

FAMILY LAW COUNCIL

ANNUAL REPORT

2007–08

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FAMILY LAW COUNCIL

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September 2008

The Hon Robert McClelland MP
Attorney-General
Parliament House
CANBERRA ACT 2600

Dear Attorney-General

In accordance with subsection 115(9) of the *Family Law Act 1975*, I present to you the Annual Report of the Family Law Council for the period of 1 July 2007 to 30 June 2008.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J Wade', written in a cursive style.

Professor John Wade
Chairperson

**Council members, observers and staff in May 2008 at the
Family Court of Australia - Sydney**



Front row (left to right): Ms Nicky Davies, Mr Kym Duggan, Ms Amanda Parkin, Ms Lani Blackman, Deputy Chief Justice John Faulks, Ms Judy Jackson, Ms Angela Filippello, Ms Toni Pirani, Ms Rae Kaspiew.

Back row (left to right): Mr Glenn Smith (visitor), Professor John Wade, Ms Wendy Banfield, Principal Registrar David Monaghan, Justice Garry Watts, Ms Nadia Nikro, Mr Stephen Still.

Missing from the photo: Federal Magistrate Norah Hartnett, Federal Magistrate Robyn Sexton, Ms Dianne Gibson

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1. YEAR IN REVIEW

This year has been marked by ongoing interest and continued developments in the family law system in Australia. The remaining 25 Family Relationship Centres are due to open in towns and cities around Australia which will bring the national network to 65. Significant work has been done on family violence initiatives with the Government launching the National Council to Reduce Violence Against Women and their Children in May as well as releasing a discussion paper on implementation of a National Child Protection Framework. In response to these initiatives, and following discussion with the Attorney-General, the Council's family violence working group agreed to frame Council's own family violence reference to fit within the current policy environment. Council will provide the Attorney with concise and immediately implementable recommendations to improve the ability of the courts and services to respond to allegations of family violence.

Landmark legislation, *The Family Law Amendment (De Facto financial Matters and Other Measures) Bill 2008*, has been introduced to allow de facto couples to access the federal family law courts on property and maintenance matters. This implements a 2002 agreement between the Commonwealth, States and Territories at the Standing Committee of Attorneys-General.

Family law continues to be a high profile topic in the Australian community, due to the far reaching social and personal effects of matters that fall under the umbrella of family law. Ongoing publicity around family violence, child protection and adoption highlights the continuing interest of the community in family law matters.

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. In October 2007, Council released a report, entitled *Improving Post-Parenting Order Processes*, which suggests ways of dealing with problems encountered by parents after court orders have been made. The aim of the reports recommendations is to steer parents towards cooperative ways of dealing with the inevitable changes in arrangements which will be necessary as children grow and circumstances change.

In May 2008, Council wrote to the Attorney-General concerning a possible reference for the Family Law Council relating to the provisions for Binding Financial Agreements in Part VIIIA of the *Family Law Act 1975*, in particular the operation of section 90G in light of the Full Court's decision in *Black and Black*¹.

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 Robert McClelland MP was a guest at the Sydney meeting held on the 1st and 2nd of May 2008. This was a valuable opportunity for the Council to discuss relevant matters directly with the Attorney-General. The Attorney was able to set out the government's agenda and policy priorities relevant to Council, outlining areas upon which, Council may be able to provide its expert advice.

¹ (2008) FLC 93-357

The Council's most important work is carried out in its committees. At present the Council has five active committees researching various aspects of family law. These committees enable Council to take advantage of expertise in particular areas. 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 (working) committees are as follows.

- Arbitration committee
- Family violence committee
- Mental Health committee
- Statistical Snapshot committee
- Preliminary binding financial agreements

In addition Council has a number of working groups which monitor particular aspects of family law. Currently there are two working groups. The Child Support working group maintains a watching brief on child support matters and is currently without a chairperson.

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

During the year the Council received the following reference from the former Attorney General:

- Mental Health terms of reference

2. ORGANISATIONAL STRUCTURE

Council members

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

The Family Law Act does not specify the number of members of Council. However, it does require that amongst a range of other members, a Judge of the Family Court be appointed. Other judges, including Federal Magistrates, may also be appointed. Section 115(11) specifies that for the purpose of that section, a Federal Magistrate is taken to be a judge. The Council has usually comprised 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.

