children and away from litigation which can be destructive of trust and cooperation between separated spouses. The legislative reforms are underpinned by significant practical assistance such as the Family Relationship Centres. The Council will watch with great interest as this new initiative takes effect.

In this busy context of reform, the Family Law Council has contributed to law reform initiatives of other bodies by making submissions on matters of family law. On 15 July 2005 Council made a submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs Inquiry into the exposure draft *Family Law Amendment (Shared Responsibility) Bill 2005* (July 2005). On 13 September 2005 the Council made a submission to the Australian Law Reform Commission (ALRC) on its discussion paper titled *Review of the Uniform Evidence Acts*. The ALRC released its final report on uniform evidence law on 8 February 2006.

In accordance with its statutory functions under section 115(3) of the *Family Law Act 1975*, the Council provided advice to the Attorney General on matters relating to family law. A joint letter of advice on immunity for family counsellors and family dispute practitioners under the *Family Law Act 1975* was provided to the Attorney General on 15 November 2005. This advice was produced by the Family Law Council jointly with the National Alternative Dispute Resolution Advisory Council and advised on the requirement for immunity for family counsellors and family dispute resolution practitioners under the *Family Law Act 1975*.

Council also advised the Attorney-General on the ‘Child Paramountcy Principle’ in the *Family Law Act 1975*. This letter of advice was provided to the Attorney-General on 17 January 2006. On 22 February 2006 Council advised the Attorney-General on the proposed section 64D of the *Family Law Amendment (Shared Parental Responsibility) Bill 2005*.

In addition to the matters set out above, the Council released a Discussion Paper on Relocation for public consultation in February 2006. This paper was circulated to 800 individuals and organisations. The 43 submissions made to the Council were reflected in the final report on Relocation which was tabled in the Senate on 11 July 2006.

The Council met in its plenary sessions 4 times over the past twelve months. As in previous years the Council used these opportunities to discuss topical themes on family law and to meet with other experts in family law throughout Australia. A more detailed report of each of these meetings is set out in part 3. These meetings allow the judiciary, the legal profession and other family law experts to address Council members and raise issues of concern or explain particular State initiatives. The Honourable Phillip Ruddock was a guest at the

Melbourne meeting which was held on 4 and 5 May 2006. This was a valuable opportunity for the Council to speak directly with the Attorney-General and for the Attorney to raise specific issues with the Council.

The Council's most important work is carried out in its committees. The Council has five committees exploring various aspects of family law at present. These committees enable the Council to take advantage of experts in particular areas of family law. The work of the committees is fundamental to the production of Council's discussion papers, letters of advice and reports. The committees are chaired by a member of Council and range in size from three to eight members. Committee meetings are generally held via teleconferences but from time to time face to face meetings are arranged.

The Council's current committees are as follows.

- Arbitration committee
- Child support committee
- Collaborative law committee
- Improving post order parenting processes committee
- Violence committee.

A more detailed report of the activities of these committees is set out in Appendix B.

During the year the Council received the following references from the Attorney General:

- Immunity for family counsellors and family dispute resolution practitioners under the Family Law Act on 16 September 2005 (joint advice),
- Family violence and the Family Law Act on 28 February 2006,
- Collaborative law on 31 January 2006, and
- Arbitration on 26 May 2006.

2. Council Members and Observers

Over the last 12 months three members of the Council have completed their terms of appointment. These are Ms Tara Gupta, Director of Legal Services, Department for Community Development Western Australia; Ms Susan Holmes Executive Director, Relationships Australia, Tasmania and Federal Magistrate Kate Hughes as she now is. Council thanks these members for their services and welcomes Mr Clive Price, Ms Susan Purdon and Justice Garry Watts.

The members of the Council between 1 July 2005 - 30 June 2006 were as follows.

