

**FAMILY LAW COUNCIL**

**ANNUAL REPORT**

**2010–11**

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## FAMILY LAW COUNCIL

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September 2011

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 2010 to 30 June 2011.

Yours sincerely,

A handwritten signature in cursive script that reads 'H. M. Rhoades'.

Associate Professor Helen Rhoades  
Chairperson

**Family Law Council members, observers and staff at the  
Attorney-General's Department – October 2010**



*Front row (left to right):* Ms Alison Playford, Ms Diane Gibson, Associate Professor Helen Rhoades (Chair), Ms Judy Jackson, and Dr Rae Kaspiew.

*Middle row (left to right):* Ms Samantha Page, Mr Clive Price, Mrs Kim Howatson, and Ms Sara Peel

*Back row (left to right):* Ms Toni Pirani, Magistrate Annette Andrews, Ms Amanda Parkin, Federal Magistrate Kevin Laphorn, Ms Nicky Davies, and Justice Garry Watts.

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## 1. Year in Review

This year the Family Law Council has undertaken an extensive work program under the direction of a new Chair, Associate Professor Helen Rhoades. Five new appointees to Council have also assisted in providing a variety of perspectives to Council's work, as well as the re-appointment of three long-term members providing continuity to Council.

The Attorney-General, the Hon Robert McClelland MP, met with Council at its October 2010 meeting in Canberra to discuss Council's future work program and current policy initiatives. Council had productive discussions with the Attorney-General, in particular his proposals for enhanced family dispute resolution.

Council's main focus this year has been on three Terms of References issued by the Attorney-General as well as issues raised by Council's own motion.

The Terms of References issued by the Attorney-General were in relation to:

- Indigenous clients of the family law system;
- Culturally and Linguistically Diverse (CALD) clients of the family law system;
- International Parental Child Abduction.

Council provided a letter of advice relating to International Parental Child Abduction in March 2011 and the remaining Terms of Reference is due for report by November 2011.

On 17 September 2010, Council provided its submission to the National Alternative Dispute Resolution Advisory Council's (NADRAC) reference of 1 December 2009 from the Attorney-General regarding the integrity of Alternative Dispute Resolution processes. Council made particular comment in relation to the operation of confidentiality and inadmissibility provisions in the *Family Law Act 1975* (the Act). Subsequent to this, Council provided a letter of advice, of its own motion, to the Attorney-General in October 2010, which raised the issue of broader information sharing and integration across the family law system in order to deal with the issue of family violence and child abuse.

Following discussions with the Attorney-General during the course of the year, Council provided a letter of advice, on its own motion, on enhanced family dispute resolution in December 2010. In April 2011, after a ruling made by Federal Magistrate Riethmuller in the matter of *Rastall and Ball* [2010] FMCA Fam 1290, Council wrote to the Attorney-General expressing concerns about the possible effect of the decision. The case concerned the application of the confidentiality and inadmissibility provisions in the Act to family dispute resolution (FDR) intake assessments.

Council also made submissions to the Attorney-General's Department regarding the Exposure Draft of the Family Law Amendment (Family Violence) Bill 2010 and to the parliamentary inquiry into the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011. Council commended the Australian Government for taking this important step towards addressing the problems identified by the recent research evaluations of Part VII of the Act and enhancing the protection of children and family members from family violence.

## 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 1975* (the Act). Appointment is for a period of up to 3 years and members may be re-appointed.

The 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 judicial officers, including Federal Magistrates, may also be appointed. It has been the policy of successive governments that Council membership attempts to encompass equity and diversity in gender and cultural background and cover a range of geographical locations.