In February 2008 Professor John Wade from Bond University was appointed as the new Chairperson on the expiry of the term of Professor Patrick Parkinson. Council would like to thank Professor Parkinson for all his work and contribution and would like to welcome Professor John Wade as the new chairperson of the Family Law Council.

Over the last 12 months, only one member of Council has completed their terms of appointment, Ms Susan Purdon of Hopgood Ganim Lawyers. Council would like to thank Ms Purdon for all her work and contribution to Council.

Council also welcomes back Deputy Chief Justice Faulks who was also appointed in February. DCJ Faulks has previously been a member and chairperson of the Council. Ms Nicola Davies, Mr Clive Price and Justice Garry Watts were also reappointed to the Council for a new three year term.

NAME	POSITION	DATE OF CURRENT APPOINTMENT	EXPIRY OF CURRENT TERM
Professor John Wade	Faculty of Law Bond University Queensland	2 October 2007	1 October 2010
Ms Nicola Davies	Senior Legal Consultant Family Law Legal Aid Queensland	6 October 2007	5 October 2010
Mr Kym Duggan	Assistant Secretary Family Law Branch Attorney-General's Department Canberra, Aust. Capital Territory	20 February 2007	19 February 2010

Deputy Chief Justice John Faulks	Family Court of Australia Canberra, Aust. Capital Territory	20 February 2007	19 February 2010
Federal Magistrate Norah Hartnett	Federal Magistrates Court Melbourne, Victoria	20 February 2007	19 February 2010
Mr Clive Price	Executive Director UnitingCare Unifam Sydney, New South Wales	6 October 2007	5 October 2010
Federal Magistrate Robyn Sexton	Federal Magistrates Court Sydney, New South Wales	20 February 2007	19 February 2010
Justice Garry Watts	Family Court of Australia Sydney, New South Wales	2 October 2007	1 October 2010

Observers

There are no provisions in the Family Law Act relating to the appointment of observers on Council. However, Council currently has observers from six agencies who may attend meetings.

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 minor changes to observers during the year. The Family Law Council would like to farewell Ms Lani Blackman, from the Australian Law Reform Commission and thank Ms Blackman for her contribution to Council. Council would also like to welcome Mr Jonathan Dobinson as the new observer for the ALRC.

The following observers attended Council meetings during the year. The following seven agencies and the Family Law Section of the Law Council of Australia have observer status on the Council (with names of observers):

ORGANISATION	NAME
Australian Institute of Family Studies	Ms Ruth Weston
	Ms Rae Kaspiew
Australian Law Reform Commission	Ms Lani Blackman
	Mr Jonathan Dobinson
Child Support Agency	Ms Yvonne Marsh
	Ms Judy Jackson
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
	Ms Amanda Parkin

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 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
- 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, and
- manage Council's annual budget.

Secretariat staff are employed by the Attorney-General's Department in accordance with the Attorney-General's Department Agreement 2007, a collective agreement made under the *Workplace Relations Act 1996*. Secretariat Staff are subject to the Department's disability strategy, human resource management and development measures. No staff were employed under an Australian Workplace Agreement during this financial year. Information on the Department's equal opportunity program, occupational health and safety policy, fraud control plan and prevention procedures and environmental protection activities is available in the Department's annual report.

The current permanent Secretariat staffing profile comprises the Director of Research (Principal Legal Officer), a Legal Officer (APS Level 3–6) and a shared Administrative Officer (APS Level 3). Salary ranges are consistent with the collective agreement and no

performance payments were made during the year. From time to time the permanent Secretariat staff are supplemented by temporary staff, including graduates and summer clerks.

