FAMILY LAW COUNCIL REPORT TO THE ATTORNEY-GENERAL ON

Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems:

FINAL REPORT — JUNE 2016
(Terms 3, 4 & 5)
Family Law Council terms of reference (revised)

Many families seeking to resolve their parenting disputes have complex needs, including emotional, sexual and physical abuse, family violence, substance abuse, neglect and mental health issues. These disputes may be able to be better addressed with the assistance of relationship support services and/or court processes that can cut across the child care & protection and family law systems.

I request that the Family Law Council consider the following matters in relation to the needs of these families:

(1) The possibilities for transferring proceedings between the family law and state and territory courts exercising care and protection jurisdiction within current jurisdictional frameworks (including any legal or practical obstacles to greater inter-jurisdictional co-operation).

(2) The possible benefits of enabling the family courts to exercise the powers of the relevant state and territory courts including children’s courts, and vice versa, and any changes that would be required to implement this approach, including jurisdictional and legislative changes.

(3) The opportunities for enhancing collaboration and information sharing within the family law system, such as between the family courts and family relationship services.

(4) The opportunities for enhancing collaboration and information sharing between the family law system and other relevant support services such as child protection, mental health, family violence, drug and alcohol, Aboriginal and Torres Strait Islander and migrant settlement services.

(5) Any limitations in the data currently available to inform these terms of reference.

I request that the Family Law Council provide an interim report to me by 30 June 2015, focusing on the first and second matters and that a final report be provided to me by 30 June 2016 on all matters.

In conducting its work, the Council should have regard to the role of the family courts and family relationship services in ensuring the protection of children.

The Family Law Council should consult key stakeholders and examine work being undertaken in Western Australia around the intersection of the family law and child protection jurisdictions. The Council should also have regard to relevant reports and reviews in this area, including the two reports by Professor Richard Chisholm AM:

- Information-Sharing in Family Law and Child Protection: Enhancing Collaboration
- The sharing of experts' reports between the child protection system and the family law system.
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A note on terminology

Central to the issues in Council’s terms of reference is the confusion of different terms for similar concepts across the various federal and state and territory jurisdictions. This was also an issue that affected the writing of Council’s report. In order to minimise confusion and maximise clarity and consistency, Council has adopted certain generic terms to refer to particular institutions and legal concepts that have different names in different systems or locations in Australia.

Throughout this report, we use the term children’s courts to refer to the various state and territory courts that exercise care and protection jurisdiction in Australia, including South Australia’s Youth Court. We use the term child protection department to refer to what might otherwise be known as a child welfare authority. The term magistrates courts has been used to refer to state and territory local courts and magistrates courts.

The term family courts is used to refer collectively to the Family Court of Australia, the Family Court of Western Australia and the Federal Circuit Court, and the term federal family courts is used to refer to the Family Court of Australia and the Federal Circuit Court.

The term family relationship services is used here to refer to post-separation services such as family dispute resolution, family counselling, post-separation parenting programs and contact services that are funded by the Attorney-General’s Department.

The term family law system is used in this report to refer collectively to the family courts (the Family Court of Australia, the Family Court of Western Australia and the Federal Circuit Court of Australia) and all family law and post-separation services, including legal aid and private legal services and family relationship services.

The term family violence has been used in this report because it is the terminology consistent with the Family Law Act 1975 (Cth) and Council’s terms of reference. The Family Law Council acknowledges that a range of different terms, including domestic violence, family and domestic violence, inter-personal violence and violence against women and their children are used in different contexts. Throughout the report we have used the term family violence as it is defined by s 4AB of the Family Law Act to be ‘violent, threatening or other behaviour by a person that coerces or controls a member of the person’s family (the family member), or causes the family member to be fearful,’ which includes ‘a sexual assault or other sexually abusive behaviour’.

We have also adopted the term family violence protection orders to refer to what are known variously as Domestic Violence Orders (DVO), Apprehended Domestic Violence Orders (ADVO), Violence Restraining Orders (VRO), Domestic Violence Restraining Orders (DVRO), Family Violence Intervention Orders (FVIO), and Family Violence Orders (FVO) in different parts of Australia.
SUMMARY AND RECOMMENDATIONS

This report provides a response to a reference from the Attorney-General, Senator Brandis, which asked the Family Law Council to consider a range of matters in relation to families with complex needs seeking to resolve their parenting disputes. Council was asked to report on the opportunities for addressing the difficulties faced by families with multiple legal needs stemming from the separation of the family law, family violence and child protection systems in Australia, as well as ways of strengthening the family law system’s capacity to identify and respond to risk to children in client families with complex support needs, including where there are safety concerns for children associated with issues of abuse, family violence, mental illness and/or misuse of alcohol or other drugs.

Council’s approach to the terms of reference

The Attorney-General asked Council to report on this reference in two stages. The first stage of Council’s work focused on terms of reference 1 and 2 (Stage 1). Council delivered an interim report on these questions in June 2015. The second stage of Council’s work, which is discussed in this report, focused primarily (but not exclusively) on the remaining terms of reference.

To inform its consideration of these questions, Council consulted with relevant organisations within and beyond the family law system, and invited and received submissions from a wide range of sources. These included commissions for children and young people, family violence services, Aboriginal and Torres Strait Islander organisations, family relationship services, child protection departments, and the courts, practitioner associations and legal aid commissions. Council also held a series of stakeholder forums around Australia, including a forum for Aboriginal and Torres Strait Islander organisations and individuals and a forum for stakeholders from culturally and linguistically diverse-specific organisations. Council was also assisted by two Working Groups: one drawn from the state and territory child protection systems and children's courts (in Stage 1) and the second drawn from the various service sectors of the federal family law and state family violence systems (in Stage 2).

Council also drew on relevant research evidence, including reports by the Australian Institute of Family Studies (AIFS) and the Australia’s National Research Organisation for Women’s Safety (ANROWS), and the work of other recent reviews that have explored issues relevant to the reference, including the Queensland Special Taskforce on Domestic and Family Violence report, Not Now, Not Ever (2015), the report of the Victorian Royal Commission into Family Violence (March 2016) and the Final Report of the Council of Australian Governments (COAG) Advisory Panel on Reducing Violence against Women and their Children. Council’s work was also informed by the priorities in the National Framework for Protecting Australia’s Children 2009-2020 and the National Plan to Reduce Violence against Women and their Children 2010-2022.
Council’s Interim Report

Council’s work on Stage 1 of this reference indicated that very few family law cases move to a state or territory children's court as a result of a child protection notification from the family courts, and suggested that much greater numbers of cases travel from the child protection system to the family law system than in the opposite direction. The material provided to Council during this stage also highlighted the significant extent to which families with complex needs have both family violence and family law related needs, and indicated that a common pathway through the wider legal system for these families involves family violence related proceedings in a state or territory magistrates court followed by proceedings in a family court. There was also evidence that some families have engagement with all three jurisdictions – the family law, family violence and child protection systems – in relation to the safety and care of their children.

The submissions received by Council during Stage 1 indicated that the current separation of these courts can pose a number of difficulties for families with complex needs, including:

- having to negotiate different legal frameworks, different terminology, different procedural rules and different decision-makers in the different jurisdictions;
- children and parents having to repeat their story, engage new legal representatives and re-litigate the question of risk to the child in different forums; and
- the potential for relevant information and orders made by the first court to be unavailable to the decision-maker in the second jurisdiction.

In Council’s view, these factors suggest a need for a more co-ordinated approach to the provision of court services in meeting the national obligation to protect children from harm. Council’s work identified a greater capacity and level of stakeholder support for the exercise of multiple jurisdictions by state and territory courts than by the federal family courts. This position reflected a number of considerations, including that state and territory courts of summary jurisdiction are already vested with Family Law Act powers; the desire of magistrates courts in some states to increase their family law workload in order to meet client demand; stakeholder concerns about the relative formality, slower pace and higher costs of proceedings in the federal family courts; and the significant constitutional barriers to vesting the federal family courts with state jurisdiction.

On the basis of these considerations, Council recommended that state and territory children's courts and magistrates courts be supported to increase their family law workload where appropriate. Council also recommended the development of a national repository of family law, family violence and children's court orders that can be accessed by each relevant court.
This report

Building collaborative and integrated services and identifying, assessing and responding to risks to children

During the second stage of its work on this reference, Council received submissions from a wide range of stakeholders expressing the view that improving the family law system’s capacity to identify, assess and respond to risk to children will require greater integration of services that support families with complex needs. These submissions suggest that central to the success of this endeavour will be the strengthening of collaborative relationships and information sharing between family law and other relevant service sectors, including specialist family violence services, mental health and drug and alcohol services, and state and territory courts.

- **Family safety services**

Reflecting the recent AIFS research and information provided to Council during Stage 1, many of those who engaged with the second stage of Council’s reference emphasised the importance of increased collaboration with state and territory family violence services. Council’s work identified a number of options for achieving this so as to strengthen responsive capacity within the family law system. These include:

- funding family violence services that provide embedded services in state and territory courts to continue to support clients with family violence issues when they move to the family law system to seek parenting or other orders;
- embedding workers from specialist family violence services in the family courts and Family Relationship Centres; and
- creating a dedicated family safety service within the family law system.

Council urges the Australian Government to consider implementing a combination of these options as a way of incorporating the expertise of the family violence services sector into the family law system to improve responses to client families where there are issues of family violence or other safety concerns for children.

- **Identifying and assessing risk to children**

Council received a number of submissions suggesting the need to improve processes for identifying and assessing risk to children within the family law system. Council acknowledges that a number of screening tools and practice changes have been implemented in recent years to improve the identification and assessment of risk in the family law system, including the development of the Detection of Overall Risk Screen (DOORS) tool, the introduction of a mandatory notice of risk forms by the Federal Circuit Court and a mandatory pro-forma information affidavit by the Family Court of Western Australia, and the
development of a Family Violence Screening Tool for use by family consultants. Council commends these initiatives.

However, Council is also aware that the recent AIFS research indicates that safety concerns for children are often missed. Given the prevalence of family violence and other behaviours that raise safety concerns for children among family law disputes, Council identified a need to establish an early whole-of-family risk assessment process that can be accessed regardless of a client’s entry point to the family law system.

Council also supports the calls by legal practitioners for a simplified tool to support risk identification in legal practice, as a basis for referring clients for a comprehensive risk assessment by a specialist family violence service or other risk assessment service. In addition, Council sees a need to develop a more systematic approach to responding to the needs of parents and children where safety concerns are identified during screening for family dispute resolution, including, where appropriate, the preparation of a safety plan and referrals to relevant services. These may include a referral to a specialised family violence support service, a referral for legal advice about personal protection orders and options for addressing parenting arrangements, a referral for therapeutic support or to a men’s behaviour change program, and referrals in relation to housing, mental health and/or substance misuse support needs.

Council acknowledges the importance of organisations and services being able to tailor risk assessment tools for their own purposes, and agrees that the effectiveness of a risk assessment process lies in the skilled exercise of professional judgment rather than the particular tool. However, Council is also aware of the calls and stakeholder support for the development of a shared risk assessment framework to support the application of these diverse tools in a nationally consistent way. Council supports the recommendation of the COAG Advisory Panel that such a framework be developed by the Commonwealth and state and territory governments, through a collaborative process and be regularly evaluated and updated to ensure ongoing relevance and accuracy.

Council also notes the important role of the courts in assessing risk to children in contested proceedings. In order to support this role, Council recommends legislative change and/or the development of protocols to facilitate the making of orders for observational or assessment reports from post-separation parenting programs and men's behaviour change programs where a party is ordered to attend.

- **Court-based and family relationships sector integrated services models**

Council supports the COAG Advisory Panel’s recommendation that governments adopt and expand on models of co-located and integrated services that have been successful in other jurisdictions. Council’s work on this reference revealed a number of such models within state and territory courts, which incorporate protocols to facilitate the sharing of information
between services to support clients with complex needs. Within the context of this reference, Council believes it is important that a similar integrated services approach is developed within the family courts and the family relationships sector.

In relation to the family courts, Council considers that government should explore the development of an integrated services model along the lines of the Victorian Neighbourhood Justice Centre (NJC). This should incorporate court-based embedded workers from specialist family violence services, mental health services, alcohol and other drugs services, Aboriginal and Torres Strait Islander organisations, migrant resource services, family relationships services and the legal assistance sector.

Council also supports the expansion of existing integrated services models within the family relationship sector of the family law system. Council acknowledges that many agencies in the family relationships sector already work in a collaborative way with other services, including by referring clients to and liaising with a range of other services, such as legal assistance services, mental health and alcohol and other drugs services, and services for culturally and linguistically diverse clients. Council notes in particular the Family Safety Model developed by Relationships Australia Victoria, which uses a case manager role attached to its men’s behaviour change programs to provide client families with a whole-of-family psycho-social assessment, services referrals to meet the ongoing safety and support needs of children and other family members, and a function that coordinates and tracks the family’s involvement with external agencies. Council considers the Australian Government should consult with Family Relationship Service Australia (FRSA) with a view to further developing case managed integrated services models attached to family dispute resolution services and men's behaviour change programs along the lines of the Family Safety Model.

- **Self-represented litigants with complex needs**

Council is aware that in more than half of the parenting cases that come before the family courts, one or both parties are unrepresented for some or all of the proceedings. A lack of representation can place a significant burden on the parties, as well as on the Independent Children's Lawyer and the courts, particularly in complex cases where there are safety concerns for the child. Council notes in particular stakeholder concerns about the cross-examination of vulnerable witnesses by abusive former partners, and the research evidence that cases involving unrepresented litigants are less likely to contain the kind of evidence needed to determine matters involving child safety concerns than cases where the parties are represented.

Council acknowledges that despite the multiple functions performed by Independent Children's Lawyers in these cases, they have a limited capacity to address these concerns. In Council’s view, the Australian Government should explore the viability and benefits of a Counsel Assisting model to assist the courts in cases where one or both parties is
self-represented and issues of family violence or other safety concerns for children have been identified.

- **Support services for families in rural and regional areas**

A number of submissions drew Council’s attention to the multiple barriers affecting access to family law services for families living in remote, rural and regional areas of Australia. Council’s work revealed a number of existing initiatives that were designed to address these issues, including virtual outreach legal assistance services and family law advice lines. Council supports the development of further initiatives along these lines for rural and regional clients, including a greater use of video and internet-based technologies to enhance access to the courts. Council also supports increased circuiting by the Federal Circuit Court to enable matters to be heard closer to where people live.

- **Increased collaboration between family law and state and territory courts**

In its *Interim Report*, Council expressed the view that supporting state and territory courts to exercise existing family law jurisdiction would benefit families with complex needs. However, for various reasons, a state or territory magistrate may not be in a position to make family law orders. As noted in Council’s *Interim Report*, clients with family law needs in this circumstance can face a number of difficulties navigating the transition from a state or territory court to the federal family law system. In recognition of these difficulties, Council sees value in the Australian Government exploring through COAG or LCCSC the possibilities for increased circuiting or out-posting of Federal Circuit Court judges and registry staff in state and territory magistrates courts, including specialist family violence courts.

**Creating cultural change and strengthening workforce capability**

- **Joint professional development**

Council notes that the development of a shared understanding of the responsibilities, constraints and practices of professionals from across the different service sectors that work with families with complex needs is central to the development of effective cross-sector collaboration. Many of those who engaged with Council’s reference suggested the need for dedicated training and joint professional development opportunities to enhance the development of collaboration and integrated services initiatives. Council notes there is general consensus among practitioners and researchers that collaboration and cross-professional development between the family violence and child protection sectors is essential to improving outcomes for vulnerable children. Council considers that family law professionals should be included in this training.
• **Family violence competency**

Council believes that a sophisticated understanding of family violence dynamics should be a core competency for work in the family law system. This should include ongoing family violence training for professionals and staff at all levels in the system that incorporates an understanding of trauma-informed practice and the family violence experiences of women and children from high-risk groups. More particularly, Council supports a family violence accreditation requirement for family report writers and legal practitioners who practice family law.

Council also acknowledges the views of stakeholders and the recommendations in recent reports that family violence training should be extended to judicial officers. Council recommends the National Judicial College of Australia develop a joint professional development program for judicial officers from the family courts and state and territory courts in which judicial officers preside over matters involving family violence in order to strengthen understanding of family law and family violence.

• **Children’s views and experiences**

Council notes stakeholder concerns to ensure that greater respect is accorded to children’s views when assessing and responding to risk, and that children’s experiences of family law processes are used to inform the development of policy and service responses to families with complex needs. Council recommends that a young persons’ advisory panel be formed to assist in the design of child centred family law services, and that guidelines be developed for judges who choose to meet with children in family law proceedings.

• **Family dispute resolution and confidentiality**

Council received a large number of submissions about the confidentiality provisions of the Family Law Act, and whether the exceptions to these should be expanded to relax the current restrictions on sharing information about communications made during family dispute resolution. Responses to this question ranged from strong support for greater disclosure to strong objections to relaxing the confidentiality requirements. Council notes in particular the concerns of some stakeholders about the complexity of the law governing confidentiality and the potential for professionals who are permitted to disclose information about safety concerns for a child to not do so because of a misperception about the parameters of their legal obligations. Council supports the recommendation of the COAG Advisory Panel in that regard, which urged governments to take steps to improve staff understanding of privacy laws in order to reduce perceived barriers to information sharing.

Council also recommends the Australian Government implement the 2011 recommendation of the Australian and NSW Law Reform Commissions that the word ‘imminent’ be removed from s 10H(4)(b) of the Family Law Act to encourage family dispute resolution practitioners
to disclose information if they reasonably believe there is ‘a serious threat to the life or health of a person’ regardless of its imminence. In addition, Council recommends the Australian Government clarify the status of family dispute resolution intake assessments in relation to the confidentiality protections in the *Family Law Act*.

- **State and territory courts exercising family law jurisdiction**

During the first stage of its work on this reference, Council examined the possibilities for vesting the federal family courts and state and territory children’s courts and family violence courts with a measure of co-extensive jurisdiction. In its *Interim Report*, Council expressed the view that supporting state and territory courts of summary jurisdiction to exercise their existing family law jurisdiction would offer significant benefits to families with complex needs. In light of this view, Council recommended the *Family Law Act* be amended to remove any doubt that children’s courts are able to make parenting orders, and to provide a simplified decision-making framework for interim parenting hearings. Council notes that these recommendations are consistent with recent recommendations made by the Royal Commission into Family Violence, as well as other recent state and territory and national policy recommendations. Council also received strong stakeholder support for these recommendations during the second stage of this reference.

To further support the capacity of state and territory courts to undertake family law work, Council recommends the National Judicial College of Australia develop a continuing joint professional development program in family law for judicial officers from the family courts and state and territory children's courts and magistrates courts. If this recommendation is accepted, Council further recommends that the monetary limit on the jurisdiction of state and territory magistrates courts to divide the property of parties to a marriage or a de facto relationship be increased, as a way of supporting clients of these courts to achieve some measure of economic independence without having to initiate proceedings in the family courts. Council also supports an increase in Commonwealth funding to state and territory courts of summary jurisdiction to enable them to take on more family law work.

**Tailored services for Aboriginal and Torres Strait Islander and culturally and linguistically diverse families**

Submissions to Council highlighted the need for tailored culturally safe family law services for Aboriginal and Torres Strait Islander families. These stakeholders noted the under-utilisation of family law services by Aboriginal and Torres Strait Islander clients and the continuing barriers affecting their access to the family courts. The submissions also pointed out that Aboriginal and Torres Strait Islander family law clients are more likely than non-Aboriginal clients to have complex needs, including family violence and child safety related needs exacerbated by the experience of inter-generational trauma.

Stakeholders also emphasised the need for specially tailored and culturally safe services for
clients from culturally and linguistically diverse backgrounds, particularly recently arrived migrants and refugees who have experienced similar levels of trauma in their lives to Aboriginal and Torres Strait Islander peoples. This may include the experience of enforced migration from homelands causing loss of identity, kinship ties and belonging, as well as disconnection from family and, in some cases, the loss of children through involvement with child protection systems.

Stakeholders proposed a range of reforms to improve the delivery of family law services to Aboriginal and Torres Strait Islander families with complex needs. These included the development of pathways between the family law system and Aboriginal and Torres Strait Islander specific services and communities by:

- embedding workers from Aboriginal and Torres Strait Islander services in the family courts and Family Relationship Centres as family liaison officers;
- working with Aboriginal and Torres Strait Islander communities and organisations to develop and deliver culturally appropriate post-separation parenting programs and family dispute resolution services;
- developing and resourcing tailored education programs about the family law and child protection systems for Aboriginal and Torres Strait Islander communities to enhance understanding of legal rights and awareness of how the family law system works; and
- ensuring ongoing cultural competency training for family law system professionals, including judicial officers, that builds an understanding of the multiple and diverse factors contributing to the high levels of family violence in Aboriginal communities, and an understanding of Aboriginal and Torres Strait Islander family structures and child rearing practices.

Council recommended reforms to this effect in its 2012 report, Improving the Family Law System for Aboriginal and Torres Strait Islander Clients. Council recommends the Australia Government implement these recommendations.

Council also supports stakeholders’ calls for culturally secure family assessment reports to assist child-focused decision-making in courts and to clarify the cultural obligations of family members in growing up an Aboriginal or Torres Strait Islander child and their importance to maintaining the child’s ongoing connection with kinship networks and country.

In addition, Council recommends that workers from Aboriginal and Torres Strait Islander family violence organisations be included in the development of any integrated services hubs that are based at the family courts or Family Relationship Centres, as noted above. Council also supports stakeholders’ calls for greater use of referrals to culturally appropriate healing-focused behaviour change programs for Aboriginal men who have used violence.

In addition to the recommendations made in its 2012 report, Council recommends amendments to Part VII of the Family Law Act to:

- require the preparation of culturally secure family assessment reports to assist the
courts in decision making in children’s matters that involve an Aboriginal or Torres Strait Islander child, including reports on issues such as the obligations of family members in growing up children associated with totemic and country connection;

- require the development of a cultural plan setting out how the child’s ongoing connection with kinship networks and country will be maintained; and

- support the convening of family group conferences for Aboriginal and Torres Strait Islander families in appropriate family law matters to assist informed decision making in the best interests of the child, to allow them to be cared for within their own families and communities wherever possible, based on the Aboriginal and Torres Strait Islander Child Placement Principles.