Name	Position	Date of first appointment	Expiry date of current term
Professor Patrick Parkinson	Faculty of Law University of Sydney Sydney, New South Wales	18 August 2004	16 August 2007
Ms Nicola Davies	Senior Legal Consultant Family Law Legal Aid Queensland	7 October 2004	6 October 2007
Mr Kym Duggan	Assistant Secretary Family Law Branch Attorney-General's Department Canberra, Aust. Capital Territory	10 July 2002	31 January 2006 ¹
Federal Magistrate Christine Mead	Federal Magistrates Court Adelaide, South Australia	1 December 2003	30 November 2006
The Honourable Susan Morgan	Retired Judge Family Court of Australia Melbourne, Victoria	1 December 2003	30 November 2006
Mr Clive Price	Executive Director UnitingCare Unifam Counselling & Mediation Sydney, New South Wales	7 October 2004	6 October 2007
Ms Susan Purdon	Hopgood Ganim Lawyers Brisbane, Queensland	1 September 2004	31 August 2007
Justice Garry Watts	Family Court of Australia Sydney, New South Wales	1 September 2004	31 August 2007

¹ A submission is being prepared recommending Mr Duggan be re-appointed for another 3 year term.

Observers

Council's observers play an important part in the management of Council's workload. Observers participate fully in Council discussions. However; in the event that a decision cannot be made by consensus, the matter is decided by Council members alone. 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. The following observers attended Council meetings during the year.

Organisation	Name
Australian Institute of Family Studies	Mr Bruce Smyth
Australian Law Reform Commission	Ms Kate Connors
Child Support Agency	Ms Yvonne Marsh Ms Dolores Schneider
Family Court of Australia	Ms Angela Filippello Ms Dianne Gibson
Family Court of Western Australia	Mr David Monaghan
Federal Magistrates Court of Australia	Mr John Mathieson
Family Law Section of the Law Council of Australia	Ms Maurine Pyke

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 (Senior Legal Officer), a Legal Officer (APS Level 4) and a shared Administrative Officer (APS Level 3). This year we were also joined by two graduates and a law student (APS Level 2).

During the year, Secretariat staff were:

Ms Anita Mackay	Director of Research	from 23 June 2005 to 25 June 2006
Ms Rosa Saladino	Director of Research	from 26 June 2006
Ms Tara Khan	Legal Officer	from 5 October 2005 to 20 January 2006
Ms Carole Caple	Legal Officer	from 22 April 2006 to 30 June 2005
Ms Di Kneebone	Administrative Officer	from 28 February 2002 to 31 March 2006
Ms Ann Boyd	Administrative Officer	from 6 April 2006 to 25 May 2006
Mr Luke Allard	Administrative Officer	from 5 June 2006
Ms Roweena Singh	Research Officer	from 21 March 2006 to 30 June 2006
Ms Sarah Christensen	Graduate	from 13 February 2006 to 2 June 2006
Ms Jessica Mackay	Graduate	from 5 June 2006

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 1975*.
- 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.
- manage Council's annual budget.

Contact details

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3. Meetings and Consultations

Plenary sessions of Council are usually held on a quarterly basis. The Council held four meetings in this financial year. Although Council usually meets in one regional centre in addition to the main capital cities each year, this financial year all Council meetings were in capital cities.

Each Council meeting focussed on a theme of topical interest and also invited members of the Judiciary; the legal profession; academics and other experts to address Council members on matters of interest. These discussions and consultations informed Council's deliberations and subsequently formed the basis of the Chairperson's quarterly reports to the Attorney-General.

4 and 5 August 2005 Sydney, New South Wales

The Council welcomed 3 new observers to its August meeting. These were Ms Kate Connors, Mr John Mathieson and Ms Adele Byrne. The meeting theme *the implementation of Family Relationship Centres and related services in the new family law system* was introduced and discussed. On Thursday morning visitors from the legal profession: Ms Sandra Hale, Mr Duncan Holmes, Mr Jim Morrissey and Ms Judith Walker gave Council an updated view of issues of concern including how Family Relationship Centres will interface with the legal profession. Later in the morning Associate Professor Les McCrimmon of the Australian Law Reform Commission (ALRC) outlined the work of the ALRC on its review of the *Evidence Act 1995*.

Ms Sue Pidgeon from the Attorney-General's Department and Mr Tony Carmichael of the Department of Family and Community Services as it then was, attended to discuss issues arising from the *Every picture tells a story* report.

On Friday morning Mr Paul Lodge; Chief Federal Magistrate Pascoe; Justice Rose and Federal Magistrate Judy Ryan as she then was, and Federal Magistrate Robyn Sexton attended to discuss issues of interest to the Judiciary including the Children's Cases Program. Later on Friday morning Dr Neil Shepherd, Mr Rod Best and Mr Derek Smith advised the Council of the views of the NSW Department of Community Services (DoCS) on the Magellan project and the relationship between DoCS and the Family Court.