The following persons were employed in the Secretariat during this financial year:

NAME	POSITION	DATES
Ms Wendy Banfield	Director of Research	from 2 January 2008 to ongoing
Ms Rosa Saladino	Director of Research	from 26 June 2006 to 21 December 2007
Ms Nadia Nikro	Legal Officer	from 19 May 2008 to ongoing
Mr Stephen Still	Legal Officer	from 11 December 2006 to 5 May 2008
Ms Jacqueline Menyhart	Legal Officer	from 26 March 2007 to 30 September 2007
Mr James Mueller	Administrative Officer	from 29 January 2007 to ongoing
Mr Indroneel Bhattacharjee	Summer Clerk	from 14 January to 1 February 2008
Ms Theresa Rajah	Summer Clerk	from 26 November 2007 to 1 February 2008

The Family Law Council would like to thank Ms Rosa Saladino, Ms Jacqueline Menyhart, Mr Stephen Still, Mr Indroneel Bhattacharjee and Ms Theresa Rajah for their hard work and time with the Secretariat.

Contact details

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The Council's homepage is at <http://www.ag.gov.au/flc>

3. MEETINGS AND CONSULTATIONS

Plenary sessions of Council are usually held on a quarterly basis. The Council held four meetings in this financial year; held in significant capital cities around Australia. At meetings, Council focussed on a theme of topical interest and also invited members of the judiciary, the legal profession, academics and other experts to address Council 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.

26 – 27 July 2007 – Darwin, Northern Territory

The theme of the Darwin meeting was *culturally and linguistically diverse issues*. Council considered how indigenous and migrant communities in the Northern Territory currently interact with the family law system.

Council heard from private practitioners; representatives from the Northern Territory Legal Aid Commission; the Family Court Darwin Registry Child Dispute Service; the North Australian Aboriginal Justice Agency; the Federal Magistrate at the Darwin Registry, Janet Terry; the Northern Territory Government Family and Children's Services Program; the Department of the Chief Minister's Office of Multicultural Affairs and Rex Wild QC, the co-author of *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred'*.

Visitors were concerned about indigenous access to family law. They identified the isolation and physical distance of remote indigenous communities, the plethora of languages, a paucity of interpreters and lack of support services including Indigenous Liaison Officers as the primary challenges.

Council also discussed the continuing practise of grandmothers and 'aunties' caring for children in some indigenous communities without the financial support that parents may receive. Council's 2004 report *Recognition of traditional Aboriginal and Torres Strait slander child-rearing practises* was referred to as part of this discussion.

15 – 16 November 2007 – Canberra, Australian Capital Territory

The Canberra meeting considered *Property matters* as the major theme. Reforms to the provisions of the *Family Law Act 1975* relating to property were reviewed, and Council discussed the current system with visitors. The visitors included senior local practitioners and one of the local federal magistrates who agreed that the current system generally produces just and appropriate outcomes

Council and practitioners discussed shared parenting reforms and property division, particularly in relation to the care and welfare of children. Visitors also spoke to Council about delays facing parties who are seeking family dispute resolution in order to obtain s 60I certificates. Waiting times were discussed and clarified with the community sector and Council was informed of a number of factors which may affect waiting times at centres, including the service delivery model employed, the nature of the intake procedures, and whether the centre is located in a large metropolitan area which has not yet had its full allotment of centres rolled out.

Council concluded there may be an issue of practitioners focussing on obtaining a certificate as the next step towards court intervention while the centres focus on mediation to resolve a dispute. This may be an area that needs to be addressed

19 – 20 February 2008 – Melbourne, Victoria

The theme of the Melbourne meeting was *Cultural and religious marriage and divorce practices in Australia*.

Council heard from invited speakers about Catholic and Jewish religious marriage and divorce matters. Council also considered a background paper that outlined issues arising from the interaction of Australian secular law and religious or cultural norms, including issues affecting Islamic marriage and divorce. Council discussed re-examining its 2001 report entitled *Cultural-Community Divorce and the Family Law Act 1975* in relation to this theme.

Reforms to the provisions of the *Family Law Act 1975* relating to parental responsibility and shared care of children were discussed and Council heard from a local Legal Aid managing lawyer as well as representatives from community organisations. Parental expectations and the belief by some in a right to equal time with children post-separation appeared to be an issue with Legal Aid practitioners reporting spending longer with clients to explain the difference between parental responsibility, shared care and substantial time.