Council also supports a consideration of the development of tailored court hearing processes for matters that involve an Aboriginal or Torres Strait Islander child, including the participation of Elders or Respected Persons who can provide cultural advice to the court. Council further recommends the Australian Government consult with Aboriginal and Torres Strait Islander representative institutions in the development of any reforms arising from Council’s work that affects Aboriginal and Torres Strait Islander children.

Council notes there is a similar need to improve the delivery of culturally safe family law services for clients from culturally and linguistically diverse backgrounds. Council reaffirms the views expressed in its 2012 report *Improving the Family Law System for Clients from Culturally and Linguistically Diverse Backgrounds* in this respect, and recommends the Australian Government implement the recommendations from that report.

However, Council believes that further steps are needed. In particular, Council recommends that workers from culturally and linguistically diverse-specific family violence services be incorporated into the development of any court-based and family relationship sector-based integrated services models to support clients from these communities.

In addition, Council considers the Australian Government should implement a process, including through amendments to the *Family Law Act*, to support the convening of family group conferences for families from culturally and linguistically diverse backgrounds in appropriate family law matters to assist informed decision-making in the best interests of the child, to facilitate children being cared for within their own families and communities wherever possible.

Council notes the concern to promote the sharing of responsibility for children’s safety and wellbeing between family, kin and professionals, which underpins the family group conference model, reflects the priorities and principles underpinning the *National Framework for Protecting Australia’s Children*. Its incorporation of extended family to help plan the care of Aboriginal and Torres Strait Islander children is also consistent with Australia’s obligations under the United Nations Declaration on the Rights of Indigenous Peoples.
Council considered concerns expressed by stakeholders about the potential for the family law system to be misused by a person who wishes to maintain a campaign of harassment against their former partner, as well as stakeholder concerns about the misuse of subpoenas to obtain access to sensitive therapeutic treatment records that are inadmissible or serve no legitimate forensic purpose. Council considers that the misuse of legal and administrative processes and frameworks raises significant public policy concerns, but acknowledges that there is presently little systematic evidence about the extent of this problem. Council recommends the Australian Government commission research that would support an understanding of how and to what extent the intentional and unintentional misuse of legal processes, systems and services relevant to family breakdown occurs and how this may be prevented.

Council also recommends the commissioning of research that would support an understanding of the extent, experience and dynamics of self-representation in family law matters involving families with complex needs, including matters where there are family violence and mental health issues.

Council also notes the lack of empirical evidence regarding the volume and circumstances in which cases crossover or fail to crossover between state and territory family violence and children's courts and the federal family courts. A clearer empirical picture of the numbers of families that seek and either succeed or fail to engage with more than one of these jurisdictions, as well as their experiences of this process, is required in order to facilitate effective collaboration and information sharing between the family law, family violence and child protection systems. Therefore Council recommends the Australian Government commission research to examine the extent to which the client bases of state and territory police and justice systems overlap those of the family courts to support the development of strategies to respond to these cases more effectively.

Council also considered stakeholder concerns about the safety of care arrangements for children made in the context of consent parenting arrangements, and the assertion that many of these cases come back to the court as fresh parenting applications or contravention orders. Council notes there is a lack of information regarding the nature of parenting arrangements made by consent where child safety concerns have been raised, including the effectiveness or otherwise, of court rules (Rule 13.04A of the *Federal Circuit Court Rules* and Rule 10.15A of the *Family Law Rules*) introduced in 2012.

Council recommends the Australian Government commission research to examine the dynamics of matters that resolve by consent, including the extent to which the arrangements consented to respond to any matters of risk that have been raised prior to the consent orders being made and the extent to which orders made by consent are followed by further litigation.
Legislative reform

In light of its consideration of the various issues raised by these terms of reference, Council believes that a comprehensive review of Part VII of the *Family Law Act*, which guides the resolution of children’s matters, is warranted. Council considers that this process should be undertaken with a view to ensuring child safety is prioritised in both decision-making and advice-giving contexts, and to supporting efficient and expeditious decision-making in light of the complex features of the contemporary client base of the family courts.

Recommendations

**Recommendation 1: Family safety services**

The Australian Government consider ways of incorporating the expertise of specialist family violence services into the family law system to improve responses to families where there are issues of family violence or other safety concerns for children. This may include a combination of:

1) funding family violence services that provide embedded services in state and territory courts to continue to support clients with family violence issues when they move to the family law system to seek parenting or other orders;
2) embedding workers from specialist family violence services in the family courts and Family Relationship Centres;
3) creating a dedicated family safety service within the family law system.

**Recommendation 2: Early whole-of-family risk assessments**

Having regard to the issues of abuse, neglect and family violence and the need for such evidence to be broadly available to protect children, the Australian Government should incorporate a whole-of-family risk assessment process into the family law system that is non-confidential and admissible.

**Recommendation 3: Family lawyers and risk identification**

The Australian Government consult with the Family Law Section of the Law Council of Australia, legal practitioner regulation bodies, including National Legal Aid, and family law practitioners more broadly, to support the development of:

1) a simplified risk identification mechanism for parents and children for use by the legal profession
2) protocols and guidelines to assist practitioners to utilise strategies to ensure that risk is identified and managed effectively, including through warm referrals to specialised family violence services
3) the development of a strategy to support the implementation of these measures among legal practitioners who practice family law in the context of their professional obligations to their clients, their ethical responsibilities as legal practitioners and the professional indemnity issues that responses to risk raise.

**Recommendation 4: Family dispute resolution practitioners and risk management strategies**

The Australian Government consult with key stakeholders, including Family & Relationships Services Australia, to identify how best to support a systematic approach to meeting client needs once an assessment that family dispute resolution should not proceed is made or risk is identified. The following options should be considered:

1) an amendment to Regulation 25 of the *Family Law (Family Dispute Resolution Practitioners) Regulations 2008* to extend the obligations of family dispute resolution practitioners to their clients to encompass the following steps as required:
   (a) preparation of a safety plan and referral to a specialised family violence support service;
   (b) referral for legal advice on personal protection orders and options for addressing parenting arrangements;
   (c) referral for therapeutic support for affected parents and children;
   (d) referral to a men’s behaviour change program and other referrals in relation to other support needs, such as housing, mental health or substance misuse needs.

2) amendments to relevant funding agreements to support this extension of obligations.

**Recommendation 5: Judicial risk assessments and court ordered programs**

The *Family Law Act 1975* be amended to facilitate the making of court orders for observational assessment reports where the court orders a party to attend a post-separation parenting program or a men's behaviour change program.

**Recommendation 6: A court-based integrated services model**

1) To provide evidence and a better structured system in a more child-focused way, the Australian Government should consider establishing a client-centred integrated service model to trial collaborative case management approaches to families with complex needs, to be piloted initially in one court registry and evaluated pending further roll out. Part of that trial should include the development of effective information sharing protocols.

2) In order to support the development of effective information sharing protocols, Council recommends the government clarify the confidentiality status of family dispute resolution intake assessments.
Recommendation 7: Case managed integrated services in the family relationships sector

To better address the complex nature of children’s disputes, the Australian Government consult with Family & Relationship Services Australia with a view to further developing a case managed integrated services approach attached to family dispute resolution and men's behaviour change programs across the whole family relationship services sector.

Recommendation 8: Self-represented litigants with complex needs

The Australian Government explore the viability of piloting a Counsel Assisting model in cases with self-represented litigants and allegations of family violence or other safety concerns for children.

Recommendation 9: Support services for families in rural and regional areas

Given the needs in regional areas for access to courts and court services;

1) The Australian Government provide funding to the family courts and family relationship services for improved technology to enable more video appearances and conferencing.

2) The Australian Government provide increased funding to the Federal Circuit Court and state and territory magistrates courts to enable the Federal Circuit Court to expand its regional circuits.

Recommendation 10: Collaboration between family law and state and territory courts

The Australian Government explore through COAG or LCCSC the possibilities for increasing circuiting of Federal Circuit Court judicial officers and registry staff in state and territory magistrates courts, including specialist family violence courts and community justice centres.

Recommendation 11: Family violence competency

The ability of professionals working in the family law system to understand family violence dynamics be strengthened by training programs and, more specifically:

1) The Australian Government develop, in partnership with other stakeholders, a learning package for professionals working in the family law system that provides both minimum competencies and in-depth and technical content designed for a range of roles, including family dispute resolution practitioners, family report writers and family lawyers (including Independent Children's Lawyers).
2) There should be a specific family violence and child sexual abuse module in the National Family Law Specialist accreditation scheme at the examination phase, professional development phase and re-accreditation phase as a compulsory requirement of being accredited.

3) That Legal Aid Commissions across Australia should consider requiring their in-house lawyers as well all legal practitioners on their family law practitioner panels to demonstrate a sound awareness of family violence, trauma informed practice and an ability to work with victims of family violence.

Recommendation 12: Joint professional development

1) To ensure there is consistent and national training, the National Judicial College of Australia develop a continuing joint professional development program for judicial officers from the family courts and state and territory courts in which judicial officers preside over matters involving family violence to strengthen understanding of family law and family violence and the impact of trauma.

2) The Australian Government engage with relevant professional bodies within the child protection, family law and family violence systems with a view to encouraging collaboration in designing and delivering joint training opportunities aimed at strengthening cross-professional understanding.

Recommendation 13: Children’s views and experiences

1) The Australian Government establish a young person advisory panel to assist in the design of child-focused family law services that build on an understanding of children’s and young people’s views and experiences of the family law system’s services.

2) The Australian Government consult with children and young people as key stakeholders in developing guidelines for judges who may choose to meet with children in family law proceedings.

Recommendation 14: Family dispute resolution and confidentiality

1) The Australian Government consider ways to improve understanding among family dispute resolution practitioners of the nature of their confidentiality and admissibility obligations in order to reduce any perceived barriers to information sharing.

2) The word ‘imminent’ be removed from s 10H(4)(b) of the Family Law Act 1975.
3) The Australian Government clarify the admissibility status of family dispute resolution intake assessments.

Recommendation 15: State and territory courts exercising family law jurisdiction

1) The National Judicial College of Australia develop a continuing joint professional development program in family law for judicial officers from the family courts and state and territory children's courts and magistrates courts.

2) If the Australian Government accepts Rec 15.1, then Council recommends amendment of the *Family Law Act 1975* to increase the monetary limit for property division by courts of summary jurisdiction.

3) Council recommends an increase in Commonwealth funding to state and territory courts of summary jurisdiction to enable them to take on more family law work.

Recommendation 16: Aboriginal and Torres Strait Islander families

1) The Australian Government implement the recommendations made by the Family Law Council in its 2012 report *Improving the Family Law System for Aboriginal and Torres Strait Islander Clients*.

2) Part VII of the *Family Law Act 1975* be amended to provide for the preparation of Cultural Reports, which may be included in Family Reports for Aboriginal and Torres Strait Islander children where a cultural issue is relevant, and for the Family Report to include a cultural plan which sets out how the child’s ongoing connection with kinship networks and country may be maintained.

3) The Australian Government implement a process, including through amendments to the *Family Law Act 1975*, to support the convening of family group conferences for Aboriginal and Torres Strait Islander families in appropriate family law matters to assist informed decision-making in the best interests of the child, to allow them to be cared for within their own families and communities wherever possible, based on the Aboriginal and Torres Strait Islander Child Placement Principles.

4) The Australian Government consider a pilot of a specialised court hearing process in family law cases that involve an Aboriginal or Torres Strait Islander child to enhance cultural safety for Aboriginal and Torres Strait Islander families, including through the participation of Elders or Respected Persons who can provide cultural advice to the court in relation to the child or young person and a specially reconfigured courtroom design.
5) The Australian Government consult with Aboriginal and Torres Strait Islander representative institutions in the development of any reforms arising from Council’s work that affects Aboriginal and Torres Strait Islander children.

**Recommendation 17: Culturally and linguistically diverse families**

1) The Australian Government implement the recommendations made by the Family Law Council in its 2012 report *Improving the Family Law System for Clients from Culturally and Linguistically Diverse Backgrounds*.

2) The Australian Government ensure that workers from Culturally and Linguistically Diverse-specific services are incorporated into the development of any court-based and family relationship sector-based integrated services model as recommended by Council in Recommendations 6 and 7.

3) The Australian Government implement a process, including through amendments to the *Family Law Act 1975*, to support the convening of family group conferences for families from culturally and linguistically diverse backgrounds in appropriate family law matters to assist informed decision-making in the best interests of the child, to allow children to be cared for within their own families and communities wherever possible.

**Recommendation 18: Court support workers**

The Australian Government increase funding and resources to provide family violence trained court support workers, including workers from, or who have been appropriately trained to work with, Aboriginal and Torres Strait Islander and Culturally and Linguistically Diverse clients.

**Recommendation 19: Self-represented litigants and misuse of process**

1) The Australian Government commission research that would support an understanding of how and to what extent the intentional and unintentional misuse of legal processes, such as the request for subpoenas, and other agencies and services relevant to family breakdown (family law services and courts, the child support system, child protection systems and civil family violence protection order systems) occurs and how this may be prevented.

2) The Australian Government commission research that would support an understanding of the extent, experience and dynamics of self-representation in family law matters involving families with complex needs, including matters where there are family violence and mental health issues.
**Recommendation 20: Crossover cases**

The Australian Government commission research to examine the extent to which the client bases of state and territory police and justice systems overlap those of the family courts to support the development of strategies to respond to these cases more effectively.

**Recommendation 21: Consent parenting orders**

The Australian Government commission research to examine the dynamics of matters that resolve by consent, including the extent to which the arrangements consented to respond to any matters of risk that have been raised prior to the consent orders being made, and the extent to which orders made by consent are followed by further litigation.

**Recommendation 22: Legislative reform**

The Australian Government instigate a review of Part VII of the *Family Law Act 1975* with a view to supporting expeditious decision-making in matters involving risk to the child or other complex characteristics.
CHAPTER 1: INTRODUCTION

This report responds to terms of reference issued by the Attorney-General, Senator Brandis, in October 2014. The preamble to the reference makes clear that underpinning its questions is a concern to enhance the capacity of the family law system to address safety concerns for children associated with issues of family violence, substance abuse, neglect and/or mental illness. This concern reflects the growing research evidence that it is the families with a range of complex support needs that tend to engage with services in the family law system. Within this context, Council was asked to examine a number of possibilities and opportunities for improving responses to these families. These were:

(1) The possibilities for transferring proceedings between the family law and state and territory courts exercising care and protection jurisdiction within current jurisdictional frameworks, including any legal or practical obstacles to greater inter-jurisdictional co-operation.

(2) The possible benefits of enabling the family courts to exercise the powers of the relevant state and territory courts including children’s courts, and vice versa, and any changes that would be required to implement this approach, including jurisdictional and legislative changes.

(3) The opportunities for enhancing collaboration and information sharing within the family law system, such as between the family courts and family relationship services.

(4) The opportunities for enhancing collaboration and information sharing between the family law system and other relevant support services such as child protection, mental health, family violence, drug and alcohol, Aboriginal and Torres Strait Islander and migrant settlement services.

Council was also asked to report on any limitations in the data currently available to inform these terms of reference (terms of reference 5).

Council delivered an Interim Report to the Attorney-General on terms of reference 1 and 2 in June 2015. In that report, Council acknowledged the findings of the 2012 Survey of Recently Separated Parents, which showed that families with a history of family violence were much more likely than families without family violence concerns to use formal services such as lawyers, family dispute resolution and the courts to resolve their post-separation disputes. Council also noted the evidence of the significant extent to which the family law system’s modern workload involves families where there is a co-occurrence of risk factors affecting the child’s safety and development, including a combination of family violence and drug or alcohol dependency and/or serious mental illness.

Council identified two aspects of the current approach to family law matters that impede the protection of children in these cases. The first concerns the separation of courts and systems that deal with family law, child protection and family violence matters in Australia. The second concerns the growing disjunction between the private law orientation of the family
law system and the increasingly public law nature of its work, and the limited capacity of a
system designed to adjudicate between the proposals of separating parents to address the
complex support needs of children and families experiencing multiple forms of
disadvantage.5

1.1 Court system fragmentation

Council’s Interim Report noted the findings of a file analysis conducted by Victoria Legal
Aid (VLA), which highlighted the significant extent to which families with complex needs
tavel between the family violence and family law systems, and to a lesser extent between the
child protection and family law systems in Australia. These data also indicate that a common
pathway to the family law system for families with multiple legal needs is an application for
family violence protection orders in a state or territory magistrates court prior to seeking
parenting orders from a family court.6 Council’s work on the first stage of this reference also
indicated that compound proceedings are more likely to arise where a family has complex
support needs, and suggested that navigating multiple courts and systems poses a number of
significant challenges for families in this circumstance. These include:

- the need to re-litigate the question of risk in different courts with different decision-
  makers;
- the need for repeat interviews, with parents and children re-telling their stories to a
  new set of professionals;
- the stress for families associated with prolonged involvement in legal proceedings;
  and
- the uncertainty of the outcome regarding the child’s care and confusion about which
court has ultimate decision-making responsibility in relation to this question.7

In addition to these issues, stakeholders who participated in the first stage of Council’s
reference expressed concerns about the barriers to obtaining family law orders associated
with court hearing delays and the greater costs and formality of the family courts compared to
state and territory courts. The information provided to Council during that stage indicated that
the impact of these barriers is especially acute for Aboriginal and Torres Strait Islander
families who are in need of parenting orders. Council’s Interim Report also noted the
concerns raised in relation to these barriers when a protective parent or other family member
is advised to seek parenting orders that limit the child’s contact with the other parent as a
condition of the child protection department withdrawing its protective application.
Stakeholders noted the difficulties of obtaining orders for limited contact from the family
courts in the absence of evidentiary support from the child protection department, and that
this absence can result in children being left without the protection of family law orders that
limit their contact with a parent who poses a risk to their safety.

In light of this evidence, Council’s considered that state and territory children's courts should
be supported to exercise jurisdiction under the Family Law Act to make consent or interim
parenting orders when a child protection matter has been finalised and the children's court
(and the child protection department) is familiar with the family’s circumstances. In order to support this practice, Council recommended that ss 69J and 69N of the *Family Law Act*, which vest courts of summary jurisdiction with powers to make parenting orders, be amended to remove any doubt that children’s courts, however constituted, are able to make family law orders under Part VII of the *Family Law Act* in the same circumstances that are currently applicable to courts of summary jurisdiction.

Council also took the view that state and territory magistrates courts should be supported to exercise their family law powers where clients have parenting order needs, and expressed its support for the expansion of specialist family violence courts at the state level. Council recommended that judicial officers of children's courts and magistrates courts be supported to exercise their family law jurisdiction through amendments to the *Family Law Act* that:

- Provide a simplified decision-making framework for interim parenting matters, and
- Enable judicial officers to deliver ‘short form’ judgments in interim proceedings.

More generally, Council suggested the need to redevelop the justice system in a way that maximises its effectiveness for families with multiple and complex needs. In Council’s view, this redevelopment must:

- Ensure a client-centred design, with services that are comprehensible and accessible to families with multiple and complex needs;
- Provide timely responses to child safety concerns, including early assessment of risk and exposure to trauma;
- Support the use of flexible problem-solving approaches to clients’ needs, including the exercise by judicial officers of multiple jurisdictions where appropriate;
- Incorporate tailored services for specific problems and demographic groups, including dedicated case-managed responses to family violence and child abuse and specialised services for Aboriginal and Torres Strait Islander families;
- Employ a teemed approach, including integrated legal and support services; and
- Facilitate information sharing and collaboration across jurisdictions.

A list of the recommendations made by Council in its *Interim Report* is provided in Appendix C. Stakeholders’ responses to these recommendations are discussed in Chapter 7.

**1.2 The changing nature of the family law system**

Research published by AIFS since Council delivered its *Interim Report* confirms that a significant proportion of the family law system’s parenting dispute workload is characterised by family violence and other safety concerns for children. These data also demonstrate that for many families who use the family law system, particularly among those who appear before the courts or seek legal advice, these concerns co-occur with a cluster of problematic dynamics, such as drug or alcohol dependency and mental ill health. As Council noted in its *Interim Report*, this profile raises questions about the capacity for a private law system
focused on resolving disputes between separating parents to respond effectively to cases where the child’s safety is in issue and the parents have complex support needs.\(^{15}\)

One dilemma facing the family law system, and particularly the family courts, is the lack of any consistent process of identifying and assessing risk to the child when a family enters the system. A second problem concerns the lack of a systematic approach to ensuring that families with complex needs are connected to support services in a coordinated and case managed way. A third issue identified during Council’s work on this reference concerns the difficulties for decision makers where there are protective concerns for a child within the context of a system designed to determine disputes between parents.\(^{16}\) In such cases, the system’s private law orientation means that judicial officers are reliant on the parents themselves to adduce evidence to inform the court’s determination of the child’s best interests. As the (then) Justice Dessau noted about decision-making in such circumstances:

> Can a judge do so confidently only on the basis of what the parties want to bring forward? They may have axes to grind. Either or both may be vengeful or stuck in their different emotional history. Consciously or more likely sub-consciously, they may be allowing their own pain to obscure their vision of what’s best for their children. … [S]imply listening to what each party raises against the other may not result in the judge having the material he or she needs to decide the case well.\(^{17}\)

In its 2002 report, *Family Law and Child Protection*, Council noted that this approach offers considerable scope for the settlement of care arrangements that leave children at risk.\(^{18}\) This problem has only intensified since that time. The recent AIFS research indicates that family violence and other safety concerns for children are now pertinent to around half of the parenting matters in the family courts, and that such safety concerns often co-occur with other problematic issues such as substance misuse and parental mental illness.\(^{19}\) Coupled with this has been a considerable increase in the number of self-represented litigants in the family courts. More than half (52\%) of the family law trials in the Federal Circuit Court in 2014/15 involved at least one parent who was unrepresented, and in 20\% of these cases both parties were unrepresented. An even larger proportion (60\%) of matters in the Family Court of Western Australia involve parties to parenting cases who are unrepresented at the time, or within 1 month, of filing their application for or response to final orders.\(^{20}\)

Previous family law research has shown that cases involving unrepresented litigants are significantly less likely to contain the kind of evidence needed to determine matters involving child safety concerns – such as evidence of child protection notifications and family violence protection orders – than cases where the parties are represented or partially-unrepresented.\(^{21}\) Council also notes the growing recognition within the judiciary of the limitations of the adversarial method for resolving family disputes,\(^{22}\) particularly in systems where significant numbers of self-represented litigants make up large numbers of the users of that system.\(^{23}\)

It is important to note that Australia’s family law system has, since its inception, comprised elements that are at odds with the adversarial tradition. Even before the introduction of the
In 2006, judges of the family courts had remarked that the best interests of the child principle means that parenting cases cannot be strictly adversarial. For example, (the then) Justice Chisholm commented in *Re Lynette* in 1999:

> [I]t is well established that proceedings in relation to the best interests of children are not strictly adversarial. The wellspring for departure from a strictly adversarial approach to proceedings is found in the Court’s obligation to treat the best interests of the child the subject of proceedings as the paramount consideration.24

Reflecting this view, the Family Court of Australia was established to be a ‘helping court’25 that incorporated an in-house counselling service,26 separate legal representatives for children,27 and specialist judges selected for their suitability to deal with family issues.28 However, despite these (then) non-traditional elements, the original family law system provided few mechanisms for dealing with child safety concerns and family violence.29 Over the years since then the system has evolved to accommodate the increasing recognition that these issues are a common feature of its work. This includes:

- The 1998 development of the Magellan program, a coordinated multi-agency approach to the resolution of children’s cases involving allegations of serious harm to children that brings together the Family Court of Australia, the relevant state or territory child protection department and Legal Aid.30

- The 2001 development of the Columbus program in the Family Court of Western Australia, a holistic multi-disciplinary differential case management approach to addressing allegations of domestic violence, child abuse, child sexual abuse and family violence where there are inherent child protection implications.