17 and 18 November 2005 Canberra, Australian Capital Territory

The theme of the November meeting was *recent developments in child support*. Council discussed the recommendations of the report titled *In the Best Interests of the Children-Reforming the Child Support Scheme*. Ms Sheila Bird of the Child Support Agency attended in place of Ms Yvonne Marsh and Mr Dennis Farrar of the ACT Law Society attended in place of Ms Maurine Pyke.

Other matters discussed were

- de facto property disputes
- the Family Relationships Centres
- collaborative law
- the paramountcy principle; and
- relocation

In accordance with Council's usual practice of meeting with judicial officers Council also met with Deputy Chief Justice Faulks and Justice Finn to discuss developments in the Family Court.

Council also met with

- Mr Matt Miller from the Child Support Agency
- Ms Sue Pidgeon from Family Pathways Branch Attorney-General's Department
- Mr Peter Arnaudo from Family Pathways Branch, Dispute Management Attorney-General's Department
- Ms Juliette Ford of Farrar Gesini and Dunn
- Ms Julie Dobinson of Davey and Dobinson
- Mr Phillip Davey of Davey and Dobinson; and
- Ms Heidi Yates of Legal Aid Commission (ACT)

16 and 17 February 2006 Adelaide, South Australia.

The theme of the February meeting was the *de facto property reference*. Mr Brian Dittman attended in place of Ms Jennifer Cooke.

Justices Burr, Murray and Strickland attended for the Judiciary section of the agenda and informed the Council on the Children's Cases and Magellan Programs, amongst other matters.

Mr Hamish Gilmore, Mr Graeme Russel and Mr Richard Mellows attended to inform the Council on the views of the legal profession on de facto property, accreditation standards and the *Shared Parental Responsibility Bill* which has now been enacted and came into effect on 1 July 2006. Mr Peter Meibusch from the Attorney-General's Department informed the Council of the progress of the amendments to the *Family Law Act 1975* giving effect to the referral of State powers in de facto property disputes.

Mr Phil Hocking and Mr Steve Agnew of the Family Court attended to advise Council about the Combined Registry Project.

Mr David Fawcett, Ms Judith Cross and Ms Elizabeth O'Connor advised Council on the Family Relationship Centres.

4 and 5 May 2006 Melbourne, Victoria

Discussions at the Melbourne meeting centred on *child-related proceedings*. Ms Dolores Schneider attended the meeting on behalf of Ms Yvonne Marsh of the Child Support Agency. Ms Filipello attended as the observer for the Family Court of Australia. After general business the Council discussed the draft *Relocation* report which was tabled in the Senate on 11 July 2006. Other matters discussed were the Improving Post Parenting Order Processes (IPPOP) report; Family Relationships Centres and the Legal Profession and child support. The Council then met with Justice Mushin, Federal Magistrate Kate Hughes and Registrar Jane Reynolds and were informed of the judiciary's views on a number of matters including the 2006 family law reforms which have now come into effect; the Children's Cases Program in Melbourne; Arbitration and Judicial Settlement Conferencing.

Ms Catherine Gale; Ms Olivia Nikou; Mr Tony Parsons; Ms Judith Sharples; Mr Paul Crowley and Mr Bill Trumble attended to advise Council of the views of the legal profession on amongst other matters; the 2006 family law reforms and collaborative law.

On Thursday afternoon Dr Jennifer McIntosh, Ms Ilana Katz and Mr Steve Atkinson gave the Council a detailed view of the Children's Cases Program using the child responsiveness model which was being trialled in Melbourne.

On Friday the Attorney-General, the Hon Philip Ruddock MP attended the meeting for discussions on a number of matters including relocation; child protection; family violence and collaborative law.

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 other bodies in the family law field. Council membership seeks to include people from various bodies and groups working in family law. In addition Council also consult regularly with other organisations and individuals with expertise or experience in the field of family law.

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, Community Services and Indigenous Affairs, the Family Court of Australia, the Attorney-General's Department, the Family Law Section of the Law Council of Australia, the Legal Aid Commission (ACT), Community Legal Services and the Family Law Council. Council's delegate is Ms Rosa Saladino, Director of Research in Council's Secretariat.