The Family Law Section of the Law Council of Australia provided an update on the progress of the Melbourne Arbitration Project. A demand for arbitration in Melbourne had been expected, however, Council was informed that this has not occurred. While groups of cases had been assigned to judges who can recommend arbitration to the parties, there has been no uptake yet.

1 - 2 May 2008 – Sydney, New South Wales

At the Sydney meeting a number of invited speakers addressed Council on the *de-facto property bill*. These included representatives of the Gay and Lesbian Rights Lobby and legal practitioners. The GLRL provided information on the nature and makeup of same-sex families including relevant statistics, parenting diversity, state and territory property regimes and the varied requirements for establishing co-habitation or the existence of a relationship.

The GLRL discussed with Council the issue of same-sex couples being able to provide proof of a relationship and access existing rights. The legal situation for co-parents who may be recognised under state legislation but not under the *Family Law Act* regarding parental responsibility was also considered.

Council heard from managers and experienced family dispute resolution practitioners representing Family Relationship Centres and service providers. The mediation process was discussed including the importance of early intervention for parents of children. Visitors provided anecdotal evidence supporting the effectiveness of early intervention in the family dispute resolution process. Council also heard about the approach taken to family violence and the extent of complex issues presenting at Family Relationship Centres. Council discussed and considered the resource implications of the mediation models adopted by many service providers.

The Honourable Robert McClelland was a guest at the Sydney Council meeting. The Attorney-General's visit gave Council an opportunity to hear the Attorney's views on Council's work. Council was appreciative of the government's priorities and initiatives in the family law environment and will continue to support developments through its primary role of providing advice and recommendations.

Acknowledgments

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



Past and present Chairs of the Family Law Council (left to right) Deputy Chief Justice John Faulks, Mrs Jennifer Boland, Mr Des Semple, Professor John Wade

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 consults regularly with other organisations and individuals with expertise or experience in the field of family law.

Council continued to maintain 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 the National Alternative Dispute Resolution Advisory Committee and the Councils' Secretariat maintain contact about mutually relevant issues. The two Council's meet as opportunities for discussion arise.

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.

4. ADVICE TO THE ATTORNEY-GENERAL

As detailed in Appendix C, the Council's function is to advise and make recommendations to the Attorney-General on the working of the Family Law Act, Legal Aid and other family law matters. This function contributes to the Attorney-General's Department achieving Outcome 1 'An equitable and accessible system of federal civil justice'.

Council contributed to this outcome through Output 1.1, which provides for:

Legal services and policy advice on family law, federal courts and tribunals, civil procedure, alternative dispute resolution, administrative law, and administration of related government programs.

In particular and as set out in part 1, during the year Council provided a report, a letter of advice and four quarterly reports 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.

Report on Improving Post-Parenting Order Processes (IPPOP)

In October 2007, Council released a report on post-parenting orders. The report, entitled *Improving Post-Parenting Order Processes*, suggests ways of dealing with problems encountered by parents after court orders have been made. The aim of the recommendations is to steer parents towards cooperative ways of dealing with the inevitable changes in arrangements which will be necessary as children grow and circumstances change. This report makes 9 recommendations which are as follows:

Recommendation 1

That the Family Law Council in consultation with the Family Law Section of the Law Council of Australia, National Legal Aid, the Family Court of Australia, the Family Court of Western Australia and the Federal Magistrates Court develop a parenting orders handbook containing model parenting orders.

Recommendation 2

That the Attorney-General's Department, in consultation with the Family Court of Australia, the Family Court of Western Australia and the Federal Magistrates Court identify and develop information materials on conflict and children which address the following issues:

- the effects of separation on parties and on their children
- the challenges involved in post separation parenting
- the effect of continuing parental hostility on their children
- the importance of both parents being involved in the upbringing of children
- the importance of an agreed dispute resolution process, and
- the types of services available to parents to deal with post-separation issues.

Recommendation 3

That the Family Court of Australia, the Family Court of Western Australia and the Federal Magistrates Court amend their rules to ensure each party receives a copy of the information materials on conflict and children when a parenting order application is made.