Members of the Family Law Council during the year 2010-2011 were as follows:

<b>NAME</b>	<b>POSITION</b>	<b>DATE OF CURRENT APPOINTMENT</b>	<b>EXPIRY OF CURRENT TERM</b>
Associate Professor Helen Rhoades	Melbourne Law School, University of Melbourne, Victoria	9 July 2010	8 July 2013
Federal Magistrate Kevin Laphorn	Federal Magistrates Court, Queensland	9 July 2010	8 July 2013
Dr Rae Kaspiew	Senior Research Fellow, Australian Institute of Family Studies, Victoria	9 July 2010	8 July 2013
Ms Alison Playford	First Assistant Secretary Family Law Branch Attorney-General's Department, Australian Capital Territory	9 July 2010	Resignation effective 12 November 2010
Ms Nicola Davies	Director, Family Law, Legal Aid Queensland	7 December 2010	6 June 2012
Mr Clive Price	Director, UnitingCare Unifam Counselling & Mediation, New South Wales	7 December 2010	6 June 2012
Justice Garry Watts	Family Court of Australia, New South Wales	7 December 2010	6 June 2012
Mr Jeremy Culshaw	Partner, Marks & Sands Lawyers, Western Australia	7 December 2010	8 July 2013
Ms Elizabeth Kelly	Deputy Secretary Attorney-General's Department, Australian Capital Territory	6 June 2011	Whilst in Deputy Secretary position

***COUNCIL HAD CONSIDERABLE CHANGE TO ITS COMPOSITION DURING THE YEAR. THERE HAVE BEEN FIVE NEW APPOINTMENTS, INCLUDING AN INCOMING CHAIR. A DEGREE OF CONTINUITY***

***WAS PROVIDED TO COUNCIL'S WORK BY THE REAPPOINTMENT OF Ms DAVIES, Mr PRICE AND JUSTICE WATTS. NOTING THE RESIGNATION IN NOVEMBER 2010 OF Ms ALISON PLAYFORD, FROM THE ATTORNEY-GENERAL'S DEPARTMENT, COUNCIL WOULD LIKE TO THANK Ms PLAYFORD FOR HER CONTRIBUTION AS A MEMBER DURING HER TIME ON COUNCIL.***

### ***OBSERVERS***

There are no provisions in the Act relating to the appointment of observers on Council. However, Council currently has observers from nine 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.

During the year there were some changes to the observers on Council. As the former Australian Institute of Family Studies representative, Dr Rae Kaspiew, was appointed a member to Council, Ms Ruth Weston was the AIFS observer in June 2011. Ms Adele Byrne became an observer for the Federal Magistrates Court of Australia in April 2011. Ms Pam Hemphill became the observer from the Family Law Courts in May 2011, replacing Ms Dianne Gibson from the Family Court of Australia. Ms Judy Jackson who represented the Child Support Agency on behalf of Ms Yvonne Marsh attended her last meeting in June 2011. The Australian Law Reform Commission was represented by Ms Sara Peel on behalf of Professor Rosalind Croucher. Council would like to thank Ms Dianne Gibson and Ms Judy Jackson for their contribution to the work of Council during their time as observers.

The agencies listed have observer status on the Council:

<b>ORGANISATION</b>	<b>REPRESENTED BY</b>
Australian Institute of Family Studies	Dr Rae Kaspiew (former) Ms Ruth Weston
Australian Law Reform Commission	Ms Rosalind Croucher Ms Sara Peel
Child Support Agency	Ms Yvonne Marsh Ms Judy Jackson
Family Court of Australia	Ms Dianne Gibson (former) Registrar Angela Filippello
Family Law Courts	Ms Pam Hemphill
Family Court of Western Australia	Magistrate Annette Andrews
Family Law Section of the Law Council of Australia	Ms Amanda Parkin
Family Relationship Services Australia	Ms Samantha Page
Federal Magistrates Court of Australia	Ms Adele Byrne

### ***COUNCIL STAFF***

The Attorney-General's Department provides Council with resources, including a Secretariat. 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 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 2010, a collective agreement made under the *Fair Work Act 2009*. Secretariat staff are subject to the Department's disability strategy, human resource management and development measures. 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. Salary ranges are consistent with the collective agreement and no performance payments were made during the year.

Council's Secretariat is provided by staff in the Family Law Branch of the Attorney-General's Department. A part-time Project Officer (APS Level 6) is the primary contact and the main coordination point for Council's work program. Research, policy advice and drafting support is provided by staff across the Family Law Branch on the basis of topic or subject area expertise as required.

### **3. Meetings and Consultations**

Council held three meetings during this financial year. At meetings, members of the judiciary, the legal profession, academics, family service providers and other experts were invited to address Council on matters of interest. These discussions and consultations informed Council's deliberations. The meetings also provided an opportunity for different disciplinary and professional groups and services within the family law sector to exchange information and raise issues of importance. Members also held three teleconference meetings during the year to progress Council's work program.