- The 2006 introduction of the Less Adversarial Trial, a multi-disciplinary problem-solving approach in which proceedings are conducted informally, with a relaxed application of the rules of evidence,31 and where the judge, the lawyers and social science professionals work together to assist the parties to resolve their dispute.32

- The 2006 establishment of a network of Family Relationship Centres around Australia, which assist families to resolve disputes about the post-separation care of children without the need for litigation, and provide referrals to therapeutic services for parents and children.33

- The 2006 establishment of the Family Relationships Advice Line, which provides advice on parenting arrangements after separation, including about family violence and safety issues for children and parents.

- The 2012 introduction of a range of family violence amendments to the *Family Law Act*34 underpinned by a concern to ensure the ‘safety of children’ is the ‘top priority’
for the family law system, including a duty on the courts to take steps to identify risks of family violence and child abuse.

It is important to note that most families settle their post-separation arrangements without recourse to the legal system. However, the latest AIFS data highlight the fact that a significant proportion of the cases that do access the services of the family law system have features indicative of complex and problematic behaviours. Against this background, Council’s considerations of its terms of reference sought to build on the developments described above to further enhance the system’s capacity to respond to the needs of these families.

To support this work, Council conducted consultations and invited submissions from relevant organisations within and beyond the family law system, including family relationship services, child protection departments, commissions for children and young people, domestic violence services, drug and alcohol and mental health services, organisations that support Aboriginal and Torres Strait Islander families and people from culturally and linguistically diverse backgrounds, and the courts, practitioner associations, legal aid commissions and state law societies. Council also held a series of forums for stakeholders from these sectors to generate discussion of the issues in its reference. General forums were held in Perth, Toowoomba, Parramatta and Darwin. Council also convened a culturally and linguistically diverse-specific forum in Parramatta and a forum for Aboriginal and Torres Strait Islander organisations and individuals in Sydney. Council was also assisted in its consideration of the issues raised by terms of reference 3 and 4 by a Melbourne-based Working Group of professionals drawn from the various service sectors of the family law system. In addition, Council members benefitted from a meeting at the NJC in Victoria. A list of the submissions, consultations, forums and Working Group members is provided in the Appendices to this report.

The remainder of this report examines Council’s considerations of its terms of reference.

Chapter 2 commences by considering the submissions and consultations regarding the issues of risk identification and risk assessment in the family law system, including stakeholders’ proposals for improving current processes and practices.

Chapters 3 and 4 examine the information sharing aspects of terms of reference 3 and 4. Chapter 3 reports on stakeholders’ views about the disclosure of information by family dispute resolution services, while Chapter 4 reports on the opportunities for enhanced information sharing between the family law system and other relevant services, including the police, therapeutic services (such as family counselling and other mental health services), court ordered programs (such as post-separation parenting programs and men's behaviour change programs) and child protection departments.

Chapter 5 focuses on the collaboration-building aspects of terms of reference 3 and 4. This chapter explores the submissions and consultations regarding the opportunities for enhancing
collaboration between different service sectors, including between the family law system and mental health, drug and alcohol and specialist family violence services. It also examines the possibilities for developing case managed integrated services models for the family law system.

Chapter 6 examines stakeholders’ proposals for training and joint professional development to support cross-sector collaboration, build capacity to protect children and support families with complex needs, and provide a culturally safe environment for Aboriginal and Torres Strait Islander and culturally and linguistically diverse families.

Chapter 7 revisits terms of reference 2 by examining stakeholders’ views about Council’s interim recommendations and recent reports regarding collaboration and information sharing between the federal family courts and state and territory family violence and children's courts.

Chapter 8 addresses terms of reference 5, which asked Council to report on any limitations in the data currently available to inform these terms of reference. This chapter discusses the current research gaps in relation to cases that cross between state and territory courts and the federal family law system, the making of consent orders where child safety concerns have been raised, and self-represented litigants and family violence.

Chapter 9 sets out Council’s views and recommendations about these issues.
CHAPTER 2: IDENTIFYING & ASSESSING RISK TO CHILDREN IN THE FAMILY LAW SYSTEM

As noted in Chapter 1, the context for Council’s terms of reference is a policy concern to strengthen the family law system’s capacity to protect children from harm. In his 2009 *Family Courts Violence Review*, the Hon. Richard Chisholm concluded that central to achieving this goal is the development of ‘a process of scrutiny’ that ‘seeks to identify any risk that requires urgent attention.’ This view was also articulated in the submission from the Western Australian Commissioner for Children and Young People to this reference, which proposed that:

Identification of children and young people at risk and their families is the single most important aspect of being able to take appropriate action to protect these children.

Since the publication of Professor Chisholm’s 2009 report, a number of legislative reforms, screening tools and practice changes have been implemented to enhance the family law system’s capacity to identify and assess the level of harm to children. These include the passage of the family violence amendments to the *Family Law Act* in 2012 (discussed in Chapter 1), and the development of the Detection of Overall Risk Screen (DOORS) tool for use by family law system professionals. However, the recent evaluation of these developments by AIFS indicates that while these changes have led to ‘an increased emphasis on identifying family violence and safety concerns across the family law system,’ the development of effective screening and risk assessment approaches still ‘has some way to go’.

As outlined in Chapter 1, research by the AIFS has demonstrated that use of the family law system’s services is strongly associated with the experience of family violence, and this is often complicated by other sources of safety concern for children, including issues of parental mental health and/or substance abuse. Nevertheless, a recent survey of family law practices found that ‘close to three in ten’ surveyed parents who used the family law system reported not being asked about family violence or safety concerns for their children. Concern to improve the capacity of family law system professionals to identify and respond to threats of harm to children and parents was also a strong theme in the submissions received by Council and consultations and forum discussions with stakeholders it conducted during its work on this reference.

This chapter addresses these issues by first exploring the ways in which professionals and services within the family law system currently identify and assess risk to children in parenting matters. The second part of the chapter examines stakeholders’ concerns and views about the system’s current capacity for risk assessment and safety planning and the need for reform. This is followed in the final part of the chapter with a description of stakeholders’ proposals for change.
2.1 Current practices

Family dispute resolution services

Before proceeding to provide a dispute resolution service, family dispute resolution practitioners are required to conduct an intake assessment and be satisfied that family dispute resolution is appropriate.\(^{43}\) In conducting this assessment, Regulation 25(2) of the *Family Law (Family Dispute Resolution Practitioners) Regulations 2008* (Cth) provides that the practitioner must consider ‘whether the ability of any party to negotiate freely in the dispute’ is affected by any of the following matters:

- (a) a history of family violence (if any) among the parties;
- (b) the likely safety of the parties;
- (c) the equality of bargaining power among the parties;
- (d) the risk that a child may suffer abuse;
- (e) the emotional, psychological and physical health of the parties;
- (f) any other matter that the family dispute resolution practitioner considers relevant to the proposed family dispute resolution.

If, after considering these matters, the family dispute resolution practitioner is not satisfied that family dispute resolution is appropriate, he or she ‘must not’ provide family dispute resolution’.\(^{44}\)

As this provision indicates, the relevant assessment is a screening process for the purposes of determining the capacity of the parties to ‘negotiate freely’ in a family dispute resolution process. The point of the process is to allow family dispute resolution practitioners to discriminate between those clients who are able to safely and effectively participate in a family dispute resolution process and those who are not. For example, partners who have used intimidation and control in the past may be incapable of appropriately participating in a facilitated decision-making process in which the other party is expected to have equal contribution to the process and outcome.\(^{45}\)

However, the process envisaged by Regulation 25 of the *Family Law (Family Dispute Resolution Practitioners) Regulations 2008* does not require a comprehensive risk assessment that measures the likelihood and degree of future harm to children or parents,\(^{46}\) including the likelihood that any family violence that is already occurring will escalate.\(^{47}\) While some family dispute resolution services use a validated risk assessment tool for this purpose, Regulation 25 does not require this.\(^{48}\)

The family courts

A key mechanism used by the family courts to identify risks of harm to a child at an early stage is the notice of risk process. This process operates differently in the Family Court of
In each case the relevant notice allows for the provision of a summary of the acts or omissions that are alleged to constitute abuse and/or family violence, the facts alleged to constitute any risk of abuse and/or family violence, and the identification of relevant affidavit evidence in this regard. The Federal Circuit Court’s form also asks questions about mental illness, drug and alcohol abuse, serious parental incapacity and any other potential sources of harm to a child.

In each case, the completion of this form facilitates the court’s responsibility to take prompt action to protect the child whenever an allegation of risk is made. This includes making whatever orders are necessary ‘to enable appropriate evidence about the allegation to be obtained as expeditiously as possible’. It also includes a responsibility under s 67Z of the Family Law Act to notify the relevant state or territory child protection department of any risk of harm to the child. An obligation to notify the child protection authority also applies to court personnel who have reasonable grounds for suspecting a child has been abused or is at risk of abuse. In the case of the Federal Circuit Court’s form, the notice of risk process is also designed to address the court’s obligation under s 69ZQ of the Family Law Act to ask the parties to parenting proceedings about any risk of harm to their child or themselves.

The Federal Circuit Court’s decision to require the filing of a notice of risk with every application for parenting orders is described in its submission to Council as follows:

In order to address the need for more comprehensive risk screening in all parenting matters, the Federal Circuit Court introduced in January 2015 a compulsory Notice of Risk, which is required to be filed by every applicant and respondent in parenting proceedings.

The Notice of Risk asks a series of questions to which a ‘yes’ or ‘no’ answer is required. It is the Court’s experience that in response to a direct question parties will sometimes disclose allegations of risk, which they might otherwise be reluctant to volunteer. The questions in the Notice of Risk are not restricted to family violence and child abuse but include other allegations, which, if true, could pose a risk to a child or a party.
The Notice of Risk brings to the attention of the docket judge any allegation made which is relevant to the safety of a party or a child. Because it is required to be filed with every application or response, the risk issues are able to be identified on the first return date (or shortly thereafter if the respondent has not yet filed material). This facilitates early identification of risks and increases the capacity of the Court to make timely orders to address them.

Another court-based opportunity for identifying and assessing risk to children occurs following the first return date when a judicial officer may make an order under s 11F of the Family Law Act. This provision enables the court to order the parties (and the child) to attend a conference with an in-house family consultant, whose role is to assist and advise parties to parenting proceedings. These appointments, which are non-privileged/reportable, are intended to:

- identify risk factors, including risks associated with family violence, abuse, mental health, and substance/alcohol abuse;
- identify the issues in dispute;
- identify the potential for resolution/negotiation; and
- identify case management and referral options, which may progress the matter.

The court may also ask the family consultant to provide it with a written or oral memorandum of advice ‘as to the services appropriate to the needs’ of the child or parties. This process, therefore, provides an opportunity for a family consultant to both conduct a risk assessment and assess the therapeutic and other support service needs of the parties and child. The latter assessment (of service needs) is conveyed to the court. In contrast, the risk assessment component of the s 11F process does not form part of the court file or the evidentiary material that is put before the court. Rather, it is a preliminary step that is used by family consultants to screen for family violence to inform their subsequent discussions with parents.

It is important to note that the s 11F assessment process is necessarily time-limited, generally taking around three to four hours. This includes meeting with the parties and child(ren) and presenting an oral or brief written report to the court. In order to accommodate the time-pressured nature of this process, the Child Disputes Services section of the courts has developed a dedicated child-focused screening tool for this purpose. The Family Violence Screening Tool is a derivative of the Mediators Assessment of Safety Issues and Concerns (MASIC) screening tool that was designed in the United States in 2010 to provide a structured risk assessment tool tailored to the context of divorce mediation processes. Based on the success and clinical validation of MASIC, the CDS worked with its authors to develop a court-specific risk assessment tool for use in Australia. The Family Violence Screening Tool, which was piloted at the Melbourne and Brisbane registries of the Family
Court in 2015, adapted and refined the MASIC tool to identify coercive and controlling behaviours and to distinguish between violence before and after separation. Importantly, its behaviourally specific questions are expressly designed to test for risks to children. It also uses a simpler questionnaire that reflects the truncated nature of the s 11F process, which can be completed in 10 minutes. A copy of the online questionnaire is sent to the parties to complete as an online risk screen prior to the s 11F conference with the Family Consultant. The risk screen can be filled out manually or on a smartphone in the waiting room if need be.

**Family lawyers**

The *Family Law Act* does not require legal practitioners to conduct a risk assessment before advising clients in parenting matters. However, the *Best Practice Guidelines for lawyers doing family law work*, prepared by the Family Law Section of the Law Council of Australia, exhorts practitioners to consider the safety of clients and any children when working with family law clients.\(^59\) In order to support this process, a risk screening tool known as the Family Law Detection of Overall Risk Screen (DOORS) was developed by Relationships Australia SA in 2010.\(^60\) Like the assessments conducted by family consultants and family dispute resolution practitioners, DOORS is not designed to provide forensic evidence for litigation purposes, but rather to assist family law professionals to detect and respond to wellbeing and safety risks to children and parents.

The recent AIFS survey of family law practices revealed evidence of ‘a mixed reception and limited take up’ of this tool among family lawyers,\(^61\) with just over half of the surveyed practitioners indicating that they rarely or never used DOORS.\(^62\) The AIFS report also noted concerns expressed by some lawyers about the extent to which the use of DOORS represents a workable approach to risk assessment in day-to-day legal practice.\(^63\) While some lawyers described DOORS as useful or helpful, other practitioners were more mixed in their reflections on this tool, with some nominating impractical aspects and difficulties associated with its application in practice.\(^64\) These included concerns that the tool is ‘too complex,’ as well as suggestions that its use is not consistent with the ‘candid and robust Q and A that any good lawyer should do with their client’.\(^65\) The report also highlighted concerns among lawyers about the extent to which conducting a risk assessment is compatible with the advocacy responsibilities of lawyers, in particular raising questions about whether the administration of DOORS attracts legal professional privilege and whether the application or non-application of risk assessment processes by lawyers might raise issues relating to professional indemnity.\(^66\)

The submissions and consultations for Council’s reference reflected views consistent with these findings. In particular, a number of practitioners and legal services expressed a strong desire for a simpler risk identification tool. Similar sentiments were aired at the forums that Council convened across Australia.
**Family report writers**

Section 62G(2) of the *Family Law Act* empowers the family courts to ‘direct a family consultant to give the court a report on such matters relevant to the proceedings as the court thinks desirable’. These reports may be prepared by an in-house family consultant or by a private practitioner engaged by the family courts pursuant to Regulation 7 of the *Family Law Regulations 1984*. The preparation of family reports is governed by the Australian Standards of Practice for Family Assessment and Reporting (the Standards), which were published in 2015. These provide minimum standards and best practice guidelines for family assessments in family law matters that are applicable to both court-based family consultants and family report writers engaged under Regulation 7.

The Standards require family report writers to make reasonable efforts to obtain sufficient information from the parties, documents or collateral sources to assess the level and nature of risks to the welfare of the children, including conducting an ‘expert family violence assessment’ and an assessment of risks in relation to any concerns about child abuse and neglect, mental illness and drug or alcohol misuse. While the Standards are not binding, a judicial officer may determine that significant variation from them invalidates or reduces the evidentiary weight of an assessment. However, the Standards also provide that family assessors ‘should only express opinions in areas where they are competent to do so, based on adequate knowledge, skill, experience and qualifications’. While ongoing professional development is provided to family report writers by the Child Dispute Services section of the family courts, there is presently no requirement that report writers have family violence training.

### 2.2 Stakeholder views and concerns

The material provided to Council revealed widespread stakeholder concern across a range of service sectors and agencies about the capacity and need for early identification and assessment of risk to children within the family law system. A common theme in the submissions was a view that the current approach presents both limited and disconnected opportunities for early risk assessment. Within this broad framework, the submissions, consultations and forum discussions revealed a number of different issues of concern, which are described below.

**The need for specialist family violence expertise**

A prominent theme in the submissions and forums was a concern to incorporate the expertise of specialist family violence services into family law system risk assessment processes. Stakeholders who raised this issue referred to the importance of incorporating an understanding of this sector’s experience and understanding of family violence dynamics and trauma-informed practice into the family law system to support early risk assessments, including the expertise of family violence services for Aboriginal and Torres Strait Islander.
and culturally and linguistically diverse clients. These submissions also noted the importance of incorporating an understanding of the tactics of abuse that can undermine the child’s attachment to the non-abusive parent, including the psycho-social and health impacts and support needs associated with exposure to family violence for children, as well as an understanding of the ways in which legal processes may be used to continue abuse after separation.

The need to recognise cumulative harm to children

Some stakeholders expressed concerns about the scope for decision-making about children’s care needs to focus on recent and imminent risks to the child’s safety at the expense of recognising the cumulative impact of trauma on children over time. This issue is discussed in the Department of Health and Human Services’ Child Development and Trauma Guide, which describes this concept as referring to:

... the effects of patterns of circumstances and events in a child’s life, which diminish a child’s sense of safety, stability and wellbeing. Cumulative harm is the existence of compounded experiences of multiple episodes of abuse or ‘layers’ of neglect. The unremitting daily impact on the child can be profound and exponential, covering multiple dimensions of the child’s life.

This concept is recognised in Victoria’s child protection legislation, the Children Youth and Families Act 2005, which requires the courts and practitioners working with vulnerable children to consider ‘the effects of cumulative patterns of harm on a child’s safety and development’.

The need for culturally safe risk assessment processes

In its Interim Report, Council noted the evidence that Aboriginal children in Australia are significantly more likely to be the subject of care and protection orders, and to be living in out of home care, than non-Aboriginal children. Submissions received during the first stage of Council’s work on this reference suggested that greater access to the family law system could offer a way to reduce the incidence of Aboriginal and Torres Strait Islander children being removed from family and country. However, Council’s previous work on these issues and the materials made available during the present reference indicate that the high rates of child protection intervention in Aboriginal families may inhibit parents from approaching the family law system for assistance.

More particularly, a number of submissions received from Aboriginal and Torres Strait Islander organisations noted a fear among Aboriginal families that disclosing the existence of family violence in family law proceedings may lead to the child protection authorities being notified and their children being removed. These submissions reflect previous research, which suggests that many Aboriginal and Torres Strait Islander people do not readily
distinguish between family law and child protection systems because of a sense that the two are intimately linked. In recognition of these barriers, Aboriginal and Torres Strait Islander services and agencies stressed the importance of risk assessment processes being designed with consideration for Aboriginal child rearing, kinship and cultural practices.

The recent work of the Judicial Council on Cultural Diversity suggests that a similar fear of children being removed into the care of the child protection system may affect the reporting patterns of women from migrant and refugee communities.

The importance of ‘whole-of-family’ risk assessments

Another strong theme in Council’s consultations, as well as in recent reports, concerned the need to include all members of the family in the risk assessment process, in order to gain an accurate picture of the risks. The potential dangers of partial and disaggregated risk assessments were illustrated during the coronial inquest into the death of Luke Batty. While a number of agencies had conducted risk assessments with Luke and his mother, the Coroner, Judge Gray, noted that none had engaged with Luke’s father. Judge Gray concluded that this failure had ‘removed a valuable potential source of information’ for assessing the level of risk to Luke.

Similar concerns were expressed during Council’s consultations. In particular, a number of stakeholders noting the dangers of risk assessments based solely on interviews with one parent, who may underestimate the risk of harm to children or be tentative about raising concerns. Others pointed to difficulties in gaining an accurate picture when individual risk assessments with each family member are undertaken by different agencies, each of which may apply a different risk assessment tool or approach.

The importance of safety planning to accompany risk assessments

Alongside and underpinning the issue of ‘whole-of-family’ risk assessments was a concern to ensure timely risk assessments so that a safety plan can be prepared and therapeutic assistance can be provided without delay where needed. A number of stakeholders pointed to the critical importance of early trauma recovery responses for children who have been exposed to family violence and identified problems with the lack of routine safety planning and follow up procedures when risk is identified in family law matters. One area where this was noted in particular concerned the absence of any obligation on the part of family dispute resolution practitioners to provide follow up support and referrals when safety concerns for children are identified during the intake screening process. As one family dispute resolution practitioner noted in relation to this point, ‘It’s a real weakness in the system’.

Council’s consultations suggest that while family dispute resolution providers are not funded to prepare a safety plan following when family violence or other safety concerns for child are identified, many services consider it ‘good practice’ to do so. Council notes that a number of
family dispute resolution providers regularly prepare a safety plan in such circumstances, while some will go further and also make referrals to legal advisers, counselling services and men's behaviour change programs.