Recommendation 4

That the Family Court of Australia, the Family Court of Western Australia and the Federal Magistrates Court undertake measures including educational measures to encourage judicial officers to make orders in reliance on appropriate sections of the Family Law Act to assist parents to adjust to post order parenting.

Recommendation 5

That the Government establish a child orders enforcement agency or in the alternative that the Government provide additional and specified funding to enable the State and Territory Legal Aid Commissions to assist parties to bring applications about serious contraventions of parenting orders before the family courts.

Recommendation 6

That the Attorney-General's Department, in consultation with the Family Court of Australia, the Family Court of Western Australia and the Federal Magistrates Court:

- explore the possibility of developing sentencing guidelines for cases involving serious disregard for parenting orders,
- develop a database to assist the judiciary in achieving consistent sentencing patterns in cases involving serious disregard for parenting orders, and
- make this information readily available to the legal profession and members of the public.

Recommendation 7

That the Attorney-General's Department, in consultation with the Family Court of Australia, the Family Court of Western Australia and the Federal Magistrates Court explore the feasibility of obtaining from State and Territory probation and parole services, pre-sentence reports in circumstances where a serious penalty for serious disregard of a parenting order is a possible outcome.

Recommendation 8

That the Family Law Act be amended to allow courts exercising jurisdiction under that Act to fix a non parole period and order cumulative sentences.

Recommendation 9

That the Government not introduce mandatory penalties for a third breach of a parenting order and that similarly the Government not introduce a requirement to consider a change in living arrangements where there has been a third breach of a parenting order.

The IPPOP report was finalised and presented to the former Attorney-General, the Hon Philip Ruddock MP, in October 2007. Following the Attorney-General the Hon Robert McClelland's approval in February this year, the report was published in April both in hard copy form and on the Council's website.

The Committee is chaired by Mr Kym Duggan of the Attorney-General's Department

Letter of Advice – Binding Financial Agreements

On 28 May 2008 Council wrote to the Attorney-General concerning a possible reference for the Family Law Council relating to the provisions for binding financial agreements in Part VIIIA, in particular the operation of section 90G of the *Family Law Act 1975* in light of the Full Court's decision in *Black and Black*²

In light of perceived defects in the wording of s90G, Council recommended that:

The Attorney make a limited reference to Council about the possible consequences of *Black & Black* or a more general reference about Binding Financial Agreements.

If the Attorney provides terms of reference, Council will consider a short timeframe for the provision of advice on the matter.



Ms Dianne Gibson (*left*) and Federal Magistrate Robyn Sexton (*right*) at the Family Law Council meeting in Sydney

² (2008) FLC 93-357.

5. IMPLEMENTATION OF RECOMMENDATIONS

In accordance with its statutory function, 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 1 July 2007 to 30 June 2008, a total of 10 recommendations have been made, Of these, 9 have been made in reports and 1 in a letter 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 1976–2008

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
1999–00	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
2006–07	8	4	12
2007–08	9	1	10
TOTAL	355	399	754

Government response to recommendations

Of the 754 recommendations made, the Government has considered 584 recommendations (78.4%). Table 2 shows the Government’s response to those recommendations. Of the 584 recommendations that have been considered by government, 460 (78.8%) have been either fully or partly implemented. A further 138 (23.6%) are regarded as having lapsed. Council has no control over its recommendations once it has provided them to the 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 2008

	Reports	Letters of advice	Total
Implemented³	147	262	409
Partly implemented⁴	32	19	51
Not implemented⁵	84 ⁶	40	124
TOTAL	263	321	584

³ “Implemented” means that the basic aim of the proposal has been substantially achieved, or comments have been accepted.

⁴ “Partly implemented” means that one or more aspects of the basic aim of the proposal have been achieved.

⁵ “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).

⁶ The four recommendations of the Council’s *Relocation* report were accepted by the Attorney-General in 2007 and are yet to be implemented.

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 under Output 1.1 of the Departments' Outcome 1.