#### ***11-12 October 2010 – Canberra, ACT***

The meeting was held in the new Attorney-General's Department building in Canberra and was chaired by Associate Professor Helen Rhoades. New members were introduced and the Attorney-General, the Hon Robert McClelland MP, attended. The Attorney-General discussed a future work program which included seeking Council's views on a proposal to enhance family dispute resolution options and a Terms of Reference to examine how the family law system might better respond to the needs of Indigenous clients and clients from Culturally and Linguistically Diverse backgrounds.

Council agreed to provide a letter of advice to the Attorney-General on broader information sharing and integration across the family law system in order to deal with the issue of family violence and child abuse. Council had also provided a submission on the issue to NADRAC's inquiry into the integrity of alternative dispute resolution processes in September 2010.

#### ***24-25 February 2011 – Melbourne, Victoria***

Meeting in the Commonwealth Law Building in Melbourne provided an opportunity for the Honourable Chief Justice Diana Bryant to talk with Council about the important work being

done in the Family Court, including work on the Federal Courts restructure and improving work practices within the Courts.

Work was well underway on Council's Terms of References on Indigenous clients in the family law system, Culturally and Linguistically Diverse clients in the family law system and International Parental Child Abduction, and each topic was further progressed at this meeting. Valuable insights were provided by special guest speakers from the service sector.

Council also discussed the recent Federal Magistrates Court's decision of *Rastall and Ball* [2010] FMCA Fam 1290 which raised concerns about when family dispute resolution commences and whether the confidentiality and inadmissibility provisions in the *Family Law Act 1975* (the Act) apply to intake assessment processes. Council initiated a letter of advice, of its own motion, to the Attorney-General seeking consideration of broader information sharing across the family law system to deal with family violence and child abuse.

### ***27-28 JUNE 2011 – CANBERRA ACT***

Although covering many other family law related issues, Council's Terms of Reference on Indigenous clients and Culturally and Linguistically Diverse clients in the family law system were the main focus of the meeting. Council's Research Assistant on these particular Terms of Reference, Ms Naomi Pfitzner, was present to assist progress with this work. Council also had the opportunity to hear from special guest speakers who provided Council with insights into the complex barriers faced by families from Indigenous and Culturally and Linguistically Diverse communities in accessing the family law system's services.

## ***Acknowledgments***

The Family Law Council is grateful to the people and organisations that made time in their busy schedules during the year to attend Council meetings and provide insights into the operation of the family law system to inform its work. Important information and observations shared by visitors to Council meetings is passed on to the Attorney-General if required.

Council Members would also like to thank the Family Law Council's regular observers for providing their expertise and contributions to the work of the Council.

Particular acknowledgement and thanks are extended to Ms Toni Pirani for her contribution to Council's work during her time as Assistant Secretary, Family Law Branch, Attorney-General's Department. The June meeting was Ms Pirani's last meeting with Council before she moved to another position within the Attorney-General's Department.

The staff of the Family Law Branch who assisted Council progress its work program and provided Secretariat support and coordination also require special acknowledgement. The Family Law Branch staff support Council by providing significant expertise in many areas of family law.

### ***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 the family law system. In addition Council also consults regularly with other organisations and individuals with expertise or experience in the field of family law.

The Council holds a seat on the Family Law System Reference Group. The Reference Group, established in July 2009, consists of peak bodies operating in the family law system, including the courts, the legal profession and service providers. The Reference Group is a consultative body advising the Attorney-General's Department on work that it is progressing and meets on a needs-basis.

Council exchanges relevant papers with NADRAC and the Council Secretariat maintains contact about mutually relevant issues. The Family Law Council provided a submission to NADRAC's reference of 1 December 2009 from the Attorney-General regarding the integrity of alternative dispute resolution processes in September 2010. Mr Clive Price had extensive involvement in relation to NADRAC's reference both as a member of Council and in his capacity as a member of the NADRAC Integrity Committee.