A number of stakeholders pressed the importance of the ‘whole-of-family’ approach to risk assessment (discussed above) to safety planning, to ensure that all family members are linked to support services. In addition, stakeholders emphasised the importance of having a single service with responsibility to coordinate or ‘case manage’ the family’s engagement with different services. This issue is discussed further in Chapter 5.

**Ensuring risk assessment is an ongoing process**

Another theme in the material provided to Council centred on the dynamic nature of risk, and the importance of the family law system being able to track changes in risk levels as families move between services, rather than being a one-off event at the first point of contact. 88 This issue, which was raised by a number of different stakeholder groups, reflected a range of different concerns. One basis for concern was raised by legal services and specialist family violence services, and reflected their experience that victims of violence will often ‘not disclose the true level of violence’ at a first meeting with a professional service. 89 Another reason for concern was raised by support services for women from culturally and linguistically diverse backgrounds, who challenged the idea that women should not have to re-tell their story to each service. This submission reflected experience of working with clients from ‘narrative based cultures,’ who ‘can feel their voices are not heard if information is shared and they don’t have a chance to tell their story’, and a concern that a failure to ask about risk may diminish the person’s trust in the service. 90

**The importance of professional training to support risk identification**

Another issue that was raised during Council’s work on this reference concerned the potential for an over-emphasis on screening tools at the expense of professional training in risk assessment and family violence. 91 For example, Women’s Legal Service Tasmania proposed that an experienced, well-trained workforce is more important to the task of identifying risk than the use of any particular tool:

[W]e believe it is dangerous to become overly reliant on screening tools. They are no substitute for training and professional instinct. Using tools, either electronically or in paper form can also distance you from your client. Clients may believe that you see their issue as one that can be reduced to ticks on a piece of paper, and this can prevent them providing you with insight and particular details. It can also hinder the relationship of trust building, and clients may be reluctant or not believe you need or want to know about any behaviour that occurs in the future after the tool is complete… 92
The submissions on this point recommended that any reforms to risk assessment processes within the family law system be accompanied by appropriate training, including ongoing and (culturally appropriate) education on family and domestic violence to support practitioners – including non-family law system professionals such as health care providers – to identify risk to children.93

2.3 Suggestions for reform

Stakeholders offered a range of suggestions for addressing these concerns. These included:
- The development of a simplified risk identification tool for family law practitioners;
- Increased use of s 11F assessments by the family courts;
- The employment of embedded workers from specialist family violence services to undertake risk assessments and safety planning;
- The establishment of a family safety service within the family law system;
- The development of a nationally consistent risk assessment framework; and
- The imposition of an extended duty of care for family dispute resolution practitioners when safety concerns are identified.

Enhancing risk identification processes for lawyers and the courts

As noted above, reflecting the findings of the AIFS survey of family law practices, the consultations and forum discussions revealed a concern among some lawyers about the usefulness of existing risk assessment tools (such as DOORS and the Common Risk Assessment Framework (CRAF) in Victoria) in the context of a busy legal practice, and a desire for a less complex tool designed specifically for use by legal practitioners to support the identification of cases that should be referred to a specialist family violence service for a thorough risk assessment. This included concerns to ensure the development of culturally safe risk identification processes that take account of the diverse and particular experiences and impacts of violence on Aboriginal and Torres Strait Islander women and children and the reasons for the reluctance of Aboriginal clients to report family violence.94

Council’s consultations also canvassed the need for the development of a targeted form for use in the family courts that could both identify risk factors and relevant sources of information about risk. For example, the Family Law Practitioners Association of Queensland proposed adding a requirement to the Federal Circuit Court’s current notice of risk form that applicants for parenting orders indicate whether the police have ever attended with respect to a family violence incident, as well as asking the parties to

… divulge their medical history (including their current treating practitioners, prescriptions, medication, current or previous diagnoses of mental health issues/admissions), their criminal history (covering offences related to children, violence, drugs and alcohol) and their previous involvement in any domestic violence proceedings.
This approach resembles the C100 Form in England, which must be completed by anyone seeking or responding to an application for parenting orders under the *Children Act 1989*.95

**Increased use of family consultants and section 11F assessments**

As discussed in section 2.1 an existing mechanism by which a risk assessment can be made by the family courts is via an order for a s 11F family assessment conference with a court-based Family Consultant. A number of submissions commended this mechanism for risk assessment and safety planning, with several suggesting it should be better resourced to support families with complex needs. For example, several submissions from Western Australia proposed that the model used by the Family Court of Western Australia, ‘which allocates a family consultant to each child-related case,’ should be adopted more widely to facilitate early risk assessment and evidence gathering.96 This was supported in particular by Aboriginal and Torres Strait Islander organisations, which praised the opportunity this process affords for referrals to culturally appropriate support services for children and parents.97 Victoria Legal Aid’s submission proposed similarly that facilitating an early risk assessment by a family consultant would enhance the protection of parents and children at risk of further abuse or family violence through timely referrals to essential services for families. VLA suggested that under-resourcing of family consultants currently prevents the use of this process in all cases that could benefit from them, and proposed increased resourcing of the s 11F process to enable better-targeted use of these reports.98

**Embedding family violence specialists in the family courts**

The work of specialist family violence services, the majority of which are located in the state system, is underpinned by an understanding of the characteristics, dynamics and impacts of family violence and expertise in assessing and managing risk.99 A core function of these services is to undertake risk assessments and safety planning that is responsive to the safety needs of victims of family violence, including children.100 A number of stakeholders suggested incorporating this expertise more directly into the family law system through the creation of an embedded worker or specialist court-based position.101 Women’s Legal Service Victoria (WLSV), for example, proposed that a practitioner from a specialist family violence service be embedded in each court registry in the same way as occurs in state family violence courts (discussed further in Chapter 5). WLSV proposed that these professionals could conduct risk assessments, prepare safety plans and make referrals to appropriate support services where safety concerns for children are identified in the Notice of Risk form.

Council’s consultations suggest that this process could also be used to identify relevant sources of information that might assist the court in making decisions about the child’s safety and best interests, such as information about:

- current and previous intervention orders and any breaches, and any reports of breaches, of these orders;
- current or previous involvement with child protection and the children's court; and
• current or previous police investigations or charges or criminal proceedings.

A family safety service

A second possibility for strengthening capacity and improving the consistency of (early and ongoing) risk assessments across the family law system was raised in the submission from No To Violence, the peak body for men's behaviour change programs in Australia. This proposal centred on the development of ‘an independent Cafcass-type’ family safety service to provide assessments, advice and support to practitioners, clients and the courts. Like the proposal for court-based family violence specialists, this proposal would involve leveraging the expertise of state-based specialist family violence services.

Cafcass is the Children and Family Court Advisory and Support Service, a non-government organisation with statutory responsibility for safeguarding the welfare of children and providing advice to the family courts in family law proceedings in England and Wales. When an application for parenting orders (known in England as ‘child arrangements orders’) is made under the Children Act 1989, the application and its accompanying C100 form (noted above) are sent to a specialist screening unit within Cafcass, which undertakes an initial safeguarding check of police and relevant local authority (child protection department) records, including records of domestic violence call outs and criminal convictions, to see if the child or family is known to these agencies. A Cafcass officer will also conduct a risk assessment with the parties and prepare a short report for the court.

Council understands that this practice is similar to that of family consultants in the Family Court of Western Australia, who liaise with child protection and police to provide information to the court about a family’s engagement with these systems when a matter is first brought before the court. During Council’s consultations, a number of stakeholders suggested that the Cafcass model could be adapted for the Australian family law system to create an independent family safety service within the non-government sector that could support the family courts and legal practitioners by providing expert family violence-based risk assessments and safety planning where risk factors are identified in the Federal Circuit Court’s notice of risk or by the client’s lawyer.

It is worth noting a similar initiative in Canada in this context. The Integrated Threat and Risk Assessment Centres (I-TRAC) in Alberta conduct professional risk assessments upon referral from the courts and police. I-TRAC provides risk assessment and safety planning services, including reports for both family law and child protection matters, and referrals to external agencies such as mental health and drug and alcohol services.

A common risk assessment framework

In his report on the death of Luke Batty, the Victorian State Coroner identified as problematic the lack of a ‘uniform approach to risk assessment’ across the different agencies that had
dealt with Luke’s family. However, Judge Gray also noted that ‘reform in this area must recognise the various roles each organisation has within the system,’ and that ‘a common approach to risk assessment does not necessarily mean there is one risk assessment tool that has to be universally applied’.

The majority of submissions to Council’s reference reflected views consistent with this approach. For example, Relationships Australia and Mackillop Family Services did not support the imposition of particular risk assessment tool across the family law system, arguing that the different parts of the system conduct risk assessment and screening processes for different purposes, and that a single tool could not adequately serve these multiple functions. For example, the Principal of the Child Dispute Services section of the family courts pointed to the need for a tailored risk assessment tool with a ‘laser focus’ that can be used in a very short time frame for the purposes of s 11F conferences (discussed above).

However, during the course of its work on this reference, Council also heard about some advantages enjoyed in states and territories that have adopted a common risk assessment tool for use across different services. For example, participants at the forum convened in Darwin spoke enthusiastically about the Northern Territory’s Family Safety Framework, which is used by a network of integrated services for responding to high-risk family violence cases in that jurisdiction (discussed further in Chapter 5). The Family Safety Framework relies on the use of a common risk assessment form and an in protocol by all participating agencies. Those stakeholders who attended Council’s forum suggested that the use of a common tool had helped to support consistent identification of risk through a shared understanding of family violence, its indicators, dynamics and consequences. Practitioners also emphasised the importance of training and professional judgement, but noted that the tool provided a valuable guide or checklist to prompt workers to consider relevant factors in each case. The forum discussion also highlighted the information sharing benefits associated with agencies using a common risk assessment tool and language.

On the other hand, the submissions and consultations more generally suggested the need to be cautious about elevating the importance of the risk assessment tool itself, which simply produces data to be assessed, above the professional judgment and training of the practitioner applying it. This point is consistent with the view of personnel from several professional groups within the family law system who were surveyed for the AIFS report on family law practices, who stressed that procedural risk assessment tools are ‘no substitute for practice-based wisdom, careful questioning and personal engagement with clients, informed by highly developed professional judgement’.

While most stakeholders who engaged with Council’s reference agreed that different risk assessment tools should be available to accommodate the specific purposes of different services, there was also significant support for the development of a common framework (as distinct from a common tool), as a way of generating consistency of practice and establishing a shared language and understanding of risk. Several submissions offered ideas for progressing the development of such a framework.
The submission from Family & Relationship Services Australia (FRSA) recommended that the first step in this process should involve the identification of ‘tools that are currently used across the system’, followed by the production of ‘a translation matrix that enables all those within the family law system to understand and compare the respective ratings of each tool’.

In contrast, WLSV suggested that a common framework ‘be developed in consultation with the family violence sector and risk assessment specialists’, and that responsibility for its development sit with an organisation such as Australia’s National Research Organisation for Women’s Safety (ANROWS). Another suggestion came from the Western Australian Commissioner for Children and Young People, who commended the work of ARACY in developing the ‘Common Approach’ – formerly called the Common Approach to Assessment, Referral and Support (CAARS) – which is used by practitioners in the early childhood, family support, mental health, family relationships and health and education sectors to identify and assess family and child support needs in a whole-of-family way.

Council notes that the Victorian Royal Commission into Family Violence (the Royal Commission) and the COAG Advisory Panel on Reducing Violence against Women and their Children (the COAG Advisory Panel) have each recently recommended the development of a national family violence risk assessment framework for use by state, territory and Commonwealth government and non-government service providers. The COAG Advisory Panel proposed that this framework should comprise ‘two key parts’:

1. **Mandatory core content:** this should be a nationally agreed set of indicators which build on current best practice and which all risk assessments carried out nationwide should take into account. These indicators should include:
   - perpetrator risk
   - other risk factors (for example, disability, immigration status, financial risk, risk of lateral violence)
   - risks of technology-facilitated violence
   - guidance on appropriate referral pathways for women and their children, and perpetrators.

2. **Flexible content:** this should include content that ensures risk assessments can be flexible and tailored to different jurisdictions, sectors, services and contexts.

Many of the submissions received by Council described features that particular agencies and services regarded as being necessary components of a common risk assessment framework. These included the following principles:

- **It must screen for risk of harm to children**
  There was widespread agreement that any framework for risk assessment that is to be used for the family law system must be designed to address risk to children, with some stakeholders noting that risk assessment tools used in other contexts, such as CRAFT in Victoria, tended to be adult-focused and limited in their capacity to identify risk to children. Some stakeholders also suggested that children and young people should be consulted as part of the risk identification process where appropriate.
• **It must recognise that risk is dynamic**, and have the capacity to identify risk in changing circumstances and family dynamics.\(^{114}\)

• **It must be family violence informed.**\(^ {115}\)

• **It must be culturally responsive**, with consideration for child rearing, kinship and cultural practices of Aboriginal and Torres Strait Islander peoples and people from culturally and linguistically diverse backgrounds.\(^ {116}\)

• **It must be empirically evaluated.**\(^ {117}\)

• **It should be suitable for use by clients with low levels of literacy**, including using plain language and not being overly lengthy.\(^ {118}\)

**Family violence risk assessment training**

The recent report of the Royal Commission into Family Violence has highlighted the importance of family violence training for all key workforces where family violence is a core concern.\(^ {119}\) This issue was also pressed in a number of submissions to Council’s reference, which pointed to the need for family violence risk assessment training for family law system professionals given the centrality of family violence to matters involving safety concerns for children. As noted above, many stakeholders argued that in order for any risk assessment tool to be effective, the professionals administering it must be adequately trained in how to use it. For example, MacKillop Family Services noted in this respect that:

> Significant skills are required to undertake risk assessment, requiring sensitivity, empathy and competence. Resourcing is required to ensure family law services staff is appropriately skilled.\(^ {120}\)

A number of submissions emphasised the need to invite judicial officers to participate in this training. The critical importance to children’s safety of enhancing the capacity of judicial officers to assess risk was highlighted in the recent coronial report on the death of Luke Batty. In the course of this report, the Victorian State Coroner, Judge Gray, described the central role of Magistrate Goldsbrough in assessing the risk of harm to Luke during the hearing of an application to amend a family violence protection order. The Coroner said:

> She [the Magistrate] was the one who first identified the red flag of danger in reflecting on Ms Batty's evidence of the knife incident. She was prescient in her assessment of the case. She was highly attuned to the emerging risks. …

> Magistrate Goldsbrough's evidence was that she took a broad approach to the issue of risk and she did not confine her assessment to the harm alleged in the application, but rather to risk of any future family violence ... Magistrate Goldsbrough's Inquest
evidence was that she asked questions of Ms Batty based on her experience and advised that [she] was 'fortunate enough to be experienced enough to ask the right questions'.

The importance of family violence risk assessment training for judicial officers was also the subject of comment by the COAG Advisory Panel in its Final Report.122

Safety planning and referrals to services

Another theme that arose during Council’s work on this reference was the importance of preparing a safety plan for families where risk has been identified, and making referrals to appropriate services. As one forum participant noted, the critical issue for practitioners once risk is identified is ‘how do we put a safety net around the case’.123 In particular, stakeholders emphasised the need to link children and parents to support services at an early stage, especially where cumulative harm is identified. These might include therapeutic and trauma recovery services – such as services to strengthen the recovery of the mother-child relationship in the aftermath of family violence124 – legal assistance services and men’s behaviour change programs.

The Practice Guide for specialist family violence workers that accompanies the CRAF in Victoria, provides that:

Safety planning is an essential professional step to undertake after the risk assessment has been done by a specialist family violence worker.125

The CRAF Practice Guide outlines a number of minimum requirements for a safety plan for victims where a risk of family violence has been identified. These include:

- the contact numbers for a family violence organisation (if not already linked into such a service), other emergency contact numbers, and the identification of a safe place to go if in danger;

- the identification of a friend or neighbour who can assist in an emergency, the identification of a way to contact the emergency support person, and a plan to get to a safe place; and

- access to cash money and quick access to important documents.126

The CRAF Practice Guide also provides a list of sample questions to help elicit information from clients about relevant contact and support people, including questions about safe times to make phone contact.

A number of stakeholders raised particular concerns about safety planning for women and children from Aboriginal and Torres Strait Islander and culturally and linguistically diverse communities. Council notes that the CRAF guidance contains dedicated safety planning
questions that are designed with the needs of women and children from Aboriginal and Torres Strait Islander communities and culturally and linguistically diverse backgrounds in mind. However, stakeholders also emphasised the importance for clients from these groups to be connected to a worker from a culturally specific specialist family violence service with whom ‘they can establish trust’, and for safety planning to include referrals to culturally appropriate support services and programs, including culturally safe counselling services and culturally appropriate healing-focused behaviour change programs for Aboriginal men who have used violence. These issues are discussed further in Chapters 5 and 6.
CHAPTER 3: INFORMATION SHARING BETWEEN FAMILY DISPUTE RESOLUTION SERVICES AND THE FAMILY COURTS

Terms of reference 3 asked Council to report on the opportunities for enhancing information sharing between the family courts and family relationship services. This chapter builds on the discussion of risk assessment in Chapter 2 by examining the possibilities for enhancing access to information held by family dispute resolution providers. Its discussion canvasses the potential for changes to the current rules governing confidentiality and inadmissibility of disclosures made during family dispute resolution and to the form of s 60I certificates issued by family dispute resolution practitioners. It also examines the status and capacity for the sharing of intake assessments conducted by family dispute resolution services.

3.1 Family dispute resolution services and confidentiality

The 2015 AIFS evaluation report indicates that around one-quarter (25.6%) of surveyed parents who had used a family dispute resolution service in 2014 held current safety concerns for themselves and/or their children, while around three-quarters (73.7%) of this cohort reported issues of emotional abuse. Other sources suggest the proportion of family dispute resolution matters that involve a history of family violence may be much higher than this, and that dealing with family violence is ‘core business’ for family dispute resolution services. Given this profile, a family dispute resolution service may be an important source of evidence to assist a court’s assessment of the level of risk to a child in having contact with a parent if the matter proceeds to litigation following engagement with the service.

As noted in the previous chapter, family dispute resolution practitioners are required to conduct a screening assessment before proceeding to provide a dispute resolution service. Where a case is assessed as not appropriate for family dispute resolution, the matter cannot proceed to dispute resolution. In such cases the family dispute resolution practitioner may issue the parties with a s 60I certificate to this effect. Data cited in the AIFS Evaluation of the family violence amendments shows that in 2013-14, 6,549 applications for final orders in children’s matters nationally (out of a total of 14,826 applications) were filed with a s 60I certificate.

However, the 2015 AIFS Evaluation of the 2012 family violence amendments shows that many disputes involving safety concerns and/or family violence may proceed to dispute resolution. Some of these may find their way to court at a later date, either because the matter does not resolve or because one or both of the parties is no longer happy with the agreed arrangements. A question that arises in relation to this situation concerns the extent to which family dispute resolution practitioners are able to share information about disclosures made during the dispute resolution process that might assist the courts or other services to determine the level of risk to a child’s safety.
This issue is governed by ss 10H, 10J and 67ZA of the *Family Law Act*. These sections provide as follows:

**s. 10H Confidentiality of communications in family dispute resolution**

(1) A family dispute resolution practitioner must not disclose a communication made to the practitioner while the practitioner is conducting family dispute resolution, unless the disclosure is required or authorised by this section.

(2) A family dispute resolution practitioner must disclose a communication if the practitioner reasonably believes the disclosure is necessary for the purpose of complying with a law of the Commonwealth, a State or a Territory.

(3) A family dispute resolution practitioner may disclose a communication if consent to the disclosure is given by:

   (a) if the person who made the communication is 18 or over - that person; or

   (b) if the person who made the communication is a child under 18:

      (i) each person who has parental responsibility (within the meaning of Part VII) for the child; or

      (ii) a court.

(4) A family dispute resolution practitioner may disclose a communication if the practitioner reasonably believes that the disclosure is necessary for the purpose of:

   (a) protecting a child from the risk of harm (whether physical or psychological); or

   (b) preventing or lessening a serious and imminent threat to the life or health of a person; or

   (c) reporting the commission, or preventing the likely commission, of an offence involving violence or a threat of violence to a person; or

   (d) preventing or lessening a serious and imminent threat to the property of a person; or

   (e) reporting the commission, or preventing the likely commission, of an offence involving intentional damage to property of a person or a threat of damage to property; or

   (f) if a lawyer independently represents a child's interests under an order under section 68L--assisting the lawyer to do so properly.
Section 10J of the *Family Law Act* deals with admissibility of communications made in family dispute resolution. It provides as follows:

**s 10J Admissibility of communications in family dispute resolution and in referrals from family dispute resolution**

(1) Evidence of anything said, or any admission made, by or in the company of:

(a) a family dispute resolution practitioner conducting family dispute resolution; or

(b) a person (the *professional*) to whom a family dispute resolution practitioner refers a person for medical or other professional consultation, while the professional is carrying out professional services for the person;

is not admissible;

(c) in any court (whether or not exercising federal jurisdiction); or

(d) in any proceedings before a person authorised to hear evidence (whether the person is authorised by a law of the Commonwealth, a State or a Territory, or by the consent of the parties).

(2) Subsection (1) does not apply to:

(a) an admission by an adult that indicates that a child under 18 has been abused or is at risk of abuse; or

(b) a disclosure by a child under 18 that indicates that the child has been abused or is at risk of abuse;

unless, in the opinion of the court, there is sufficient evidence of the admission or disclosure available to the court from other sources.

(3) Subsection (1) does not apply to information necessary for the practitioner to give a certificate under subsection 60I(8).

(4) A family dispute resolution practitioner who refers a person to a professional (within the meaning of paragraph (1)(b)) must inform the professional of the effect of this section.

Section 67ZA, which applies to a range of family law system professionals, provides that where a family dispute resolution practitioner ‘has reasonable grounds for suspecting that a child has been abused, or is at risk of being abused, the person must, as soon as practicable, notify a prescribed child welfare authority of his or her suspicion and the basis for the suspicion’.135
As these provisions indicate, there are a number of exceptions to the general rule that a family dispute resolution practitioner must not disclose a communication made during the family dispute resolution process. These include:

- A statutory obligation to immediately notify the relevant child protection authority if the practitioner has ‘reasonable grounds for suspecting that a child has been abused, or is at risk of being abused’;
- Permission to disclose communications made during family dispute resolution where the person consents to this or the practitioner believes disclosure is necessary to protect a child from a risk of physical or psychological harm;
- Permission to disclose communications in order to prevent ‘a serious and imminent threat to the life or health of a person’ or ‘the likely commission of an offence involving violence or a threat of violence to a person’;
- Permission to disclose information to an Independent Children's Lawyer who has been appointed for a child if it would assist the lawyer to represent the child’s interests in family law proceedings.