4. Advice to the Attorney-General

As indicated in part 1, during the year Council provided a report and three letters of advice to the Attorney-General. 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.

Relocation report

Council's *Relocation* report reviews the law of relocation in Australia and considers whether and how it should be reformed. Council's view is that relocation cases form a special category of cases and further guidance is required in the Family Law Act to assist the court in making relocation decisions. As a result, Council made the following recommendations in the report.

Recommendation 1: That if changes are made to relocation law as a result of Council's report, any changes should be reviewed when the results of the Australian social science research currently underway become available.

Recommendation 2: That two changes be made to reinforce that orders impose obligations, as follows:

1. Insert new subsection 65N(2) which reads "A parenting order that deals with whom the child is to spend time, imposes an obligation to maintain a relationship with a child in accordance with the terms of the order".
2. Add to section 70NAE a further subsection giving the respondent a reasonable excuse for contravention, which is that "the applicant has repeatedly failed to exercise his or her responsibilities in accordance with the order".

Recommendation 3: That a presumption should not be inserted in the Family Law Act to deal with relocation cases.

Recommendation 4: That the following provision be inserted in the Family Law Act:

A) Where there is a dispute concerning a change of where a child lives in such a way as to substantially affect the child's ability to live with or spend time with a parent or other person who is significant to the child's care, welfare and development, the court must:

- (1) Consider the different proposals and details of where and with whom a child should live, including:
 - (a) What alternatives there are to the proposed relocation;
 - (b) Whether it is reasonable and practicable for the person opposing the application to move to be closer to the child if the relocation were to be permitted; and
 - (c) Whether the person who is opposing the relocation is willing and able to assume primary caring responsibility for the child if the person proposing to relocate chooses to do so without taking the child.
- (2) Consider which parenting orders are in the child's best interests having regard to the objects contained in section 60B and all relevant factors listed in section 60CC, and:

- (a) Whether given the age and developmental level of the child, the child's relocation would interfere with the child's ability to form strong attachments with both parents;
- (b) If a party were to relocate:
 - (i) What arrangements, consistent with the need to protect the child from physical or psychological harm, can be made to ensure that the child maintains as meaningful a relationship with both parents and people who are significant to the child's care, welfare and development as is possible in the circumstances;
 - (ii) How the increased costs involved for the child to spend time with or communicate with a parent or people who are significant to the child's care, welfare and development should be allocated;
- (c) The effect on the child of the emotional and mental state of either party if their proposals are not accepted.

(B) The court may also consider the reasons the parent wishes to move away and any other relevant considerations.

Advice on immunity for family counsellors and family dispute practitioners under the Family Law Act

On 15 November 2005 the National Alternative Dispute Resolution Advisory Council (NADRAC) and the Family Law Council (FLC) reviewed the law on immunity for mediators and provided advice to the Attorney-General on the requirement of immunity for family counsellors and family dispute resolution practitioners under the Family Law Act. NADRAC and the FLC made 2 recommendations in that advice. They are as follows.

Recommendation 1: that the immunity provisions be removed from the *Family Law Amendment (Shared Parental Responsibility) Bill 2005* (Shared Parenting Bill).

Recommendation 2: That the distinction between 'facilitative dispute resolution' and 'advisory dispute resolution' be removed from the Shared Parenting Bill.

Advice on the 'Child Paramountcy Principle' in the Family Law Act

On 17 January 2006 Council dispatched a letter of advice to the Attorney-General which outlined the findings of public consultation on the discussion paper titled *The 'Child Paramountcy Principle' in the Family Law Act* released in December 2004. The advice commented on the government's response to the recommendations made by the House of Representatives Standing Committee on Legal and Constitutional Affairs *Exposure Draft of the Family Law Amendment (Shared Parental Responsibility) Bill 2005* on the paramountcy principle. The advice made the following recommendation.

Recommendation: in light of the proposed amendments to the paramountcy principle in the Shared Parenting Bill, there is no justification for recommending further changes to the paramountcy principle as currently drafted. However, if the whole Family Law Act is to be re-written at some time in the future, a clear statement of the paramountcy principle with enumerated exceptions should be incorporated in the Family Law Act as part of that re-write.