Council maintained its relationship with the Family Law Section (FLS) of the Law Council of Australia by providing input into the review of the Family Law Section of the Law Council's *Best Practice Guide for lawyers doing family work*. This document was originally developed by a joint committee of the FLS and Council in 2004 as a series of guidelines designed to assist lawyers and encourage best practice in family law. The 2nd edition was released in October 2010.

## **4. Advice to the Attorney-General**

As detailed in Appendix C, Council's function is to advise and make recommendations to the Attorney-General on the workings of the *Family Law Act 1975* (the Act), Legal Aid and other family law matters. This function contributes to the Attorney-General's Department

performance against Outcome 1 ‘An equitable and accessible system of federal civil justice’. During the year Council concentrated its resources into the substantial work involved in the References issued by the Attorney-General, as well as own-motion advices raising issues for the Attorney-General’s consideration.

***LETTER OF ADVICE – PROPOSAL TO ENHANCE FAMILY DISPUTE RESOLUTION***

On 16 December 2010 Council provided advice to the Attorney-General on a proposal to enhance family dispute resolution in response to a discussion with the Attorney-General at Council’s October meeting. Council provided support to the principle of providing families with a range of options for resolving family disputes, including enhancing access to services provided in a low cost, informal and non-adversarial environment. However, Council had some concerns about the proposal and recommended that at a minimum, a number of safeguards be included to ensure that any changes are implemented in a way that serves the best interests of children and is just and equitable for the parties. In relation to the extension of the requirement to attend family dispute resolution to property matters and spousal maintenance matters, Council recommended that:

- obligations to provide full and frank disclosure apply to parties to family dispute resolution for property and spousal maintenance matters, and
- practitioners providing family dispute resolution for property and spousal maintenance matters be appropriately trained.

In relation to arbitration, Council recommended that:

- de novo review is available for arbitration awards in children’s matters as well as property and spousal maintenance matters
- a risk assessment tool is used by arbitrators to ensure the safety of families, and
- consideration be given to methods to promote the safety of arbitrators.

***LETTER OF ADVICE – CONFIDENTIALITY AND INADMISSIBILITY IN THE FAMILY LAW ACT***

On 12 October 2010 Council provided the Attorney-General with advice, by its own motion, on the confidentiality and inadmissibility provisions in the Act to highlight a need to promote broader information sharing and integration across the family law system particularly to deal with the issue of family violence and child abuse. Council suggested that a process is required to ensure that the court is able to identify when a family dispute resolution practitioner has specific information about child abuse or serious family violence in a case, and suggested that:

- in conjunction with the courts, the government explore a way to develop the existing Commonwealth Law Courts portal to enable family dispute resolution practitioners to input information to allow the courts and other appropriate bodies to receive information, and
- the Act should be amended so that exceptions to the inadmissibility provision are along similar but not identical lines to those exceptions specified for confidentiality in the Act.

***LETTER OF ADVICE – INTERNATIONAL PARENTAL CHILD ABDUCTION***

On 14 March 2011 Council provided advice to the Attorney-General in relation to International Parental Child Abduction in response to Terms of Reference issued in November 2010. The Terms of Reference required Council to consider whether there are any gaps in existing legislation to deal with this issue; whether there is a need to introduce new offences to strengthen Australia's response to this issue; and should a need be identified, what exceptions or defences should apply. Council was required to have regard to the Hague *Convention on the Civil Aspects of International Child Abduction* and any benefits or risks to Australia in meeting its obligations under the Hague Convention. Council made six recommendations, namely that:

- i) The wrongful retention of children should be a criminal offence consistent with the approach taken in relation to wrongful removal of a child;
- ii) The Act should not be amended to include a criminal offence of child abduction in circumstances where Court orders have been neither sought nor granted unless the parents have engaged in, or the taking parent has been invited to engage in, family dispute resolution with a family dispute resolution practitioner in relation to a dispute about a child;
- iii) There should not be a general criminal offence of child abduction;
- iv) There is merit in further legislative and non-legislative measures that could be taken to assist in international parental child abduction cases including: information gathering powers; mediation; and publicity about the Convention;
- v) A range of exceptions and defences apply to the existing criminal offence provisions, and as well should apply to the new offence provisions proposed above including: duress; sudden or extraordinary emergency; self-defence; lawful authority; mistake of fact; fleeing from violence; protecting the child from danger of imminent harm; reasonable excuse; and consent.