Section 10J of *Family Law Act* also provides that disclosures made during family dispute resolution are admissible in court if the disclosure ‘indicates that a child under 18 has been abused or is at risk of abuse’.

In recent years a number of commentators have called for these provisions to be amended to allow family dispute resolution practitioners to share information about disclosures of family violence made during family dispute resolution that do meet the requirements of the present exceptions in the *Family Law Act*, and/or to amend s 60I certificates to allow family dispute resolution practitioners to ‘flag’ any risk concerns they have when issuing a certificate that family dispute resolution is not appropriate. More recently, there have been calls for the sharing of screening assessments between services that work with families, including family dispute resolution providers.

These issues are discussed in turn below.

### 3.2 Expanding the legislative exceptions to confidentiality

In his 2009 *Family Courts Violence Review*, the Hon. Richard Chisholm considered that the capacity of the family courts to protect children ‘would almost certainly be enhanced if it has access to relevant information held by external agencies’.\(^\text{136}\) This included family dispute resolution services. In light of this view, Professor Chisholm recommended the federal government consider amending the confidentiality provisions of the *Family Law Act* so that information held by family dispute resolution services that is relevant to identifying risk to a child could be made more readily available to the courts.\(^\text{137}\)

A number of submissions took a similar view and supported legislative change to broaden the circumstances in which services may disclose information revealed during family dispute
resolution to the courts, either for evidentiary or case management purposes. Supporters of change envisaged flow-on benefits to victims of family violence via a reduction of trauma associated with repeated risk assessments, as well as benefits to the courts in having information to support the assessment of risk in interim hearings.

However, many stakeholders from both the legal and family dispute resolution sectors did not support reforms to relax the confidentiality and/or admissibility rules. The reasons for this position encompassed a number of different concerns.

A key reason for opposing reforms to the confidentiality provisions involved concerns about the potential negative impact of such changes on the willingness of parties to engage in family dispute resolution. A number of the submissions to this effect noted that these services provide an important opportunity for parents who have experienced family violence to achieve safe parenting arrangements outside the adversarial process of litigation, and that assurances of confidentiality can be critical to effective practice in such cases. Several legal and family dispute resolution services expressed concern that without the protection of confidentiality, victims of violence may not feel safe to engage in family dispute resolution. More particularly, these stakeholders noted that in their experience, the confidentiality of the process often encourages parties to disclose information they have not previously felt comfortable disclosing, which is essential to the risk screening process. For example, Relationships Australia Canberra, Legal Aid WA and VLA submitted that a relaxation of the confidentiality provisions in the Family Law Act could lead to a lack of trust in the family dispute resolution process. As VLA expressed this concern:

It is VLA’s experience that the confidentiality of the FDR process may encourage parties to disclose information they have not previously felt comfortable disclosing. These disclosures are essential to the FDR risk assessment process. The information obtained determines the appropriateness of progressing with FDR and if so, the safety planning required to enable FDR to progress safely. Changes to confidentiality provisions may result in parties failing to raise safety concerns. This could expose parties and their children to further risk of harm if the matter progresses to FDR when it is unsafe or otherwise inappropriate to do so.

Others were concerned that broadening the exceptions to confidentiality could inhibit admissions of unsafe behaviours by parents, which is a pre-condition to any behavioural change. For example, Women’s Legal Service Victoria submitted that:

Mediation exists as a non-prejudicial form of dispute resolution. It allows parties to disclose allegations of family violence and for such allegations to be recognised. Safety concerns can be discussed in a safe environment by parties and their lawyers. Removing the confidentiality of this process can limit a party’s willingness to engage in a meaningful way in negotiating and reaching a resolution. It can diminish trust and make parties wary of admitting to past behaviour and agreeing to change behaviour.
Another primary concern among those who opposed changes to the confidentiality rules was that such a move would fundamentally change the nature of family dispute resolution. As Relationships Australia submitted:

We do not support any reduction in the rules of admissibility currently applying to mediation and family counselling. Confidentiality in the therapeutic context is a cornerstone of service delivery and effective practice. In Family Dispute Resolution (FDR), confidentiality is also a pillar on which it is founded. Watering down of the confidentiality provisions applying to these services to allow for an exchange of information between family relationship services and the family courts is likely to negatively impact on the integrity of the therapeutic service provision. It will also negatively impact on the openness of discussions that are needed to facilitate the resolution of disputes for the vast majority of separated couples who access these services, but never proceed to court.

Concerns were also raised about the potential for further abuse of parents and children if disclosures are shared with the courts.141 These submissions argued that the current provisions are working adequately to protect children, and noted that family dispute resolution practitioners routinely make reports to child protection authorities where child safety concerns arise,142 as they are obliged to do where they have reasonable grounds for suspecting that a child is at risk of abuse.143 In light of this practice, several stakeholders suggested that efforts to enhance the quality of information about risk to children should focus on improving information sharing between child protection agencies and the family courts (discussed in Chapter 4), rather than bypassing the child protection system.144

A number of stakeholders also suggested that disclosures made by parties can usually be sourced from the parties themselves via the completion of a notice of risk when filing their application for orders.145 According to some stakeholders, this is particularly the case since the changes to the Federal Circuit Court Rules in January 2015, which require each party to a parenting application to complete and file a notice of risk in every case. For example, the Federal Circuit Court noted in its submission that as a result of this change, obtaining information from family dispute resolution services ‘is no longer pressing’ for the courts.146 This view was also evident in submissions from legal aid commissions, which noted that other services generally provide stronger sources of evidence to support their work, and in the submission from the FRSA, which noted that the exception for Independent Children's Lawyers is little used in practice.

Others suggested that a broadening of the confidentiality exceptions could open the floodgates to subpoenas, with little evidentiary benefit to the courts. For example, VLA noted that ‘the information provided by a parent during family dispute resolution is not proof that there is a risk to the child’,147 while the FRSA expressed concerns that legislative change might nevertheless see family dispute resolution services receive a significant increase in subpoenas for litigation purposes.
Some submissions pointed out that the current confidentiality exceptions already allow family dispute resolution practitioners to share information where they have safety concerns for a child. As noted above, the current provisions permit a practitioner to disclose information where he or she believes that disclosure is necessary to protect a child from a risk of physical or psychological harm. Stakeholders suggested that the real problem may be that many family dispute resolution practitioners are unaware of the extent to which they are already permitted to share information because of the complexity of the legislation, and proposed that a better solution would be to support a culture of information sharing through improved training for practitioners (and other therapeutic service providers) about the exceptions to their confidentiality obligations. This suggestion was supported more generally in many submissions through concern to ensure that information sharing by services is supported by ‘training, advice and support’ to practitioners who work in relevant agencies.

On a related note, some stakeholders were troubled by the prospect of an amendment to the law in the absence of research evidence to support the assumption that parties fail to include in their affidavit material disclosures of family violence made during dispute resolution. These stakeholders argued that any change in the law should not occur without evidence that the current laws governing confidentiality of family dispute resolution are impeding the ability of the courts to assess risk. In a similar vein, the FRSA submission noted the need for research into the potential impact on family dispute resolution practices of a change to the confidentiality rules.

Finally, many stakeholders offered suggestions for alternative measures to support the gathering of information and assessment of risk to children by the family courts. These included:

- a greater use of s 11F assessments (described in Chapter 2),
- the employment of out-posted specialist family violence services workers within the family courts to undertake risk assessments (discussed in Chapter 2),
- the provision of training for judicial officers in family violence risk assessment (discussed in Chapter 2),
- the employment of co-located child protection practitioners and police liaison officers within the courts (discussed in Chapters 4 and 6),
- training for family dispute resolution practitioners and other providers of therapeutic services in understanding their confidentiality obligations and the exceptions to these (discussed in Chapter 6), and
- the establishment of a national database for the sharing of family law, children's court and family violence court orders (discussed in Chapter 7).

### 3.3 Flagging risks on section 60I certificates

As noted in Chapter 2, where following the screening assessment required by Reg. 25 of the *Family Law (Family Dispute Resolution Practitioners) Regulations 2008*, a practitioner is not satisfied that family dispute resolution is appropriate, family dispute resolution cannot
proceed and the practitioner must issue a certificate under s 60I(8) of the *Family Law Act* to this effect.\(^{151}\) This might be the case, for example, where the assessment indicates that a partner who has ‘used intimidation and control in the past may be incapable of appropriately participating in a facilitated decision-making process,’ or because a partner who has been the victim of family violence may be traumatised by their experience of intimidation and control to such an extent that they ‘cannot safely participate’ in family dispute resolution.\(^{152}\) However, the reasons for the practitioner’s decision will not be evident on the face of the certificate.

Because of this, some commentators have in the past suggested the need for a mechanism that would allow family dispute resolution practitioners to ‘flag’ the existence of safety concerns to the courts. On the other hand, others have argued that the ‘not appropriate’ category of s 60I certificates should, of itself, be understood as a signal that safety concerns exist sufficient to trigger a risk assessment by the courts.\(^{153}\)

During its consideration of the present reference, Council received a large number of submissions related to this issue. Some stakeholders were supportive of changes to s 60I certificates to flag the existence of family violence, or even to allow family dispute resolution services to provide some form of additional information about the reasons for the ‘not appropriate’ conclusion.\(^{154}\) However, a survey of its members conducted by FRSA indicated that opinions within the sector are divided about this question: half of FRSA survey respondents felt that more information should be included (such as why mediation was not successful), while the other half felt that no changes should be made. Similarly, a survey of its legal practitioners conducted by Legal Aid NSW found that 43% considered that more information from family dispute resolution services should be provided on s 60I certificates, while 57% did not.

Reflecting the views canvassed in submissions to the 2010 family violence inquiry by the Australian and NSW Law Reform Commissions, a number of organisations raised concerns about the potential negative effects of changes to certificates that would convey reasons for the dispute resolution provider’s assessment. These included concerns that providing information about risk on a certificate that goes to both parties may expose victims of violence to further risk of violence,\(^{155}\) including children,\(^{156}\) and could inhibit the disclosure of violence to family dispute resolution professionals.\(^{157}\) Several stakeholders also offered the view noted in the Australian and NSW Law Reform Commission’s report, *Family Violence – A National Legal Response*, that additional information is unnecessary as a ‘not appropriate for family dispute resolution’ certificate should, of itself, operate as a signal to the court to investigate risk issues.\(^{158}\)

A number of stakeholders offered suggestions for reforms that sought to address the concerns about heightened risk to victims of family violence associated with providing additional information on s 60I certificates. The Family Law Practitioners Association of Queensland suggested that rather than providing additional information, s 60I certificates could include an additional ‘tick box’ category that would allow practitioners to indicate that a notification of
risk has been sent to the relevant child protection authority. Several other stakeholders, such as the Family Law Section of the Law Council of Australia, proposed modifications to the certificate to allow family dispute resolution practitioners to provide case management recommendations to the court, such as whether an Independent Children’s Lawyer should be appointed or whether a family report should be ordered, or to recommend courses or services that could assist the parties. These suggested reforms would not breach a party’s confidential discussions and would not require any amendment to the current Family Law Act provisions.

3.4 Screening assessments

A third issue concerns the possibility of sharing screening assessments conducted as part of the intake process for family dispute resolution. The former Victorian State Coroner, Judge Gray, raised the issue of sharing risk assessment information in his report on the death of Luke Batty, where he noted in relation to Luke’s family that there had been

… an absence of effective information sharing between services and there was no comprehensive family violence risk assessment undertaken and shared. The risk assessments that were undertaken by the agencies in relation to Ms Batty and Luke were performed in ‘silos’ and relevant information was not shared between agencies. None of the services shared its risk assessment with any other service.

In response to his concern about the implications of this for Luke’s safety, Judge Gray recommended the Victorian government ‘identify legislative or policy impediments to the sharing of relevant information, and remove such impediments’, so that all relevant agencies ‘are able to share relevant information in relation to a person at risk of family violence’. The report of the Royal Commission into Family Violence also notes that the sharing of risk assessment information has the potential to increase victim safety, improve case management and coordination, reduce the need for victims to re-tell their stories, and increase the accountability of perpetrators. The Royal Commission has recommended the enactment of dedicated family violence information sharing legislation in Victoria (discussed in Chapter 4).

Reflecting similar concerns, two submissions to Council’s reference proposed that family dispute resolution services should be able to share their screening assessments with the courts where they have safety concerns for a child or parent.

However, in keeping with the view espoused by many stakeholders that there should be no change to the current provisions regarding confidentiality and inadmissibility of disclosures, there was also some strong opposition to this proposal. For example, the submission from the
FRSA noted in relation to its survey of members that:

… all respondents were of the view that particular aspects of counselling and FDR should remain confidential (ie intake assessment, case file notes). VLA also opposed any proposal to remove the confidentiality protections from intake processes, noting that ‘during the assessment interview, a party will often seek assurances that the information collected is protected by confidentiality’. VLA expressed particular concern that any incursions into the confidentiality of intake assessments could ‘result in parties failing to raise safety concerns’ during the screening process. Council also notes that the joint submission from the Magistrates’ Court of Victoria and the Children's Court of Victoria proposed that risk assessments conducted by support agencies should not be shared without client consent.

A number of submissions noted that it remains unclear whether intake assessments conducted by family dispute resolution providers are covered by the Family Law Act’s confidentiality provisions. This uncertainty stems from the 2010 decision in Rastall & Ball. In this case, Riethmuller FM (as he then was) ruled that:

The confidentiality protection in s 10H relates to ‘a communication made to the practitioner while the practitioner is conducting family dispute resolution’ (emphasis added). The prohibition on admissibility in s 10J relates to ‘anything said, or any admission made, by or in the company of … a family dispute resolution practitioner conducting family dispute resolution’ (emphasis added). The sections also provide a number of very limited exceptions which are not relevant to this matter. The words of the provisions make clear that the protections that those provisions offer the parties and family dispute resolution practitioner are only engaged when the family dispute resolution practitioner is ‘conducting family dispute resolution’.

… That is, to put it more colloquially, the Family Law Act ‘cone of silence’ only descends after an assessment by an approved person, and only covers the specific process then conducted by an approved person.

On the basis of this reasoning, his Honour found that the relevant intake assessment information was not confidential under s 10H of the Family Law Act and was not inadmissible under s 10J of the Act.

In their submissions to Council, several organisations called for clarification of this issue. The Family Law Council has previously written to the Attorney-General about this matter, seeking an amendment to clarify that intake assessments are included within the definition of family dispute resolution. Council was concerned at that time that a lack of confidentiality may inhibit disclosure of information that is needed for family dispute resolution services to assess risk to parties. A number of other organisations and commentators, including NADRAC, have also supported the characterisation of intake assessments as an integral part of the family dispute resolution process on this basis.
CHAPTER 4: ACCESS TO INFORMATION FROM OTHER SERVICES

The terms of reference asked Council to report on the opportunities for enhancing the flow of information between the family law system and a range of relevant services. The importance of information sharing to the success of coordinated service delivery for families with complex needs is discussed in the next chapter. However, many of the submissions that Council received about information sharing focused on the litigation stream of the family law system, and on the evidentiary needs of the courts in cases involving safety concerns for children and families with complex needs. This included discussion of the capacity for the family courts to access information about the parties held by particular services, including family dispute resolution services, post-separation parenting programs, therapeutic treatment services (such as family counselling, mental health and drug and alcohol counselling services), men’s behaviour change programs, child protection departments and police. This chapter focuses on stakeholders’ views about this aspect of information sharing.

The importance of gathering evidence to support allegations of risk of harm to a child is reinforced by AIFS research conducted in 2007. This study found that without such evidence, allegations of child abuse or family violence appeared to have little effect on court outcomes.\textsuperscript{171} However, as noted by Council in its 2002 report, \textit{Family Law and Child Protection}, the private law nature of family law proceedings means that when concerns about child safety are raised in parenting disputes, the issue of the child’s protection can ‘become a matter for the parents to prove or disprove on their own’.\textsuperscript{172} This circumstance can leave considerable scope for arrangements to be made that leave children at risk. The potential for this is heightened in cases in which one or both parties do not have legal representation during the hearing. As described earlier in this report, more than half of the parenting matters in the Federal Circuit Court and the Family Court of Western Australia involve at least one party who is not represented.

It is important to note (as described in Chapter 1) that there are a number of qualifications to the general principle that the gathering of evidence to inform decision-making by the family courts is the responsibility of the parties. For example, judicial officers have power under s 69ZW of the \textit{Family Law Act} to make an order in child-related proceedings that requires a prescribed State or Territory agency to provide the court with documents or information related to child abuse or family violence. The prescribed agencies for this purpose are child protection departments and the police. Federal Circuit Court registrars also have power to issue a subpoena on their ‘own initiative’ to obtain necessary evidence from particular services.\textsuperscript{173} However, the usual approach in family law matters relies on the parties and their legal representatives to gather evidence to put before the court.

Against this background, this chapter examines the opportunities for enhancing the flow of information to the family courts from these services, and the possible mechanisms for achieving this. The chapter is in four parts. The first section summarises stakeholders’ views
and approaches to the sharing of information by different services with the family courts. The second section provides an overview of existing state-based legislative schemes for the sharing of information about family violence protection orders and domestic violence threats. The third section examines stakeholders’ views about the provision of information to the family courts by specific service types, including the police, therapeutic services (such as counselling and mental health services), court ordered programs (such as post-separation parenting and men's behaviour change programs), and child protection authorities. The final section of the chapter looks at the question of who should have responsibility for gathering evidence to put before the court when there are child safety concerns and the parties are unable or unwilling to do so.

### 4.1 Stakeholder approaches to information sharing

Support for information sharing to achieve safe outcomes for children was a strong theme in the submissions received by Council. This view reflects the priorities of the National Framework for Protecting Australia’s Children 2009-2020 and the Second Action Plan of the National Plan to Reduce Violence against Women and their Children 2010-2022, each of which contain action items designed to strengthen responses to violence against women and children through the sharing of information. The submissions also reflected a recognition that deciding what arrangements are in a child’s best interests can be challenging for the family courts ‘when relying on the parties to provide the best available information’, and that gathering evidence to support a parent’s claims of safety concerns for the child can be especially difficult for unrepresented parties.

However, the submissions also revealed that for many stakeholders, their support for sharing information with the family courts is contingent on the nature of the service and the conditions of entry. Overall, stakeholders exhibited a concern to ensure the development of ‘a culture of appropriate information sharing’ based on ‘clear guidelines’ in which the child’s safety and best interests is the guiding consideration. However, underpinning many of the submissions was a concern about how to ensure that all relevant information is available to support the court’s assessment of risk to children while also protecting the privacy and therapeutic needs of children and parents who need care and treatment.

As this suggests, many stakeholders were of the view that informed consent must be the cornerstone of any information sharing in relation to therapeutic services, and stressed the need to be mindful of the client’s privacy interests and the potential adverse impact on help-seeking behaviours in this context. Some also raised concerns about the possibility for the sharing of disclosures made to therapeutic services to compromise the client’s safety, and/or expressed reservations about the way in which information from therapeutic services might be used to cause harm or re-victimise parents or children who have experienced family violence in the context of an adversarial litigation process. In contrast, stakeholders envisaged scope for access to information from certain services – such as men's behaviour change programs and post-separation parenting programs – without the client’s consent
4.2 Family violence information sharing schemes

A number of jurisdictions in Australia have enacted dedicated family violence information sharing legislation that permits identified agencies to share information in order to support integrated responses to high-risk family violence cases. A description of the integrated family violence responses themselves is provided in Chapter 5.

One such scheme is contained in Part 13A of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW). This legislation allows the disclosure of ‘personal information and health information’ about ‘threatened’ and ‘threatening’ persons (the victim and perpetrator of family violence) by relevant state agencies and services where they believe on reasonable grounds that a person ‘is subject to a domestic violence threat’. A ‘domestic violence threat’ is defined to mean ‘a threat to the life, health or safety of a person that occurs because of the commission or possible commission of a domestic violence offence’. Relevant agencies include government departments such as police, health, housing, child protection, education and justice (including local courts) and various community based organisations, including specialist family violence services, welfare, health, counselling, housing and accommodation and legal assistance services. The scheme provides for a central referral point, which may collect information that is shared pursuant to the legislation with partner agencies without the consent of the parties to the threat where it is necessary to lessen or prevent ‘a serious threat’ to the life, health or safety of a protected person and/or their children.

Similar legislative schemes exist in Western Australia and Tasmania in relation to police, child protection and a number of state public sector agencies. Section 70A(2) of the *Restraining Orders Act 1997* (WA) allows relevant partner organisations to share information about a person who is protected by a family violence protection order and/or their child where ‘the provision of such information is necessary to ensure the safety of a person protected by a violence restraining order, or the wellbeing of a child affected by such an order’.

There is currently no family violence information sharing legislation in Victoria to support its integrated family violence response, the Risk Assessment and Management Panels (RAMPs), which are noted in Chapter 5. In Victoria, RAMPs operate by way of information sharing protocols between the partner agencies. However, in its recent report to the Victorian Government, the Royal Commission into Family Violence has recommended the government amend the *Family Violence Protection Act 2008* (Vic) to create a specific family violence information-sharing regime.

South Australia also does not have family violence information sharing legislation to support
its Multi Agency Protection Service (MAPS) (discussed in Chapter 5). Instead, the South Australian Cabinet has issued an administrative instruction requiring government agencies and contracted service providers to comply with a set of Information Privacy Principles. Consistent with the administrative instruction, the South Australian Ombudsman has issued Information Sharing Guidelines for Promoting Safety and Wellbeing to provide a consistent approach to information sharing where there are threats to safety and wellbeing.\textsuperscript{190} Information sharing between partner organisations of the ACT Family Violence Intervention Program (FVIP) and the Gold Coast Domestic Violence Integrated Response (GCDVIR) in Queensland are guided by a protocol/MoU.