Advice on proposed section 64D of the Family Law Amendment (Shared Parental Responsibility) Bill 2005

On 22 February 2006 Council provided the Attorney-General with a letter of advice on the inclusion of the words “exceptional circumstances” in the proposed subsection 64D(2) of the Shared Parenting Bill. Section 64D deals with parenting orders that are subject to later parenting plans. The following recommendations were made in the advice.

Recommendation 1: That the proposed subsection 64D(2) be amended to state “**if it is necessary in the best interests of the child**, the court may include in a parenting order a provision that the parenting order, or specified provision of the parenting order, may only be varied by a subsequent order of the court (and not by a parenting plan).”

Recommendation 2: that the requirement to be satisfied that this provision is necessary in the best interests of the child shall apply whether or not the order is proposed with the consent of all the parties to the proceedings.

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 2006, a total of 732 recommendations have been made. Of these, 338 have been made in reports and 394 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 1976-2006

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
2001-02	2	4	6
2002-03	17	-	17
2004-05	17	8	25
2005-06	4	5	9
TOTAL	338	393	732

Government response to recommendations

Of the 732 recommendations made, government has considered 568 recommendations (77.7%). 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 138 (24%) 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 2006

	Reports	Letters of advice	Total
Implemented	137	260	397
Partly implemented	32	19	51
Not implemented	80	40	120
TOTAL	249	319	568

“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 two reports.

The report *Parental Child Abduction* was sent to the Attorney-General on 2 February 1998. In November 2005 the Attorney-General agreed to examine the possible use of power to award costs relating to the actual recovery of children. The International Family Law Section of the Attorney-General’s Department is now considering this. 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. The 'Response of the working group of the Standing Committee of the Attorneys-General (SCAG) to the recommendations made by the Family Law Council in its report on *Family Law and Child Protection*' reported a lack of consensus amongst the States and Territories on the recommendations, particularly those that involved legislative change. Most of the States and Territories supported recommendations 13 and 14 of the report. The working group is now focusing on implementing these recommendations.

6. Financial Report

Council's meeting and program costs are met each year by the Family Law Branch of the Civil Justice Division 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). These costs include 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 2005-06

Item	Expenditure
Sitting Fees (including superannuation)	25,915.48
Venue Hire & Incidentals	330.18
Meeting Costs	1,445.73
Domestic Airfares	27,367.38
Travel Allowance	14,123.44
Memberships	177.28
Training	380.00
Car/Taxi Hire	2,409.71
Car Parking	49.64
Publications/Printing	4,449.02
Stationery	343.00
General Office Costs	11.00
Total	\$77,001.86

Appendix A: Council Publications

Family Law Council News

During the year a Spring/Summer 2005 and an Autumn/Winter 2006 issue of the Family Law Council News was 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. Reports and papers produced after 1991 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)
- *Ministers of Religion and Admissible Evidence under section 18 of the Family Law Act 1975* (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) *
- *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)

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)
- *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

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 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)

2000 – 30 June 2006

- *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)
- *Statistical Snapshot of Family Law 2000-01*
- *Family Law and Child Protection* (2002)
- *Best Practice Guidelines for Lawyers doing Family Law Work* (2004)
- *Pathways for Children – A review of children's representation in family law* (2004)
- *Review of binding financial agreements provisions in Parts VIII and VIIIA of the Family Law Act 1975* (Letter of Advice to the Attorney-General) (2004)
- *Operation of Division 11 of Part VII of the Family Law Act 1975* (Letter of Advice to the Attorney-General) (2004)
- *The 'Child Paramountcy Principle' in the Family Law Act* Discussion Paper (2004)
- *The Legal Practitioner's Guide* (2004) produced with the Child Support Agency and the Family Law Section of the Law Council of Australia
- *Recognition of traditional Aboriginal and Torres Strait Islander child-rearing practices. Response to Recommendation 22: Pathways Report, Out of the Maze* (2004)
- *Advice on immunity for family counsellors and family dispute resolution practitioners under the Family Law Act* (2005) provided with the National Alternative Dispute Resolution Advisory Council
- *Advice on the 'Child Paramountcy Principle' in the Family Law Act* (2006)
- *Advice on the proposed section 64D of the Family Law Amendment (Shared Parental Responsibility) Bill 2005* (2006)
- *Relocation* (2006)*

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

Appendix B: Council Committees 2005-06

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 2006.