If Government decides, despite Council's recommendation above, to introduce a general criminal offence of international parental child abduction, these exceptions and defences should also apply to that offence.

- vi) The Act should include a requirement for the Attorney-General to consent to prosecution under the primary offences (those relating to the taking parent themselves) and a special prosecution policy should be developed to guide decision making in such cases.

#### ***LETTER OF ADVICE – DECISION IN THE MATTER OF RASTALL AND BALL [2010] FMCA FAM 1290***

On 8 April 2011 Council wrote to the Attorney-General, by its own motion, providing advice about the possible effect of the ruling made by Federal Magistrate Riethmuller in the matter of *Rastall and Ball* [2010] FMCA Fam 1290 regarding the application of section 10H and 10J of the Act (confidentiality and inadmissibility provisions) to family dispute resolution intake assessments. Council recommended that:

- The Act be amended to provide expressly for the inadmissibility of family dispute resolution communications made during the intake and assessment process.

## **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.

From 1 July 2010 to 30 June 2011, a total of 14 recommendations or suggestions have been made. Of these, all 14 were made in the four letters of advice provided to the Attorney-General. No reports to the Attorney-General were made in this financial year.

**GOVERNMENT RESPONSE TO RECOMMENDATIONS**

Five recommendations made by Council relate to the enhanced family dispute resolution proposal. These recommendations are being considered by government as it develops this proposal. Three suggestions and recommendations were made in the area of information sharing where there is family violence, and in relation to amending the provisions in the Act governing inadmissibility of information. These are being considered by government in the context of possible legislative amendments in relation to the enhanced family dispute resolution proposal. Six recommendations were made in relation to international parental child abduction. These recommendations are also being considered by government.

In addition to the 14 recommendations made this year, Council also made 13 recommendations in its report *Improving responses to family violence in the family law system: An advice on the intersection of family violence and family law issues* published in December 2009 and discussed in Council’s 2009-10 Annual Report. In response to this and other research and reports, the government introduced the *Family Law Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011* into the Federal Parliament in March 2011. It was passed through the House of Representatives on 30 May 2011. The Bill is aimed at prioritising the safety of children, and protecting children and members of their family from harm. This Bill responds to extensive research and reports by eminent family law and child development specialists. Council’s report has significantly contributed to the evidence base to allow for the development of this Bill.

**6. Financial Report**

Council’s meeting and program costs are met each year by the Family Law Branch of the Access to 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 2010–11**

Item	Expenditure
Sitting Fees (including superannuation)	21,645.40
Venue Hire & Incidentals	Nil
Meeting Costs	1,717.59
Travel	9,117.30
Memberships	Nil
Consultants	Nil
Publications/Printing	1,310.00
<b>TOTAL</b>	<b>\$33,790.29</b>

**Financial accountability**

Council's total yearly expenditure for 2010-11 was **\$33,790.29**. Council's meetings were held in major cities and meeting venues were provided by the Attorney-General's Department in Canberra and the Commonwealth Law Courts in Melbourne at no cost to Council. Council would like to thank the Department and Courts for this assistance, in particular the Honourable Chief Justice Diana Bryant for the usage of her conference room facilities. Council's costs form part of the Attorney-General's Department's audited financial statements published in the Department's Annual Report.

### *Grants*

To support Council in providing the Attorney-General advice on the Terms of Reference on Indigenous clients in the family law system and Culturally and Linguistically Diverse clients needs in the family law system, \$70,000 was provided as a Grant to engage a research assistant and cover associated expenses for the duration of the project. The research assistant is based in Melbourne and is supported by the Council Chair, Associate Professor Helen Rhoades. The Grant was paid to the University of Melbourne.

### *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](http://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**

### ***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. Most of the reports and papers produced after 1991 are available online at <http://www.ag.gov.au/flc>.