Council's meeting and program costs include fares, cab-charges and travelling allowances for Council members who are neither judicial officers nor public servants. Costs for judicial officers and public servants are covered by their respective organisations, as are all costs for observers. Costs for Secretariat staff are also met by Council, although Secretariat salaries, superannuation and day-to-day expenses are met from the budget of the Attorney-General's Department.

Table 3: Family Law Council Total Expenditures for 2007–08

Item	Expenditure
Sitting Fees (including superannuation)	15,755
Venue Hire & Incidentals	1345
Meeting Costs	1086.40
Domestic Airfares	21,156.64
Travel Allowance	13,904.83
Memberships	Nil
Training	550
Car/Taxi Hire	1876.09
Car Parking	Nil
Publications/Printing	6970.64
Stationery	Nil
General Office Costs	Nil
TOTAL	\$62 644. 60

Financial accountability

Council's total yearly expenditure for 2007-08 was **\$62 644.60**. Council's costs are lower than last year, mainly because there were no general office costs and the majority of meeting venues were provided by the Family Court of Australia at no cost to the Council. Council would like to thank the court for this assistance. Council's costs form part of the Attorney-General's Department's audited financial statements published in the Department's Annual Report.

Purchasing

No consultancy service contracts have been let, and no expenditure on consultancy has been made during this financial year. Information on expenditure on contracts and consultancies is available on the AusTender website www.tenders.gov.au. No reportable contracts were entered into by Council, and no contracts were exempted from reporting requirements during the year.

APPENDIX A: COUNCIL PUBLICATIONS

Family Law Council News

During this financial year 3 *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 600 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>>.

2005 – 30 June 2008

- *Improving Post-Parenting Order Processes* (2007)
- 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
- *Statistical Snapshot of Family Law 2002–2003* (2005)
- 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)*
- *Collaborative Practice in Family Law* (2006)
- Advice on the recommendations made in Council's 2000 report: Litigants in Person (2006)
- Advice on Children with Intellectual Disabilities (Regulation of Sterilisation) Bill 2006 (2006)
- *Statistical Snapshot of Family Law 2003–2005* (2007)
- *The Answer from an Oracle: arbitrating family law property and financial matters* (Discussion Paper) (2007)

2000 – 2004

- *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)

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)

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

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)

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)

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)

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

APPENDIX B: COUNCIL COMMITTEES 2007-2008

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 2008.

Mental Health Committee

On 5 July 2007 the Family Law Council received terms of reference from the Attorney-General. The Council has been asked to examine whether there should be amendments to the *Family Law Act 1975* to give courts a wider jurisdiction to make orders in proceedings where mental health issues arise.

The Council set out recommendations and are all follows:

1. Recommends legislative reform to give courts a wider discretion to order a party to undertake an assessment as to mental health status and to obtain a report. Council does not recommend that the court be given additional power to compel a party to accept treatment. State legislation already provides for voluntary or involuntary treatment for those suffering mental illness.

2. Recommends legislative reform in relation to the question of whether a party has a physical or mental disability affecting his or her understanding of the nature or possible consequences of the case, or affecting his or her capacity to adequately conduct, or give instruction for the conduct of, a case.

In Council's view such legislative reforms will better provide for the immediate safety of the parties and/or a child, the subject of proceedings, and are likely to improve the procedure for the appointment of a case/litigation guardian.

This Committee is chaired by Federal Magistrate Norah Hartnett of the Federal Magistrates Court.

This letter of advice is not yet finalised.

Arbitration Committee

Following a discussion paper which was released in May 2007, a draft letter of advice was sent to the Attorney-General on 1 May 2008 regarding the issue of arbitration of family law property and financial matters.

The terms of reference for the arbitration committee are as follows:

Terms of reference

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*
- Mr Kym Duggan
- Ms Susan Purdon
- Ms Lani Blackman
- Ms Maurine Pyke
- Federal Magistrate Christine Mead

The committee was assisted by the following members of the National Alternative Dispute Resolution Advisory Council:

- Justice Murray Kellam
- Professor Tania Sourdin
- Fabian Dixon QC

This report is not yet finalised.