Arbitration committee

The arbitration committee is working on terms of reference approved by the Attorney-General on 26 May 2006. The reference is:

That the Family Law Council investigate arbitration of family law property and financial matters, taking into consideration the following:

1. Is it possible, and if so is it desirable, for a court exercising jurisdiction under the *Family Law Act 1975* to have the ability to compulsorily require parties to proceedings to participate in arbitration of property and financial matters?
2. What, if any, legislative changes need to be made to support compulsory arbitration?
3. What, if any, changes to court processes need to be made to assist compulsory arbitration?
4. What, if any, funding might be required to support voluntary and compulsory arbitration?
5. What, if any, changes to court processes or other changes could be made to promote voluntary arbitration.

Members of the committee are as follows:

- Justice Garry Watts *Convenor*
- Ms Kate Connors
- Mr Kym Duggan
- Ms Christine Mead FM
- Ms Susan Purdon
- Ms Maurine Pyke
- Ms Anita Mackay / Ms Rosa Saladino *Secretariat*

Child support committee

The Child Support committee along with the Family Law Council, the Family Law Section of the Law Council of Australia and the Child Support Agency agreed to incorporate *The Legal Practitioner's Guide: precedents for child support agreement and court orders*, produced in September 2004 into the Lexis Nexus Loose-Leaf Service.

Members of the committee are as follows:

- Ms Christine Mead FM *Convenor*
- Mr Kym Duggan
- Ms Yvonne Marsh
- Professor Patrick Parkinson
- Ms Anita Mackay / Ms Rosa Saladino *Secretariat*

Collaborative law committee

This committee was convened to advise how the Government, in partnership with the legal profession, can assist in promoting collaborative law in Australia. On 31 January 2006, the Attorney-General gave the committee the following terms of reference:

That the Family Law Council, in consultation with the Family Law Section of the Law Council of Australia and the National Centre of Collaborative Law, advise how the Government, in partnership with the legal profession, can assist in promoting collaborative law in Australia.

In particular, consideration should be given to the following:

1. what, if any, legislative changes need to be made to support the practice of collaborative law
2. what, if any, changes to court processes need to be made to assist collaborative law
3. what, if any, changes need to be made to the legal aid system to promote collaborative law, and
4. whether it is desirable to have national guidelines for the practice of collaborative law and if so, how would these best be developed?

The committee is preparing a collaborative law report addressing paragraphs 1 to 3 of the terms of reference.

Members of the committee are as follows:

- Ms Susan Purdon *Convenor*
- Mr Phil Davey *Consultant*
- Ms Nicola Davies
- Ms Julie Dobinson *Consultant*
- Mr Kym Duggan
- Ms Juliette Ford *Consultant*
- Ms Norah Harnett FM *National Alternative Dispute Resolution Advisory Council*
- Ms Kathryn Heuer *Consultant*
- Ms Christine Mead FM
- Ms Maurine Pyke
- Professor Tania Sourdin *National Alternative Dispute Resolution Advisory Council*
- Justice Garry Watts
- Ms Anita Mackay / Ms Rosa Saladino *Secretariat*
- Ms Roweena Singh *Secretariat*
- Ms Jessica Mackay *Secretariat*

The committee appointed a working group to address paragraph 4 of the terms of reference. On 2 June 2006, the working group completed draft *Best practice guidelines for collaborative family law practice*. The guidelines were sent out for consultation. The working group is considering the feedback received.

Members of the working group are:

- Ms Susan Purdon *Convenor*
- Mr Stephen Bourke *Consultant*
- Mr Phil Davey *Consultant*
- Ms Nicola Davies
- Ms Julie Dobinson *Consultant*
- Ms Kym Duggan
- Ms Juliette Ford *Consultant*
- Ms Kathryn Heuer *Consultant*
- Ms Maurine Pyke
- Ms Anita Mackay / Ms Rosa Saladino *Secretariat*
- Ms Roweena Singh *Secretariat*
- Ms Jessica Mackay *Secretariat*

Improving post-parenting order processes committee

The improving post-parenting order processes committee is preparing a report on improving family law processes for dealing with problems which arise after orders have been made. The report includes consideration of mandatory penalties for a third breach of parenting orders, which was an additional term of reference given to the Council by the Attorney-General on 28 February 2006.