#### 2010 – 30 June 2011

- Advice on confidentiality and inadmissibility in the Family Law Act seeking consideration of broader information sharing and integration across the family law system to deal with family violence and child abuse (October 2010)
- Advice on Enhanced Family Dispute Resolution (December 2010)
- Advice on International Parental Child Abduction (March 2011)
- Advice on the decision of *Rastall and Ball* [2010] FMCA 1290 regarding the application of the confidentiality and inadmissibility provisions in the Family Law Act to family dispute resolution intake sessions (June 2011)

#### 2005 – 2009

- A letter of advice provided jointly with the National Alternative Dispute Resolution Advisory Council on immunity for family counsellors and family dispute resolution practitioners under the Family Law Act (2005)
- *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)
- *Improving Post-Parenting Order Processes* (2007)
- Binding financial agreements letter of advice (2008)
- Advice on Kinship carers of Indigenous Children (2008)
- Mental Health letter of advice (2008)
- Arbitration letter of advice (2008)
- *Improving responses to family violence in the family law system: An advice on the intersection of family violence and family law issues* (2009)

#### 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 2010-2011**

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 2011.

### ***Statistical Snapshot Working Group***

Council agreed to discontinue the work on the Statistical Snapshot as data is readily available from various other sources. The considerable work done by Ms Angela Filippello in formulating past Statistical Snapshots was acknowledged with gratitude.

### ***TERMS OF REFERENCE ON MEETING THE NEEDS OF INDIGENOUS CLIENTS IN THE FAMILY LAW SYSTEM AND CULTURALLY AND LINGUISTICALLY DIVERSE CLIENTS IN THE FAMILY LAW SYSTEM***

#### ***INDIGENOUS REFERENCE SUBCOMMITTEE***

With regard to the National Indigenous Law and Justice Framework developed by the Standing Committee of Attorneys-General, the Indigenous reference subcommittee has consulted with representatives of Indigenous communities in relation to the family law system needs and experiences of Indigenous families.

Members of the subcommittee are:

- Dr Rae Kaspiew (*Convenor*)
- Mr Clive Price

- Justice Garry Watts
- Magistrate Annette Andrew
- Ms Elizabeth Kelly
- Ms Judy Jackson

#### ***CALD REFERENCE SUBCOMMITTEE***

The CALD reference subcommittee has consulted with a wide variety of CALD community representatives and services to assist in gaining an understanding of the family law system needs and experiences of migrant and refugee families.

Members of the subcommittee are:

- Associate Professor Helen Rhoades (*Convenor*)
- Ms Nicky Davies
- Federal Magistrate Kevin Laphorn
- Mr Jeremy Culshaw
- Ms Amanda Parkin
- Ms Sara Peel
- Ms Samantha Page

## **Appendix C: Compliance with Annual Report Guidelines**

The following information is provided in compliance with the Department of Prime Minister and Cabinet's 2011 *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 2009 – 2010* was tabled in the House of Representatives on 19 October 2010.

#### **ADVERTISING AND MARKET RESEARCH**

The Council was not involved in any advertising or market research activity during 2010-11.

#### **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 the Family Law Council's website <<http://www.ag.gov.au/flc>>. Electronic access to the work of Council is available for Letters of Advice, Submissions, Reports to the Attorney-General and Annual Reports.

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. Submission invitations are also found on Council's website when applicable.

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) minutes of Council and Council committee meetings
- (e) papers prepared for regular meetings of Council
- (f) correspondence
- (g) documents relating to internal administration and management
- (h) research notes and papers prepared in Council's Secretariat or provided to the Secretariat, and
- (i) 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, discussion papers and letters of advice to the Attorney-General (categories (a), (b) and (c)), 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 (d)) may be inspected at Council's Secretariat in Canberra.

A bound set of Council meeting papers (category (e)) for the period 1976–1996 is held by National Archives of Australia in Canberra. A further bound set is held by Council’s Secretariat covering the period 1976 to 22 November 2002 in Canberra. The Secretariat also holds unbound copies of meeting papers since November 2002.

It is Council’s policy to make available publicly copies of submissions (category (i)) 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 (f), (g) and (h)) 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.

Council’s Secretariat 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 2010–11.

The information officer for the purposes of freedom of information requests and for general inquiries is:

Secretariat - Family Law Council  
Attorney-General’s Department  
3-5 National Circuit  
BARTON ACT 2600

Telephone: 02 6141 6666  
Fax: 02 6141 5452

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

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