4.3 Stakeholder views about access to information from specific services

Police records

Many stakeholders regarded the police as an important source of information for family law matters that involve allegations of family violence or child abuse.\textsuperscript{191} However, the private law underpinnings of family law litigation and the large numbers of self-represented litigants can impede the production of police records in family law cases. At present police records can only be obtained via a subpoena process or an application under s 69ZW. Where documents are produced under subpoena, they can only be tendered by a party to the proceedings. The subpoena process is expensive, complicated and difficult to navigate for a victim of family violence, especially if they are unrepresented.

The submissions received by Council suggest that the key avenue for improving access to police records would involve greater use of s 69ZW orders by the family courts. Several stakeholders, including the Federal Circuit Court and Legal Aid Western Australia, noted that s 69ZW provides an easier mechanism for gathering information from child protection agencies and the police compared to the subpoena process. Section 69ZW of the \textit{Family Law Act} provides that a court may order a prescribed State or Territory agency to provide documents or information relating to:

- any notifications to the agency of suspected abuse of a child to whom the proceedings relate or of suspected family violence affecting the child;
- any assessments by the agency of investigations into a notification of that kind or the findings or outcomes of those investigations;
- any reports commissioned by the agency in the course of investigating a notification.

Police in each state and territory are currently prescribed agencies for the purposes of this section. However, with the exception of Western Australia, it seems that relatively few orders directed to police are made under s 69ZW.\textsuperscript{192}
In its submission, Legal Aid Western Australia noted that s 69ZW had been the catalyst for the development of effective memorandums of understanding between the family court, the police, the child protection department and legal aid in that state, which had, in turn, allowed the Family Court of Western Australia ‘to implement timely cost effective information sharing arrangements with WA police, particularly the provision of Criminal Records and Incident Reports’. This and other submissions suggested that central to facilitating access to police records by the family courts are the building of successful collaborative relationships.

Another suggestion, which was made by the Family Law Section of the Law Council of Australia and Women’s Legal Service Victoria, for obtaining information from police at interim parenting hearings would involve the development of a Practice Direction encouraging Federal Circuit Court registrars to issue subpoenas on their own initiative.

Before leaving this section, it is important to note that Women’s Legal Services NSW expressed concerns about access to police records by the family courts, noting that increased information sharing between police and the courts may dissuade victims from reporting violence to police out of fear that their confidential information might be shared with their former partner in family law proceedings.

**Therapeutic services**

The *Family Law Act* provides a general requirement for parties to attend family counselling before a parenting order is made. For the purposes of the Act, family counselling is defined as a process in which a family counsellor helps:

(a) one or more persons to deal with personal and interpersonal issues in relation to marriage; or

(b) one or more persons (including children) who are affected, or likely to be affected, by separation or divorce to deal with either or both of the following:

(i) personal and interpersonal issues;

(ii) issues relating to the care of children.

The *Family Law Act* attaches confidentiality and inadmissibility protections to communications made during family counselling in the same way as applies to family dispute resolution. The relevant sections of the *Family Law Act* provide as follows:

**s. 10D Confidentiality of communications in family counselling**

(1) A family counsellor must not disclose a communication made to the counsellor while the counsellor is conducting family counselling, unless the disclosure is required or authorised by this section.

(2) A family counsellor must disclose a communication if the counsellor reasonably believes the disclosure is necessary for the purpose of complying with a law of the Commonwealth, a State or a Territory.
(3) A family counsellor may disclose a communication if consent to the disclosure is given by:

(a) if the person who made the communication is 18 or over—that person; or

(b) if the person who made the communication is a child under 18:

(i) each person who has parental responsibility (within the meaning of Part VII) for the child; or

(ii) a court.

(4) A family counsellor may disclose a communication if the counsellor reasonably believes that the disclosure is necessary for the purpose of:

(a) protecting a child from the risk of harm (whether physical or psychological); or

(b) preventing or lessening a serious and imminent threat to the life or health of a person; or

(c) reporting the commission, or preventing the likely commission, of an offence involving violence or a threat of violence to a person; or

(d) preventing or lessening a serious and imminent threat to the property of a person; or

(e) reporting the commission, or preventing the likely commission, of an offence involving intentional damage to property of a person or a threat of damage to property; or

(f) if a lawyer independently represents a child's interests under an order under section 68L—assisting the lawyer to do so properly.

(5) A family counsellor may disclose a communication in order to provide information (other than personal information within the meaning of section 6 of the Privacy Act 1988) for research relevant to families.

(6) Evidence that would be inadmissible because of section 10E is not admissible merely because this section requires or authorises its disclosure.

Note: This means that the counsellor's evidence is inadmissible in court, even if subsection (2), (3), (4) or (5) allows the counsellor to disclose it in other circumstances.
s. 10E Admissibility of communications in family counselling and in referrals from family counselling

(1) Evidence of anything said, or any admission made, by or in the company of:

(a) a family counsellor conducting family counselling; or
(b) a person (the professional) to whom a family counsellor refers a person for medical or other professional consultation, while the professional is carrying out professional services for the person;

is not admissible:

(c) in any court (whether or not exercising federal jurisdiction); or
(d) in any proceedings before a person authorised to hear evidence (whether the person is authorised by a law of the Commonwealth, a State or a Territory, or by the consent of the parties).

(2) Subsection (1) does not apply to:

(a) an admission by an adult that indicates that a child under 18 has been abused or is at risk of abuse; or

(b) a disclosure by a child under 18 that indicates that the child has been abused or is at risk of abuse;

unless, in the opinion of the court, there is sufficient evidence of the admission or disclosure available to the court from other sources.

In addition to these provisions, legislation in a number of states and territories provides a general professional privilege that covers the relationship between a counsellor, psychiatrist, psychologist and their patient. These statutes provide that the court may direct that evidence not be adduced of a ‘protected confidence’ if it is satisfied that harm might be caused to the confider and the ‘nature and extent of the harm outweighs the desirability of the evidence being given.’ The court may take into account a range of factors when making this decision, including the probative value and importance of the evidence, the nature of the proceeding, the availability of other evidence, the nature and extent of the harm that may be caused and the public interest in preserving the confidentiality of protected confidences. A protected confidence means a communication made by a person in confidence to another person in the course of a relationship in which the confidant was acting in a professional capacity and when the confidant was under an express or implied obligation not to disclose its contents, whether or not the obligation arises under law or can be inferred from the nature of the relationship between the person and the confidant.

Stakeholders who made submissions in relation to the sharing of counselling records were concerned to maintain the current confidentiality protections so that parents and children who use these services have ‘a safe place’ to work through personal issues and vulnerabilities.
without fear the information will be shared with the courts unless the present exceptions apply. In general, as noted in the earlier part of this chapter, most stakeholders regarded the question of information sharing by counselling and mental health services with the family courts as one that should be subject to the person’s informed consent, and that no treatment records should be shared without it unless the legal exceptions to confidentiality apply. The key argument made here was that disclosing these records could negatively impact on the therapeutic relationship and on the treatment the client is receiving. A number of stakeholders also expressed concerns that counselling records may be used inappropriately in family law proceedings to stigmatise or harm a parent who is dealing with mental health issues, or as part of a pattern of intimidation and controlling behaviour.

Stakeholders’ concerns to protect the therapeutic relationship are supported by the Australian Medical Association guidelines, and in the scholarship about this issue. For example, Levy and his colleagues have argued that ‘confidentiality is instrumental for the development of a therapeutic relationship that facilitates optimal psychiatric care.’ According to this view, an absence of confidentiality may deter people from seeking treatment.

A further concern raised by Women’s Legal Services NSW relates to the use of subpoenas to access counselling records that are inadmissible in order to search for other admissible evidence. This submission proposed that subpoenas for therapeutic records should be subject to a prescribed decision-making process. Council notes in this regard the Family Court of Western Australia Practice Direction, which provides that a subpoena directed to a family counsellor will not be issued unless the subpoena ‘is accompanied by a letter certifying that reasonable efforts have been made’ to discuss the ‘possible consequences of compliance with the subpoena, including the impact on the family or children involved’ with the person against whom the subpoena is directed.

Professor Richard Chisholm has proposed clarifying the law on subpoenas in relation to family counselling records. Professor Chisholm suggests the following possibilities for reform:

- An absolute prohibition on the production of inadmissible documents.
- Summarise the general law on subpoenas in relation to a legitimate forensic purpose.
- Treating the question of subpoenaing material in the same way as admissibility of the material.

Stakeholder responses to obtaining information from drug and alcohol services were similar to the submissions made about mental health services. While stakeholders generally acknowledged that information regarding treatment or counselling for drug and alcohol related problems could assist decision-making in parenting matters, there was also significant concern that disclosure of a person’s participation in a treatment program harbours potential for stigmatisation and deterrence of help-seeking behaviours. This included a submission from the Alcohol and Other Drugs (AOD) Peaks Network, which represents over 400
(primarily) non-government agencies across Australia that provide a range of drug and alcohol services, who submitted:

Privacy is paramount for people seeking treatment for alcohol and other drug issues. Illicit drug dependence is recognised as the most stigmatised health condition in the world and this stigma is often cited as a barrier by people who wish to access assistance. … The development of an effective therapeutic relationship between AOD service providers and people in need of support is based on honesty, confidentiality and trust.

In light of this concern, AOD Peaks Network submitted that any sharing of information with the family law system must be based on the client’s informed consent to the release of the information.

**Court ordered programs**

In contrast to the position adopted by stakeholders in relation to treatment records from therapeutic services, the submissions regarding access to information from men’s behaviour change programs and post-separation parenting programs indicated strong support for the provision of a limited form of assessment report to the courts where a person has been ordered to attend. These stakeholders, which included relevant program providers, saw this approach as being consistent with the justification for court ordered attendance at these programs and as a way of both ensuring the accountability of parents who are referred to such programs and assisting the court to assess the client’s safe parenting capacity. As this suggests, underpinning the apparent distinction between stakeholders’ views about access to information from therapeutic services versus court ordered programs was an understanding of the centrality of confidentiality to the success of the former process, and the importance of accountability to children and partners with regards to the latter. More particularly, program providers noted that unlike counselling services, where privacy is critical to the therapeutic process, the primary method used to work with clients in men’s behaviour change programs and post-separation parenting programs involves a group course format.

A court may order a person to attend a post-separation parenting program as a condition of parenting orders made in contested proceedings where this course is in the best interests of the child, or where a parent has contravened a parenting order. In such circumstances, the post-separation parenting program provider is required to inform the court if the person ‘fails to attend the program, or a part of it’. However, evidence of anything said, or of any admission made, by a person attending a post-separation parenting program is not admissible unless it indicates that a child ‘has been abused or is at risk of abuse’.

A number of stakeholders suggested that providers of parenting order programs should be required to provide an observational and/or assessment report to the court where the court has ordered the person’s attendance. For some stakeholders, this was seen as an important
measure to ensure accountability for parents who are referred to such programs. However, while there was broad support for this idea, stakeholder views varied about the content of such reports – from providing details about the person’s attendance and the extent to which a person made a genuine effort to participate, to assessments of the person’s progress in relation to identified issues and recommendations for future handling of the matter. Some submissions suggested that in order to deal efficiently with the court’s need for information where a party has been ordered to attend a post-separation parenting program, a standard template could be developed by community organisations for this purpose. For example, some program providers suggested the family courts could develop a standard ‘tick box’ feedback form for use in family law matters, which would require the service to indicate whether the person attended each session and whether the person engaged effectively and participated positively in the process.

Men's behaviour change programs are another potentially important source of information for assessing the risks of parent-child contact. These programs, known as domestic violence perpetrator programs (DVPPs) in the United Kingdom and Stopping Violence Programs in Canada, work with men who have been violent and controlling towards a current or previous partner to enable acceptance of responsibility for their behaviour and attitudinal, behavioural and lifestyle choices that embrace non-violence. Recent research in the United Kingdom has identified significant reductions in the incidence of violence and abuse associated with men’s participation in these programs.

More recently, men's behaviour change programs in Australia have begun to incorporate a focus on enhancing men’s safe parenting of their children. This move reflects similar approaches in the United Kingdom, where the family courts are increasingly using such programs as a response to the problem of parents who have used violence wanting contact with their children. Council notes in this context that the COAG Advisory Panel has recently recommended that all Australian governments ensure that initiatives that ‘embed fathering’ in perpetrator programs be expanded.

Stakeholder submissions, including from No To Violence, the peak body for men's behaviour change programs in Australia, and program providers in the family relationship services sector, proposed that there is considerable potential for the family courts to make greater use of these programs. This includes the provision of assessment reports to the courts where a party to parenting proceedings is referred ordered to attend a program, including assessments that could assist the court in deciding what is a safe level of parent-child contact, particularly where the client has engaged in the fathering aspect of a program.

As noted above in relation to post-separation parenting programs, men's behaviour change programs providers suggested that the family courts could develop a standard ‘tick box’ feedback form for use in family law matters, which would require the service to indicate (1) whether the person attended each session and (2) whether the person engaged effectively and participated positively in the process. A possible third feedback question that was canvassed during Council’s consultations concerned the possibility of seeking the practitioner’s opinion.
about whether the client’s attitude to parenting had been positively affected by the course. However, some stakeholders foresaw problems in making clinical assessments of the impact of a course on a participant in the context of group courses. That is, some program providers indicated that there is not enough one-to-one engagement in men’s behaviour change programs for practitioners to make a good clinical judgment about this issue. On the other hand, others, such as No To Violence, took the view that program providers are well placed to advise the courts about ‘whether the person is making the changes required to provide safe, reparative and restorative parenting’.226

Council’s consultations indicate that, in contrast to the experience of perpetrator programs in the United Kingdom, men’s behaviour change programs in Australia currently receive very few referrals from the family courts. Council was also advised that current professional standards governing these programs in each state and territory constrain their ability to provide courts with observational or assessment reports in the absence of client consent. While these standards vary across jurisdictions, they generally provide that behaviour change programs must not provide a court with any information about a person’s engagement with the service other than a report that they attended and completed the program.227 No To Violence noted that this ‘block’ is currently in the process of being removed from professional standards for behaviour change programs in several states, in recognition of the importance of this sector’s expertise to decision-making about safe parenting for children. Council’s consultations with program providers indicate their strong support for this impediment to information sharing with the courts to be removed.

**Child protection departments**

As noted in the discussion of police records, s 69ZW of the *Family Law Act* provides a dedicated mechanism by which the family courts can request information from a state or territory child protection department. Where a child protection department has conducted an investigation of a notification of suspected abuse or has had previous involvement with parties to a parenting dispute, the family courts may make an order under this provision requiring the department to provide documents or information relating to that investigation or involvement. This includes information about risk assessments or outcomes of investigations and any reports commissioned by the department in the course of investigating a notification of child abuse.228

The material provided to Council, including submissions received from the Federal Circuit Court and several child protection departments, indicates that s 69ZW orders are used extensively for this purpose.229 The submissions also revealed a widespread view that this mechanism is operating effectively.230 Stakeholders noted in particular that s 69ZW provides a relatively streamlined way to obtain information compared to the subpoena process, which requires a party’s lawyer to issue a subpoena for production of the department’s file.231 This is reflected in information supplied to Council by the Queensland Department of Communities, Child Safety and Disability Services, which shows that the department
responded to around two-thirds (62%) of requests from the family courts in 2014-15 in under than 10 working days.

In its submission, Legal Aid WA outlined its experience of a number of benefits associated with the use of s 69ZW orders for obtaining child protection files in that state. It indicated that s 69ZW had been a catalyst for the development of an effective memorandum of understanding (MoU) between the Family Court of Western Australia, the Department for Child Protection and Family Support and Legal Aid WA in relation to families that have had contact with the child protection department. These are supported by a working group of representatives of these stakeholders who meet on a regular basis to manage practice and process issues arising from the MoU and by the co-location of a senior child protection worker at Family Court of Western Australia to facilitate its operation. The MoU also sets out the process to be followed to notify the court when the child protection department refers a party to the FCWA to seek parenting orders, in circumstances where the department has had involvement with the family and has information relevant to the Court’s consideration of orders that are in the best interests of the child. This involves an email notification that is sent to the Court’s Counselling and Consultancy Service, which forwards the information to the court registry and to the legal aid duty lawyer service at the court.

The Western Australian MoU also sets out the procedure for obtaining information from the child protection department pursuant to s 69ZW of the *Family Law Act* (and the equivalent provision in the WA legislation). This process is supported by a Practice Direction, which provides that leave of the court must be obtained to subpoena the department where documents have already been produced according to s 69ZW or where documents could be obtained under that section. The Chief Judge of the Family Court of Western Australia has also issued an Information Note to Practitioners listing documents that may be on a child protection file to facilitate more specific requests for information using s 69ZW. Legal Aid WA noted that these initiatives had enhanced the ability of the Family Court of Western Australia to achieve early assessments of risk to children. The use of this procedure has also seen a reduction in both the volume of subpoenas issued to the child protection department and the department’s workload.

Another practice innovation in relation to s 69ZW orders that was canvassed in several submissions is the Personal History Pilot, an initiative of the NSW Department of Families and Community Services (FaCS). This pilot involves the provision of personal histories of children held by FaCS to the Federal Circuit Court at an early stage so as to assist judicial officers when considering whether to make an order under s 69ZW. The Person History document contains basic information about the child (name, date of birth, gender, but no other identifying information such as address), any reports received by FaCS about the child and the status of those reports, and any assessments undertaken by FaCS and if any proceedings have been commenced, the status of those proceedings and any orders obtained including any aspects of parental responsibility that have been reallocated and to whom these have been reallocated. FaCS has undertaken to provide a Person History report within 48 hours (or within 2 hours for very urgent matters) of receiving a request.
Several stakeholders raised a further possibility for effecting broader information exchange between the family law and child protection systems. These submissions pointed to the information sharing scheme contained in Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) (which was discussed by Council in its *Interim Report*), and argued for extension of this model to other states and territories.\(^{235}\) This scheme authorises the NSW child protection department and the federal family courts to exchange ‘information relating to the safety, welfare or well-being’ of a child or young person if the information would assist the recipient organisation to ‘make any decision, assessment or plan’ relating to the safety, welfare or well-being of a child.\(^{236}\)

It is important to note that some stakeholders urged Council to adopt a cautious approach to the sharing of child protection department files in family law matters. Women’s Legal Service Victoria, Aqua Dreaming and a number of Aboriginal and Torres Strait Islander Legal Services expressed concerns about the potential negative impact on Aboriginal families of increased information sharing between the child protection and family law systems. These included concerns that information provided by a child protection department may not be compiled by practitioners with an understanding of Aboriginal and Torres Strait Islander culture or child rearing practices, and that the information supplied may be unsubstantiated, misleading and/or misinterpreted by the family courts. In a similar vein, several stakeholders submitted that child protection files offer limited value as a source of evidence about risk to children in cases where there is a protective parent, as child protection departments tend not to intervene in such cases.\(^{237}\) These submissions expressed concern that the department’s lack of follow-up investigation may be interpreted as an indication that no risk to the child exists.\(^{238}\)

### 4.4 Who should have responsibility for gathering information about risk?

As the material discussed above illustrates, stakeholders pointed to a number of sources of information that could assist the courts to assess and respond to allegations of risk. The submissions also point to a range of potential mechanisms for providing the family courts with evidence to support decision-making, including a greater use of s 69ZW orders and own-initiative subpoenas by the courts, the inclusion of family law services in state family violence information sharing schemes, and the development of memorandums of understanding between services and the courts.

A further issue raised by Council’s terms of reference concerns the question of who should have responsibility for gathering information from relevant sources where a parent is not able or willing to do so. This issue is a significant one for the family courts given the growing incidence of unrepresented parties and the large number of cases involving safety concerns for children. Three suggestions for addressing this issue were canvassed during Council’s work on this reference. These are discussed below.
Independent Children's Lawyers

One suggestion for assigning responsibility for evidence gathering would involve increased resourcing and use of Independent Children’s Lawyers. This solution was proposed by VLA as a way of leveraging existing structures within the family law system. As VLA noted, it is already standard practice for Independent Children’s Lawyers to seek information from the child protection department and police and to subpoena information from non-legal support services that a client is using, such as drug or alcohol counselling or a mental health service.

This submission speaks to the findings of the 2014 AIFS Independent Children's Lawyers Study report, which identified evidence gathering as one of the three dimensions of the Independent Children’s Lawyer role. The AIFS study reported that both Independent Children’s Lawyers and other professional stakeholders, and particularly judicial officers, placed significant emphasis on the importance of this function. The AIFS report notes that the majority of the professional participants in its study regarded the independence of Independent Children’s Lawyers as crucial to ensuring that information that has bearing on questions of risk is put before the court.

A family safety service

One of the suggestions for improving the risk assessment capacity of the family law system that was described in Chapter 2 involved a proposal for the establishment of ‘an independent Cafcass-type’ family law advisory service that would draw on the expertise of the specialist family violence sector. Cafcass (the Children and Family Court Advisory and Support Service) is a non-government organisation with statutory responsibility for safeguarding the welfare of children and providing advice to the family courts in family law proceedings in England and Wales. As described in Chapter 2, Cafcass officers conduct an initial safety check of police and child protection records when an application for ‘child arrangements orders’ is filed. These checks are statutorily supported and do not require the parent’s consent. Cafcass also has statutory authority to carry out any other checks it considers necessary based on the information provided by the parties in their C100 Form (noted in Chapter 2), which all applicants for child arrangements orders are required to complete. In addition to the questions that ask about safety concerns for the child, this form is designed to assist Cafcass to identify possible sources of information about risk. Cafcass provides a report of the information gathered from its safeguarding and telephone checks to the court, along with advice about case management of the matter (the safeguarding letter), which is filed prior to the First Hearing Dispute Resolution Appointment.

As part of their suite of responsibilities, Cafcass officers also make referrals to relevant services where the court makes a ‘contact activity direction’ under s 11A of the Children Act 1989. These are directions made at interim hearings that require a party to ‘take part in an activity that promotes contact with the child concerned’, such as a parenting program or domestic violence perpetrator program. Where such orders are made, Cafcass will monitor
the person’s compliance with the direction and prepare a report to the court about the person’s engagement with the relevant program. Cafcass is authorised to receive observational reports from relevant services and forward them to the court.