The members of the committee are:

- Mr Kym Duggan *Convenor*
- Ms Nicola Davies
- Ms Angela Filippello
- Ms Dianne Gibson
- Ms Yvonne Marsh
- Ms Christine Mead FM
- Dr Bruce Symth
- Ms Anita Mackay / Ms Rosa Saladino *Secretariat*
- Ms Carole Caple *Secretariat*

The paramouncy principle committee

On 13 February 2006, the paramouncy committee released a discussion paper on relocation. Comments were sought from interested individuals and organisations about whether there is a need to change the law on relocation and if so, how this should be done. The results of the public consultation and the committee's advice on the relocation terms of reference (paragraph 2 of the child paramouncy principle terms of reference) were incorporated into a report. This report was provided to the Attorney-General on 31 May 2006 and was tabled in the Senate on 11 July 2006.

Members of the committee are:

- The Honourable Susan Morgan *Convenor*
- Professor Patrick Parkinson
- Professor Richard Chisholm *Consultant*
- Mr Kym Duggan
- Ms Tara Gupta *Consultant*
- Ms Susan Holmes *Consultant*
- Ms Susan Purdon
- Mr David Monaghan
- Ms Anita Mackay / Ms Rosa Saladino *Secretariat*
- Ms Sarah Christensen *Secretariat*

Violence and the Family Law Act committee

The violence and the Family Law Act committee is working on terms of reference given by the Attorney-General on 28 February 2006. The reference explores the co-ordination of the family law system and State and Territory welfare systems. The terms of reference are:

The Family Law Council should consider recommendation 13 of the *Report on the Exposure Draft of the Family Law Amendment (Shared Parental Responsibility) Bill 2005* in relation to adult victims of family violence. The Government notes that the Family Law Council has already made recommendations on the protection of children in the September 2002 report, *Family Law and Child Protection*.

The Family Law Council should identify strategies for improving the coordination of the State and Territory systems, including specific projects which may assist the Government achieve the objectives. The Family Law Council should only consider State and Territory laws to the extent that they intersect with the family law system.

In accordance with recommendation 13, consider measures that the Commonwealth may initiate on its own or with the cooperation of State and Territory Governments to:

- improve effective protection of persons who are or may be victims of family violence
- examine the effectiveness of legal and law enforcement mechanisms and their costs
- consider the degree to which Commonwealth, State and Territory agencies, individually or in cooperation, are able to deliver just and cost-effective outcomes
- assess the effectiveness of initiatives in public education prevention and rehabilitation; and
- examine the alleged incidence of false allegations of family violence.

The Government notes that, as part of the Family Law Violence Strategy, independent short-term research will be commissioned about how the courts currently deal with allegations of violence that arise in family law proceedings.

Members of the committee are as follows:

- Ms Nicola Davies *Convenor*
- Mr Kym Duggan
- Mr Clive Price
- Ms Angela Filippello
- Mr David Monaghan
- Ms Grania Sheehan *Consultant*
- Ms Anita Mackay / Ms Rosa Saladino *Secretariat*

Appendix C: Compliance with Annual Report Guidelines

The following information is provided in compliance with the Department of Prime Minister and Cabinet's 2006 *Requirements for Annual Reports*.

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 2004-2005* was tabled in the Senate on 11 October 2005.

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 2005-06 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 comprised 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 2005-06 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.

Equal employment opportunity

The personnel and administrative functions of the Council's Secretariat are performed by the Attorney-General's Department. Information about the Department's equal employment opportunity program is provided in the Department's annual report.

Occupational health and safety

The Council's Secretariat uses the policy and resources of the Attorney-General's Department in relation to occupational health and safety. Information about the Department's policy is available in its annual report.

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 of charge 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.

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>>.

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 applies 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 2005-06.

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).

Advertising and market research

The Council was not involved in any advertising or market research activity during 2004–05.

Ecologically sustainable development and environmental performance

As noted, the Council's Secretariat is based in the Attorney-General's Department. Information about the Department's actions and performance in relation to environmental matters is available in its annual report.