Improving post-parenting order processes Committee

The Improving post-parenting order processes report was finalised and presented to the former Attorney-General, the Hon Philip Ruddock MP, in October 2007. Following your approval in February this year, the report was published in April both in hard copy form and on the Council's website.

The terms of reference were received on 16 November 2004. A further term of reference for the consideration of mandatory penalties for a third breach of parenting orders was given to the Council by the Attorney-General on 28 February 2006.

Terms of reference

In the light of the Every picture tells a story report and the Government's proposed response⁷ 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 changes⁸ 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.

Additional term of reference

On 28 February 2006, Council received the following additional reference:

Mandatory Penalties for a Third Breach of Parenting Orders

Further examine the recommendation of the House of Representatives Standing Committee on Family and Community Affairs in the Every picture tells a story report that a court should give consideration to a parenting order in favour of the other parent, where there is a third breach within a pattern of defiance of court orders. In particular consider and make recommendations about whether it is appropriate for there to be mandatory penalties for a party that has breached a parenting order for a third time in the *Family Law Act 1975*.

⁷ This response was given effect to by the 2006 Government reform package.

⁸ These changes are embodied in the *Family Law Amendment (Shared Parental Responsibility) Act 2006* and associated changes which came into effect on 1 July 2006.

This examination should consider the Government response to [the Every Picture Tells a Story] report which did not support this recommendation.

The members of the committee are:

- Mr Kym Duggan *Convenor*
- Ms Nicola Davies
- Deputy Chief Justice John Faulks
- Federal Magistrate Norah Hartnett
- Ms Angela Filippello
- Ms Dianne Gibson
- Ms Yvonne Marsh
- Federal Magistrate Christine Mead
- Mr Clive Price

This report was finalised in October 2007.

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

Terms of reference

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.

Amendments to Terms of Reference

In June 2007, Council requested that a change be made to the Terms of Reference to remove the word ‘adult’ from the first paragraph. In requesting the proposed change, Council stated that it does not intend to re-examine issues surrounding the protection of children, as considered by Council’s report in September 2002, *Family Law and Child Protection*.

The then Attorney responded to Council, agreeing to the requested changes and proposing further alterations to the Terms of Reference. The Terms of Reference were altered to:

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 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*. Council agreed with these new terms of reference.

Following the Attorney-General’s advice to the Family Law Council and Council’s meeting in Sydney on the 3 May 2008, the committee will be reviewing work undertaken so far and will convene prior to the next Council meeting in August to settle preliminary recommendations to the Attorney-General. The Attorney-General has advised for Council’s report to be tailored to a particular aspect of family violence in the family law system. The Family violence committee agreed that the current family violence structure is too broad and should focus on *court related services*.

Members of the committee are as follows:

- Ms Nicola Davies *Convenor*
- Mr Kym Duggan
- Mr Clive Price
- Federal Magistrate Robyn Sexton
- Ms Angela Filippello
- Mr David Monaghan

This report is not yet finalised.

Statistical Snapshot Working Group

The Statistical Snapshot working group has commenced production of the 2006 to 2008 edition of its biennial report on the state of family law.

Members of the working group are as follows

- Principal Registrar Angela Filippello *Convenor*
- Mr John Mathieson
- Mr David Monaghan

APPENDIX C: COMPLIANCE WITH ANNUAL REPORT GUIDELINES

The following information is provided in compliance with the Department of Prime Minister and Cabinet's 2007 *Requirements for Annual Reports*.

Enabling legislation

The Family Law Council was established by the Attorney-General pursuant to 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 the circumstances specified in subsection 115(6A) of the Family Law Act. Under subsection 115(7), the Attorney-General may also convene Council meetings.

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 2006 – 2007* was tabled in the House of Representatives on 13 February 2008.

Advertising and market research

The Council was not involved in any advertising or market research activity during 2007-08.

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. The Council's operation is open to external scrutiny. However, there have been no significant developments in this regard.

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, which are available to the public as detailed below:

- (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 and 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.ag.gov.au/flc>>. Annual reports are available electronically at <<http://www.ag.gov.au/flc/annualreports>>.

Hard copies of reports, including this annual report, 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 2006 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 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. 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 during 2007–08.

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).

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