Counsel Assisting

A third proposal for addressing the limited capacity of self-represented litigants to gather and present relevant evidence to the courts in cases where safety concerns for the child have been identified centred on the use of a counsel assisting role. Counsel Assisting are employed to assist in a number of inquisitorial settings, including coronial inquests, Royal Commissions and boards of inquiry. However, there is surprisingly little scholarship or case law dealing with this role. While it is clear that it can be adapted according to the needs of the particular kind of inquiry, it is generally agreed that counsel assisting perform two key functions in inquisitorial proceedings: identifying and collating relevant evidence and presenting it to the commission of inquiry (the inquisitor) in a coherent and efficient way.

As this indicates, a central part of the role of counsel assisting is to gather all the relevant information necessary to enable the inquisitor to make his or her decision. This will involve using the powers of the commission of inquiry to identify and obtain evidence from relevant sources. As one person who regularly appears as counsel assisting in coronial matters described this part of the role, a Counsel Assisting ‘is in effect the chief investigator’ for the inquiry.

The second and related aspect of the counsel assisting role involves a responsibility to present the material to the inquiry in a way that assists the inquisitor to make decisions about the statutorily identified questions. This will include calling and examining witnesses independently so that the inquisitor does not have ‘to descend into the arena’. There is no requirement, however, for evidence to be presented orally, and it is not uncommon for uncontroversial facts to be reduced to a written statement and circulated to the parties. Because inquiries are not proceedings inter partes, counsel assisting may consult with the inquisitor in order to plan the issues that need to be addressed to support the inquisitor’s determination. A counsel assisting also has a responsibility to ventilate all issues relevant to the inquisitor’s decision so that parties have an opportunity to respond.

Stakeholders who supported the use of this role in parenting proceedings envisaged a number of benefits for the courts and families associated with this model in cases where there are safety concerns for a child. In addition to fulfilling the role of evidence gatherer, these included support for judicial officers in determining the child’s best interests. Council notes in this respect the description of the counsel assisting role as one that is underpinned by ‘an ethic of assistance’, with judge and counsel having ‘a common aim [of] furthering the necessary inquiry’. Others pointed to the benefits of this role for victims of family violence, particularly in matters where one or both parties is unrepresented, including by assisting unrepresented parties to narrow the issues in dispute, with flow-on productivity
benefits for the courts, and avoiding the need for a victim of family violence to be cross-examined by an unrepresented perpetrator.
CHAPTER 5: COLLABORATION, CASE MANAGEMENT AND INTEGRATED SERVICES

In addition to their focus on information-sharing, terms of reference 3 and 4 asked Council to report on the opportunities for enhancing collaboration between agencies within the family law system as well as between family law system services and other services, such as child protection authorities, mental health, family violence and drug and alcohol services. Council was also asked to report on the opportunities for building collaboration between the family law system and organisations and services for Aboriginal and Torres Strait Islander families and culturally and linguistically diverse communities. Submissions about this issue tended to focus on the importance of the family law system developing collaborative relationships with services that work with families with complex safety-related needs, including the development of case managed integrated services models for family law clients.

This chapter examines these submissions in seven parts. The first part provides a brief background description of research on the facilitators and inhibitors of effective cross-sector collaboration in this context. The second section describes a number of existing family law system services that stakeholders regarded as having demonstrated a successful approach to collaborative service delivery. In the third section, Council examines a number of opportunities suggested by stakeholders for developing or enhancing collaborative partnerships, including the co-location of services and outreach programs. The following sections explore possible models of coordinated service delivery that could be adapted for or expanded within the family law system. These include a court-based integrated services model and a family relationships sector case managed approach. Section six describes the various state and territory-based integrated services responses to high-risk family violence cases, which might provide a membership opportunity for family law system services. The final section revisits the issue of stakeholder meetings discussed in Council’s Interim Report.

5.1 Barriers to effective cross-sector collaboration

Many of the submissions that Council received reflected the findings of the 2012 Legal Need in Australia report, which recommended the development of a ‘more holistic approach to justice that provides integrated and multifaceted service delivery across both legal and non-legal services’. For example, MacKillop Family Services noted that where services attempting to respond to families with complex needs are disjointed, the results can be counter-productive. Its submission cited with approval the following extract from research by Leah Bromfield and her colleagues:

> When working with a parent who is dealing with multiple and complex problems, practitioners are likely to have to try to support them on different fronts. Referring the family to a different service or professional for each problem or trying to tackle all problems simultaneously will be overwhelming for the family. An effective
intervention is planned and purposeful, based on a comprehensive assessment and staged to meet the family’s needs and capacities over time.260

As this suggests, many stakeholders were concerned to ensure that where families require multiple services, these are delivered in an integrated and case managed way. However, a number of stakeholders also noted the significant barriers to achieving this, given the variety of different service sectors and the different underpinning philosophies and approaches to working with families with complex needs. For example, the Western Australian Commissioner for Children and Young People noted in her submission that the system’s capacity for effective collaboration will be dependent on addressing:

… the political and ideological issues that stem from significant differences among legal practitioners, family consultants, family dispute resolution practitioners, mental health practitioners, child protection practitioners, alcohol and drug workers, and other experts as to the causes and appropriate responses to family violence and abuse.

Reflecting this view, the submissions received by Council conveyed a broad recognition that safeguarding children is the responsibility of many different organisations in Australia, each with a different mandate and approach to service delivery and ‘differing ideologies, organisational cultures and processes’.261 These differences present significant challenges to developing effective collaboration across these service sectors. In her study of multi-system responses to family violence, Professor Linda Neilson concluded that the failure to coordinate services and systems to protect children was ultimately ‘rooted in two interlocking challenges: one disciplinary, the other systemic’.262 Neilson’s research suggests that the former is a reference to the disciplinary differences between legal and social science perspectives of children’s best interests,263 while the latter refers to the tensions created by different (and sometimes competing) mandates, priorities, cultures and underpinning philosophies of the different systems and service sectors (such as those discussed in Council’s Interim Report).

Of relevance to Council’s reference in this context is a recent South Australian study that sought to shed light on the barriers to effective collaboration between child protection and specialist family violence services, which suggests that the history of poor collaboration between these sectors, each of which is concerned with the protection of children, is in part a function of their different ‘philosophical frameworks’.264 This study found that child protection workers tended to describe their work with clients affected by family violence as ‘crisis intervention’ or ‘short term support’. In contrast, domestic violence workers described their role as focused on strengthening the relationship between the mother and child ‘so she can feel confident as a mum again to look after her kids properly’.265

These different perspectives affected service delivery to clients in a number of ways. For example, the researchers reported that child protection workers tried to enhance a woman’s protective capacity by ‘nudging’ her to leave an abusive partner, and ‘tended to focus on the emotional impacts for children of witnessing domestic violence’,266 while domestic violence
workers were more inclined to focus on ‘the ways that domestic violence affected a mother’s relationship with her children and her capacity to parent effectively’.267

This research, which reflects the COAG Advisory Panel’s comments on the cultural barriers to collaboration associated with ‘incompatible understandings of the problem’,268 points to some of the significant challenges facing collaboration and coordinated service delivery across the family law, family violence and child protection systems. As discussed in Council’s Interim Report, these include different approaches to the best interests of the child concept as between the child protection and family law systems.269 Different understandings of harm to children and their recovery needs associated with family violence may also affect professional relationships between the family law and family violence sectors.

5.2 Existing and promising collaborative models

Efforts towards creating more coordinated family law services have been underway for some time. In recognition of this, many of the submissions noted the importance of supporting and enhancing existing collaborative models that already operate successfully within the family law system.

Family Law Pathways Networks

Many submissions expressed strong support for the Family Law Pathways Networks (FLPNs). There are 36 FLPNs across Australia. Some have been operating since 2001, while others commenced in 2010-2012, after the Commonwealth Attorney-General’s Department, which now funds all networks, made funding available. While a network’s steering committee may develop terms of reference setting out membership arrangements, grant agreements declare that members of networks should include the family courts, community legal centres (including Family Violence Prevention Legal Services), legal aid commissions, family lawyers, family law services (including Family Relationship Centres, Children’s Contact Services, Parenting Orders Programs, family dispute resolution services and men’s services), the Child Support Agency and local Aboriginal and Torres Strait Islander and culturally and linguistically diverse organisations.

The purpose of the FLPNs is to support the development of a coordinated family law system.270 Within this framework, networks are funded to work towards a number of core objectives. These include developing and maintaining:

- referral mechanisms between local providers;
- a shared understanding of network members’ roles and those of key organisations;
- members’ awareness of services; and
- cross-sector training for network members and key organisations.271

Many stakeholders regarded the coordination of cross-sector training as the primary function and benefit of FLPNs. This view is consistent with a 2012 evaluation of FLPNs, the
Independent Review of Family Law Pathways Networks, which found that the professional development aspect of FLPNs’ work was highly valued by respondents across the family law system. More importantly, the evaluation found that the work of the FLPNs had led to an increased understanding of the complexities of the family law system amongst different professional groups, and that it had helped to build stronger working relationships across different sectors, particularly between legal and social service professionals. Reflecting these findings, a number of stakeholders who made submissions to Council’s reference suggested the FLPNs should play an important role in enhancing collaboration between service providers across the family law system.

Council notes that the 2012 evaluation report made a number of recommendations for improvement of service collaboration. These included recommendations that the FLPNs create stronger ties with Aboriginal and Torres Strait Islander organisations and organisations working with culturally and linguistically diverse communities, as well as with non-family law system organisations such as services from the alcohol and other drugs and mental health sectors. In sympathy with these recommendations, a number of stakeholders who made submissions to Council’s reference suggested that there is scope to use FLPNs as a platform for building greater collaboration with other services external to the family law system, particularly with specialist family violence services and child protection agencies.

Another point raised both in the 2012 review of FLPNs and in submissions to Council’s reference is that FLPNs may have a role to play in facilitating ‘information kiosks’ at the family courts in association with relevant services, so as to improve court users’ access to information about local services and support referral processes.

Magellan

Whereas the FLPNs highlight the opportunities for using cross-professional development to build collaboration across a range of service sectors, the Family Court’s Magellan program demonstrates the benefits of a teamed approach to working with families where a risk of child harm has been identified. The Magellan program provides an example of successful interagency collaboration between the family law and child protection systems to safeguard children from harm in contested parenting cases where there are allegations of sexual or physical abuse.

The Magellan program began as a pilot in 1998 and was subsequently rolled out across the various registries of the Family Court of Australia. A similar model operates in the Family Court of Western Australia. The main aim of the Magellan program is to provide a coordinated multi-agency approach to the resolution of cases involving allegations of serious harm to children. The program brings together the Family Court, the relevant state or territory child protection department and Legal Aid. Cases are identified at their initial point of contact with the court via its Notice of Risk process (discussed in Chapter 2). This triggers a notification to the child protection department, which will investigate the allegations.
(assuming they meet its threshold) and report back to the parents and the court within a fixed time period. Parenting cases dealt with in the Magellan list are intensively case managed, with cases overseen by a team consisting of a registrar, a judge and a family consultant. In a Magellan matter proceedings are expedited, an Independent Children’s Lawyer is always appointed by the legal aid commission, and the court will request that the child protection department become involved in the proceedings and produce a report on the allegations for the court, which assesses questions of risk and abuse. Cases in the Magellan list adhere, at every stage, to strict timelines with a goal of early resolution.

The Magellan program was evaluated by the AIFS in 2007. This review demonstrated that the program had been successful in both responding promptly to children at risk of significant harm and generating effective inter-agency cooperation between the family law and child protection systems. The research found that cases that proceeded through the Magellan process were resolved more quickly than ‘Magellan-like’ cases that involved allegations of serious harm to children, and had greater involvement of the child protection department, fewer court events, and were more likely to settle early. The report of this study also notes that participants identified the cooperation between agencies in the production of early reports by the child protection department as critical to the program’s success.

A number of submissions cited the Magellan list as an example of an effective coordinated, multi-disciplinary approach to complex matters. Some submitted that Magellan should be extended to the Federal Circuit Court. Others suggested that the eligibility criteria for the Magellan list should be expanded to include a broader range of risks to children, including risks associated with family violence, mental ill-health and drug and alcohol dependency. Two submissions pointed to the Family Drug Treatment Court in the Children’s Court of Victoria as an example of how drug and alcohol services and legal processes could be successfully combined to support families with particular needs. While most of these stakeholders did not recommend the creation of a formal drug court list within the family law space, they did advocate for support services being made available on-site at registries of the family courts to support client families with complex needs.

On the other hand, Legal Aid NSW suggested the creation of a specialist list for complex cases, whilst National Aboriginal and Torres Strait Islander Legal Services (NATSILS) and other stakeholders advocated for the creation of a specialist court hearing process for Aboriginal and Torres Strait Islander children.

It should be noted that not all stakeholders who made submissions about this issue offered support for the operation of the Magellan program, with several submissions suggesting the need for ongoing training for family law and child protection system professionals and judicial officers to enhance understanding of child sexual abuse.
Co-located child protection practitioners

As noted in Council’s *Interim Report*, many stakeholders offered high praise for the co-location of child protection practitioners in the family courts in Victoria and Western Australia, and recommended the expansion of this model to other states. This included strong support from this model from the relevant child protection departments and the family courts, and from Aboriginal and Torres Strait Islander legal services. In Victoria, this program entails a partnership between the Department of Health and Human Services (DHHS) and the federal family courts, whereby child protection workers are located within family law registries in Melbourne and Dandenong. The role supports the operation of the protocol, which exists between DHHS and the federal family courts. In its submission to Council, DHHS noted that the role facilitates the exchange of timely information in matters where families in parenting proceedings have been involved with the child protection system.

The AIFS evaluated the Victorian program in 2015. It found, among other things, that the presence of co-located practitioners in the family courts had a significant impact on both fostering collaborative relationships and practices as well as on improving information sharing between the family law and child protection systems. Some other observations made by the AIFS in its evaluation report include:

- The role of the co-located practitioner was highly valued by both family law and child protection professionals.
- The initiative led to improved timeliness and quality of information for both the family courts and DHHS, which in turn supported earlier and more informed decision-making.
- In particular, the Melbourne role provided an effective point of access to the other system for both family law professionals (mostly judge’s associates, family consultants, registrars and Independent Children’s Lawyers) and child protection practitioners.
- Improved timeliness of information, a benefit of which included fewer court adjournments, which had positive results for parties.
- The quality of information provided by DHHS has been improved through the co-located role, including by providing child protection practitioners with templates to respond to family court notifications and with feedback on the information practitioners have provided.

In its *Interim Report*, Council recommended that the Attorney-General raise the idea of expanding the co-location of state and territory child protection department personnel in federal family court registries at the COAG level. This recommendation received strong support from a wide range of stakeholders during Council’s consultations for this reference, including from several child protection departments. Council notes that since the release of its *Interim Report*, the Royal Commission into Family Violence has recommended that the Department of Health and Human Services ‘support on a continuing basis the co-located...
child protection practitioner initiative in the Victorian registries of the Family Court of Australia and the Federal Circuit Court of Australia. A number of stakeholders also suggested that the co-location of police personnel at the family courts would be beneficial for matters involving a history of family violence. It was submitted that this would help to build collaboration across the family law and police service sectors in a similar way to the co-located child protection practitioner program, and support requests for information under s 69ZW.

**Lawyer-assisted family dispute resolution models**

A number of stakeholders also offered strong support for existing lawyer-assisted family dispute resolution services, which involve partnerships between family relationship services and community legal services or the courts. As Legal Aid WA submitted:

FDR, particularly where it is lawyer-assisted, often provides the best opportunity for victims of family violence to achieve parenting arrangements in the best interests of their children.

One such service that was recommended to Council is the Legally Assisted Family Dispute Resolution (LAFDR) program in Melbourne, which involves a three-way partnership between the Family Mediation Centre (FMC), the Family Law Legal Service and the Monash Oakleigh Legal Service. The LAFDR model, which ensures both parties are legally represented, allows the FMC to provide family dispute resolution in more complex matters, including matters involving family violence, than might otherwise be assessed as appropriate for an alternative dispute resolution process. The model employs a ‘consumer directed’ solution-focused approach in which the lawyers are present to provide advice and reality-check proposed agreements with their client.

Another lawyer-assisted model of family dispute resolution that was mentioned by FRSA is AccessResolve, an Australia-wide program delivered by Relationships Australia in collaboration with the Federal Circuit Court. AccessResolve is a lawyer-assisted conciliation (LAC) model in which clients and their lawyers actively engage in negotiations to resolve disputes about property matters. Clients are ordered to attend LAC by the Court and the case is allocated to a legally trained conciliator in the relevant location. A telephone screening and risk assessment is conducted with each party by a trained intake officer based in Victoria. As per the Court Order, prior to mediation parties are required to prepare and exchange information relating to the case and to send all relevant documents to the mediator/conciliator 7 days prior to the LAC appointment. Stakeholders noted that the lawyer-assisted dispute resolution model enables legal practitioners to support their clients, to contribute to a conciliatory and respectful negotiation, to assist in preparation and exchange of information, and to help with clarifying details and drafting heads of agreement. Lawyers are encouraged to advise and coach their clients and are required to comply with reasonable instructions of
the conciliator. Relationships Australia notes that approximately 500 cases are dealt with through this program each year, with settlement rates consistently above 70%.

Several stakeholders noted that the (former) Coordinated Family Dispute Resolution (CFDR) program, which was not continued past the pilot stage, provided a good example of effective service integration within the family law system. The CFDR pilot project was initiated by the Federal Government in 2009, and commenced operation in five sites around Australia in 2010-2011. CFDR was designed for separated families where there is a history of past family violence and/or current violence. The model offered a team of professionals comprising two family dispute resolution practitioners, a specialist family violence professional, a men’s support professional (where the ‘predominant aggressor’ was male), lawyers for each of the parties and child consultants. The team provided intensive support throughout the family dispute resolution process with the aim of keeping the children and parties safe and ensuring power imbalances did not impede the parties’ ability to participate.

**Legal outreach services**

The material provided to Council also detailed a range of family law outreach services. One example is Legal Aid NSW’s Family Law Early Intervention Unit, which provides a free family law legal outreach service at The Shed in western Sydney. The Shed is an Aboriginal men’s suicide prevention service based in Mount Druitt. The Legal Aid service works alongside other outreach services at the Shed each Wednesday, including psychologists from the Westmead Hospital Aboriginal Health Unit, Probation and Parole and the Mootang Tarimi (Living Longer) mobile outreach service, which provides free public health screening.

Another example is the Link Virtual Outreach program provided by WLSV, which is designed to ensure women living in regional and rural Victoria who experience family violence can access specialised legal advice in a secure location convenient to them. Using Skype and other internet-based tools, the project coordinates a virtual legal practice, allowing WLSV lawyers and specialist family violence workers from Berry Street Northern Family & Domestic Violence Service (NFDVS) to meet with clients living in regional and rural locations around the state. Through Link, WLSV partners with regional agencies across Victoria including community health centres, refuges and generalist community legal centres (CLCs). WLSV provides training and resources to workers from those agencies to enable them to identify the critical legal issues that can arise for women in the context of family violence, and to ensure that timely referrals are made to WLSV’s Link Virtual Outreach lawyers.

**5.3 Partnerships, outreach and co-located services**

In addition to supporting the expansion of the programs described above, stakeholders indicated the need to build greater collaboration across a broader range of services that work with families with complex needs. The most frequently recommended services for the family
law system to partner with were specialist family violence services and services for Aboriginal and Torres Strait Islander families and culturally and linguistically diverse communities. It is clear from these submissions that many stakeholders regard these areas as significant ‘gaps’ in the service delivery of the family law system that need to be addressed. A number of stakeholders also identified a need for greater liaison with drug and alcohol services, mental health services, housing services and organisations that support children with disabilities, including services that support children with Autism Spectrum Disorder (ASD) and organisations that support children and young people who have a parent with a mental illness.

**Partnerships with specialist family violence services**

Each state and territory funds the delivery of a range of specialist family violence services by community based organisations. These include specialist support services for women and children and perpetrator services such as men’s behaviour change programs and men’s referral services. The federal government also currently funds 23 organisations in the family relationships services sector to deliver family violence services. These are largely providers of men's behaviour change programs. However, the vast majority of specialist family violence services are state-funded and state-based.

As part of their suite of responsibilities, family violence services perform risk assessments, conduct safety planning and provide information and referrals to agencies such as financial and health services. Domestic Violence Victoria (DVV) explained in its submission to the Royal Commission into Family Violence that these services are underpinned by an understanding of the nature and dynamics of family violence that has developed over time in response to advances in evidence-based practice. The primary focus for specialist family violence services is on ensuring the safety of women and children. Service providers have extensive expertise in recognising and responding to the signs of violence and the associated risk factors and dynamics of violence, and are well versed in identifying risk, preparing safety plans with women, and working collaboratively with police and other services to manage that risk.

The work of specialist family violence services also reflects a commitment to trauma-informed practice (discussed further in Chapter 6). This key element of their service delivery approach involves understanding and responding to the neurological effects of trauma on parents and children and the range of adaptive responses and patterns they develop, either consciously or unconsciously, as a coping mechanism. The use of this practice model is built on the premise that, without this understanding, services that work with traumatised clients can replicate the power and control experienced in abuse relationships, thereby re-traumatising those in the process of seeking support.

As described in Chapter 2, a number of stakeholders saw value in building stronger relationships between the family law system and specialist family violence services. This
included leveraging the expertise of family violence workers to conduct risk assessments and prepare safety plans for family law system clients, to support the work of the courts and legal practitioners. Stakeholders also pointed to the benefits of embedding specialist family violence service workers in the family courts, as occurs in many state and territory magistrates courts.

A number of submissions also stressed the importance of ensuring that any embedded family violence workers and collaboration with family violence services includes specialist agencies that work with women and children at higher risk of family violence. This includes Aboriginal Family Violence Prevention Legal Services and organisations that support women from culturally and linguistically diverse communities, such as InTouch Multicultural Centre Against Family Violence. It also includes working closely with specialist organisations that support women with disabilities and services for clients in regional and rural communities. In relation to the last of these, Council was urged to consider the particular barriers to accessing family law and other support services that face women in rural and regional areas who experience family violence. Council notes in this regard the findings of the Landscapes of Violence report, which documented these barriers, including the challenges associated with both geographic and social isolation, the greater opportunities for the surveillance of victims of family violence, challenges associated with maintaining anonymity and privacy, expensive private and limited public transport networks, limited crisis accommodation, limited access to therapeutic and health services and limited availability of specialist legal services.

The development of WLSV’s skype-based Link Virtual Outreach program that delivers specialised legal advice to women in country Victoria (discussed earlier in this chapter) was designed to address these issues.

As noted in Chapter 4, a number of stakeholders also suggested that the family law system should develop stronger links with men's behaviour change programs.

Collaboration with Aboriginal and Torres Strait Islander organisations

Council’s 2012 report, Improving the family law system for Aboriginal and Torres Strait Islander Clients, noted that the family law system is under-utilised by Aboriginal and Torres Strait Islander people, and documented the range of barriers affecting their access to its services. These include issues of legal literacy, language and communication difficulties, a lack of culturally appropriate services and cultural safety, and geographic and economic barriers. In addition, Council’s Interim Report on the present reference noted continuing mistrust of the family law system among Aboriginal and Torres Strait Islander people associated with its links to the child protection system and the high rates of removal of Aboriginal children from their families by child protection departments.

In their responses to terms of reference 4 of the present reference, a number of stakeholders, including Aboriginal and Torres Strait Islander organisations and individuals who
participated in Council’s forums and consultations, called for greater collaboration between the family law system and Aboriginal and Torres Strait Islander-specific services. For these stakeholders, inter-sectoral collaboration was understood as being critical to improving both access to and the experience of family law services for Aboriginal and Torres Strait Islander clients. In particular, the submission from NATSILS noted the relevance of Council’s present reference to Aboriginal clients given their ‘greater tendency to have complex needs relative to non-Indigenous Australians’. The material provided to Council suggests that this may include support needs associated with issues of disability, mental health, drug and alcohol abuse, family violence and engagement with child protection systems.

Council’s work on its 2012 report revealed a limited level of liaison between family law system and Aboriginal and Torres Strait Islander services at that time, and little in the way of coordinated service delivery for Aboriginal clients with family law needs. In particular, Council found a lack of coordination between Indigenous-specific services and mainstream family law services, such as Family Relationship Centres and legal assistance services, with many organisations having a limited knowledge of the work of agencies from the other sector. In its 2012 report, Council recommended:

The Australian Government, in consultation with stakeholders, develop strategies to build collaboration between Aboriginal and Torres Strait Islander-specific service providers and organisations and the mainstream family law system (courts, legal assistance and family relationship services). This should include support for Aboriginal and Torres Strait Islander organisations to provide advisory and other support for family law system services.

Council’s work on the present reference indicates that, despite the success of awareness raising campaigns such as ‘Sisters Day Out’ in increasing access to legal services, barriers to the family law system remain. As NATSILS submitted, key among these is a lack of cultural safety associated with mainstream legal processes, which can be ‘culturally intimidating and unresponsive to an Aboriginal world view’. Stakeholders submitted that the way forward must incorporate efforts to both improve the cultural competency of family law system professionals and to enhance cultural safety for Aboriginal and Torres Strait Islander clients of the family law system (discussed further in Chapter 6).

Stakeholders submitted that greater collaboration with and referrals to Aboriginal and Torres Strait Islander-specific services is central to creating a culturally safe family law system. To this end, several stakeholders recommended the development of partnerships between the family law services and Aboriginal Community Controlled Health Organisations and Aboriginal Child Care Agencies. Others noted the importance of building good referral relationships with Aboriginal and Torres Strait Islander specific legal services, and working with Aboriginal organisations to develop and deliver culturally appropriate parenting programs and family dispute resolution services. Others pointed to the importance of including Aboriginal and Torres Strait Islander specialist family violence services in any
court-based integrated service hubs for clients who have experienced family violence, and to the importance of working with and making referrals to culturally appropriate behaviour change programs for Aboriginal men who have used violence in their relationships. 312

These issues are discussed in more detail in Chapter 6.

Collaboration with services for culturally and linguistically diverse communities

Council also published a report in 2012 that looked at ways of improving the family law system for clients from culturally and linguistically diverse backgrounds. 313 That report outlined a number of difficulties faced by families from minority cultural communities in accessing the services of the family law system, including barriers to legal assistance for women from migrant and refugee backgrounds affected by family violence and a lack of culturally responsive services, including culturally safe legal and family dispute resolution services and parenting programs. Council’s investigations for that reference also revealed that it was not uncommon for clients from CALD communities to have multiple legal and support needs, including immigration, social security and family law needs, and to be faced with navigating a range of different services that operated in silos. 314

At that time, Council’s consultations highlighted a number of examples of collaborative working relationships between culturally and linguistically diverse specific services and family law services, including the successful operation of legal outreach clinics in community health centres and successful partnerships between family dispute resolution services and migrant settlement services. 315 On the other hand, Council’s 2012 report noted that there was also a ‘lack of systemic collaboration between migrant settlement services and the family law system,’ and a ‘need to develop working relationships and referral pathways between these sectors.’ Council recommended that:

The Australian Government, in consultation with stakeholders, develop strategies to build collaboration between migrant service providers and organisations and the mainstream family law system (courts, legal assistance and family relationship services), including through the establishment of referral ‘kiosks’ within the family law courts. 316

Council is aware through its consultations for the present reference of a number of initiatives along these lines that involve collaboration between family law and culturally and linguistically diverse specific services. One such initiative involves a partnership between Legal Aid NSW and Settlement Services International (SSI), which was developed in 2013 to provide accessible legal services to culturally and linguistically diverse community members in Western Sydney. Under a MoU between the two organisations, outreach family law and civil law (including specialist immigration) clinics are operated by Legal Aid NSW at eight Migrant Resource Centres in 10 locations in Western Sydney. As part of the arrangement, Legal Aid NSW also provides regular community legal education workshops to Migrant Resource Centre staff, clients and communities. A recent evaluation of this partnership found
Council also notes the existence of collaborative initiatives within the family relationship services sector to deliver culturally responsive family dispute resolution services to families in culturally and linguistically diverse communities. These include the partnership between the Spectrum Migrant Resource Centre and the Broadmeadows Family Relationship Centre in suburban Melbourne, which involves the co-location of migrant resource centre personnel within the Family Relationship Centre and the provision of culturally tailored community legal education about family law matters for local ethnic communities.

Submissions to the present reference urged Council to encourage the development of further engagement initiatives of this kind. In particular, some stakeholders pointed to the importance of building stronger connections with respected members and leaders of faith-based communities to enhance understanding of Australian family law. Others, such as the Federation of Ethnic Communities’ Councils of Australia (FECCA), submitted that there is need for greater community legal education about the family law system and the intersections between migration law and family law for families from CALD communities.

Council also notes the recent report from the Judicial Council on Cultural Diversity, which details the multiple and significant barriers facing migrant and refugee women seeking to leave a violent relationship and recommends greater collaboration between legal, settlement and domestic violence services, to support migrant and refugee women experiencing family violence and family breakdown.

Liaison with disability services for children

Several stakeholders pointed to the particular difficulties that face children with significant health issues when their parents separate, and, in this context, the need for greater liaison between the family law system and disability services. Several people described a number of challenges for family law services associated with the post-separation care of children with Autism Spectrum Disorder (ASD) in particular. These submissions suggested, for example, that disputes over care arrangements in such circumstances are more likely to come into the family law system than disputes between parents with non-ASD (neurotypical) children. In part, this view reflects studies that suggest it is not uncommon for parents who have a child with ASD to disagree about the diagnosis and most appropriate form of treatment, and that this can be exacerbated by separation. It also reflects the fact that, depending on their level of functioning, a child who has ASD may be more likely than a neurotypical child to have difficulty coping with the kinds of changes and transitions involved in a shared parenting arrangement, and more likely to need a single unchanging home with one primary carer who can provide individualised instruction. For these reasons, a number of stakeholders recommended greater liaison between the family law system and the disability sector, as well as professional development around these issues for family law system professionals.
5.4 A court-based integrated services model

In its final report, the COAG Advisory Panel recommended that:

All Commonwealth, state and territory governments should identify opportunities to expand models of co-location and integration that include courts, agencies and services.324

The material received by Council suggests strong stakeholder support for creating ‘a hub of services’ located at the family courts, as well as at Family Relationship Centres.325 The submissions provided a number of examples of existing court-based integrated services approaches and suggested that the family law system could adopt a similar model for responding to children and families with complex needs. Two examples are described in this section.

The Neighbourhood Justice Centre

The first model, which was raised by several stakeholders, is located at the NJC in Collingwood in inner Melbourne. This court-based integrated service delivery program was the subject of consideration by Council in its 2012 report on Improving the family law system for clients from culturally and linguistically diverse backgrounds.326 The NJC was also recommended to the Royal Commission into Family Violence in a submission from Domestic Violence Victoria, where it noted:

One long term and successful example of co-location is the Neighbourhood Justice Centre (NJC) in the City of Yarra. Established in 2007, it remains the only community justice centre in Australia. The NJC includes a variety of agencies providing legal assistance, family violence support services, mental health and alcohol and other drug services and counselling, as well as a multi-jurisdictional court that sits as a Magistrates’ Court, Children’s Court, Victorian Civil and Administrative Tribunal (VCAT) and a Victims of Crime Assistance Tribunal (VOCAT). In co-locating support services and community initiatives, the NJC focuses on addressing the underlying causes of harmful behaviours and social disadvantage. Community engagement is central to the work of the Centre, which includes a café and community art gallery and hosts a range of community activities in the City of Yarra. Agencies such as Berry Street provide family violence support services at the NJC.327

The NJC has an on-site client services team that provides assessment and referral services for the Court, with a range of employed and out-posted support service providers on site, including representatives from a migrant settlement service, a specialist family violence service, an alcohol and other drugs service, a mental health service, a restorative justice conferencing program, a financial counselling service, VLA and a community legal service. These agencies provide services to the NJC’s clients in an integrated and coordinated fashion.
within a framework of therapeutic justice. Where the court requests that a number of different services work with a client, information is shared between the services with the client’s consent. In such cases (which are common), one agency will take on the case coordination role and responsibility for providing a report to the court on the client’s progress with each service.

As noted by Domestic Violence Victoria, the NJC also operates on a neighbourhood level. Central to its operation is active community engagement with a range of culturally and linguistically diverse communities in the Yarra area, including community legal education and on-site meetings of local community groups.

In his submission to Council, Magistrate David Fanning from the NJC urged Council to consider the potential benefits for the family courts of its problem-solving framework that links clients to services that are ‘relevant to addressing the issues which have contributed to the court appearance’:

Problem solving courts focus on creating behaviour change beyond the point in time of the resolution of the legal issues [and] on achieving better substantive outcomes that are sustainable over time and thus eliminate or reduce the cycle of matters coming back before courts.

Council notes that in its recent report, the Royal Commission into Family Violence cited a number of advantages of court-based co-location of services, including:

- accessibility of services for clients,
- ease of communication between agencies,
- agencies gaining greater understanding of each other’s work and ‘institutional empathy’, and
- productivity gains and timely service delivery through physical proximity.\(^{328}\)

The Royal Commission also noted that it had received a number of submissions from services that support victims of family violence who had advocated the use of a therapeutic justice model for families with complex needs.\(^{329}\)

**Courts Integrated Services Program (CISP)**

Another model that was recommended to Council is the Courts Integrated Services Program (CISP), which currently operates in three registries of the Magistrates’ Court of Victoria (MCV).\(^{330}\) This model was also the subject of recommendations by Judge Gray in his coronial report on the death of Luke Batty,\(^{331}\) as well as more recent recommendations by the Royal Commission into Family Violence.\(^{332}\) The CISP is a multidisciplinary team-based case management program that works with offenders for up to 4 months where a person is on bail or summons. CISP is commonly used with men who have breached family violence protection orders. To be eligible for the program, there must be a likelihood that the accused...
will re-offend and that he or she has at least one of the following:

- a physical or mental disability or illness
- drug and alcohol dependency and misuse issues
- inadequate social, family and economic support that contributes to the frequency or severity of their offending.

If these criteria are met, a magistrate may grant bail on condition that the bail applicant participates in the CISP program. Once engaged, a CISP case manager carries out an assessment and refers the defendant to relevant services. The CISP provides a range of services, including drug and alcohol and acquired brain injury services and men's behaviour change programs. Additional services, such as pharmacotherapy and/or psychological assessment or treatment and parenting education programs, may also be delivered by referral to external agencies. A case manager monitors the respondent’s participation in the program and provides a progress report to the court.

The overall aim of CISP is to use therapeutic intervention to provide short-term assistance with health and social needs prior to sentencing, and to mitigate risk and reduce re-offending. The criteria for inclusion in the CISP reflect the evidence that mental health issues and drug use are risk factors for re-offending in the context of family violence. Like the NJC, the CISP program focuses on the issues underpinning the client’s offending and aims to promote behaviour change and manage risk to victims. A key focus of CISP is holding perpetrators to account by requiring their attendance at weekly meetings with a case manager and monitoring their attendance and progress with treatment providers.

Like the NJC, the CISP has been the subject of positive evaluations. These include evidence of a reduction in re-offending rates associated with participation in the program. The researchers attributed this to the program’s focus on treating the issues underlying the offending behaviour and the role that CISP plays in linking participants to a range of different support services. This evaluation also found that CISP clients’ mental health improved during their period on the program. The report notes that magistrates reported using CISP in several ways, including:

- as a means of obtaining a comprehensive assessment of the problems and issues associated with the defendant from the case manager at court;
- as a way to select and organise appropriate therapeutic responses, knowing what services are available and relevant; and
- to monitor defendants during their bail period and be provided with feedback on their treatment progress.

A separate economic evaluation of the CISP showed a significant cost saving to the justice system as a result of the program as a result of the reduction in re-offending. Council notes that in her evidence to the Royal Commission into Family Violence, Deputy Chief Magistrate Felicity Broughton also noted the benefits of CISP in keeping victims of family violence safe, and argued that it should be extended to respondents in civil family violence matters in order
to begin work with perpetrators at an earlier stage.337

5.5 A family relationship sector coordinated services approach

While some submissions offered suggestions for a court-based model of coordinated services delivery, others proposed Family Relationship Centres or community based family relationship agencies as a potential site for a case managed approach. Three of these models are described below.

Before providing these descriptions, it should be noted that while a number of stakeholders conveyed support for the creation of an integrated services approach to family law clients within the community sector, some emphasised the importance of ensuring that clients affected by family violence or other safety concerns are linked to legal assistance while they access therapeutic and other support services. This understanding is reflected in the first model described below.

The Family Safety Model

This model, which was recently developed by Relationships Australia Victoria (RAV), centres on the employment of Family Safety Practitioners. At present this position is attached to its men's behaviour change programs, but it is also currently being trialled within RAV’s family dispute resolution services. The Family Safety Model was designed to enhance children’s safety by ensuring that all family members – men, women and their children – are linked to services through a whole-of-family integrative case management framework. The Family Safety Model adopts an inter-agency approach, which results in a continuum of services being provided to family members over an extended period of time. The aim of the Family Safety Model is to increase the overall responsiveness of the service system to the family’s multiple needs.

The key elements of the Family Safety Model are:

- A whole-of-family response to the issue of family violence;
- An assertive engagement and joined up approach to working with all family members;
- Actively prioritising the safety of partners/former partners/family members and the children of the men participating in RAV’s men's behaviour change programs;
- Offering a range of group work programs that provide preventative and early intervention responses for family members affected by family violence;
- Delivering an integrative and coordinated practice response when engaged with families that are affected by family and domestic violence.

Within this model it is the responsibility of the Family Safety Practitioner to coordinate the services for men, women and children – including risk and needs assessments, joint planning of therapeutic and legal assistance interventions, and service delivery by a range of agencies or practitioners – within an overall plan, including case tracking and formal case closure.
processes. As noted, the Family Safety Practitioner role involves a strong emphasis on assertive engagement with all family members to ensure that:

- A comprehensive service entry assessment is undertaken. This includes assessments of people's needs as well as a thorough safety, risk and psychosocial assessment for all family members, and explicitly tracks the family’s history of legal interventions, including breaches of family violence protection orders.
- The coordination and tracking of the different parts of the therapeutic work within a service.
- The coordination and tracking of the family’s engagement with external agencies and systems.

The Family Safety Model's comprehensive psychosocial assessment has been designed in a flexible way to meet all family members’ needs. The psychosocial assessment is holistic and covers a range of psychological, relational and structural domains, which inform the development of a collaborative case plan, with ‘warm referrals’ to appropriate (RAV and external) services. Critically, the Family Safety Practitioner proactively supports family members with transitions between services to ensure families do not ‘fall through the gaps’.

**Services Connect**

Another model that was recommended to Council as a basis for designing a family relationship sector integrated services approach is Services Connect. This program, based in Victoria, provides a mechanism for engaging a range of services to work in an integrated way with a particular client or family with services coordinated by a single case manager under a single case plan with a single record covering all interactions with each service. The Services Connect model includes:

- a key worker who is the primary support worker and plans and coordinates services for a client and their family;
- a holistic needs identification and assessment, by which comprehensive information is collected so that people do not need to keep re-telling their story to each service;
- a single plan that considers the full range of a client’s and their family’s needs and covers the full range of services they will receive;
- one client record instead of multiple records held by different services; and
- a focus on the achievement of outcomes in service planning and delivery.

Services Connect partnerships include providers of child and family support, mental health, alcohol and drug treatment, family violence, homelessness, housing, disability and Aboriginal-specific services. Some partnerships have services co-located whereas others have key workers conducting their Services Connect role from their home agency.

**Child FIRST and Integrated Family Services**

The third program that was suggested to Council as a potential model for a family
relationship sector-based integrated services approach is the Child and Family Information, Referral and Support Teams (Child FIRST) and Integrated Family Services in Victoria. Child FIRST is a point of entry to an integrated network of community-based family service providers that receive funding to provide services for Victoria’s child protection department, the Department of Health and Human Services. There are 23 Child FIRST catchments in Victoria, each of which provides a central referral point to a range of community-based support services within the catchment area, including community health, drug and alcohol and mental health services and Aboriginal support organisations, culturally and linguistically diverse specialist services, specialist family violence services and housing and homelessness services.\textsuperscript{340} Child FIRST is funded to take referrals from the community and police where a person ‘has a significant concern for the wellbeing of a child’.\textsuperscript{341} Upon receiving a referral, Child FIRST undertakes assessments of needs and risk to the child and makes referrals to other agencies. A 2011 evaluation of this program found that Child FIRST and Integrated Family Services were successfully intervening earlier than statutory-based interventions with at risk children, thereby reducing the extent of departmental involvement with vulnerable families.\textsuperscript{342}

5.6 State and territory integrated family violence responses

Some submissions supported greater use of formal inter-agency collaboration structures in the family law context, but suggested that the family law system should seek to link in with existing state-based integrated service responses rather than develop additional programs. For example, a number of stakeholders recommended that the family law system participate in the current state-based integrated family violence responses, rather than attempt to replicate these service systems.\textsuperscript{343} The integrated services model in each state and territory has a similar structure and approach and many involve the police or specialist family violence service as the lead agency.

A number of stakeholders recommended Victoria’s Risk Assessment and Management Panels, known as RAMPs, as a good example of collaborative practice,\textsuperscript{344} with some submissions suggesting that the family courts in Victoria should seek to join this project. RAMPs are designed to bring together services from a range of relevant sectors to share information and manage the risk that pertains to families where a high-risk of family violence is identified. The panels comprise women’s domestic violence services, Victoria Police, Corrections Victoria, the child protection department, Child FIRST, Women’s Domestic Violence Crisis Service, men’s behaviour change programs, local hospitals, Maternal and Child Health Services, Centrelink, the Office of Housing, mental health and alcohol and drug services and, in one location, the Magistrates’ Court of Victoria. Other services – such as Aboriginal community services, homelessness services, community health services and disability services – are invited to participate in RAMP processes when they are required for individual cases. The RAMPs are coordinated by a local family violence service in each location.
A similar integrated services model exists in New South Wales, known as Safety Action Meetings or SAMs. These involve local case meetings of key service providers with the aim of lessening or preventing serious threats to the life, health or safety of domestic violence victims and their children. Like RAMPs, SAMs are premised on the idea that no one agency or service has all the relevant information about a case, or the ability to take all the actions necessary to address the issues involved. Meetings, which are chaired by a local police officer, are held fortnightly between key government and non-government service providers, including health, housing, child protection, education and justice, and various community based agencies. Attendees share information relevant to a victim's current situation and develop a list of practical actions they can take to reduce the immediate threat to the victim's safety. Information sharing at these meetings is made possible by Part 13A of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW), which was discussed in Chapter 4.

The Department for Child Protection and Family Support in Western Australia drew Council’s attention to an integrated response program it established and participates in, known as Family and Domestic Violence Response Teams (FDVRTs). FDVRTs operate in 17 locations across Western Australia. They involve a partnership between the police, the child protection department and family violence services. The aim of FDVRTs is to improve the safety of child and adult victims of family and domestic violence through a collaborative approach that focuses on timely intervention following a police call out to a domestic violence incident. The model includes joint risk assessments using a common risk assessment framework, coordinated responses between partner agencies, and multi-agency safety planning. A shared database has been developed to support the operations of the FDVRT including recording outcomes. There is a FDVRT in every child protection district and in most regions the team members are co-located.

South Australia has a police led co-located services model known as the Multi Agency Protection Service, or MAPS. The relevant agencies involved include police, corrections, health, housing, the Office for Women, education and the child protection department, Families SA. The MAPS model is described as ‘an early warning system’, intended to increase system accountability. South Australia Police has leadership of the response, which includes the power to instruct and hold other agencies to account in relation to identified cases. The information gathered is then automatically uploaded into each agency’s database in real-time.

The Northern Territory’s Family Safety Framework (noted in Chapter 2) is also led by the police and involves collaboration between police, child protection and other government departments. Like the RAMPs in Victoria and SAMs in New South Wales, the framework is designed for use in high-risk family violence situations and includes a common risk assessment tool. The benefits of this framework were canvassed in submissions from the Northern Territory Legal Aid Commission and Relationships Australia Northern Territory, who suggested that aspects of this model could be translated to the family law system.

The ACT’s coordinated inter-agency response to family violence incidents is known as the
Family Violence Intervention program (FVIP). The FVIP is made up of two core initiatives: a coordinating committee chaired by the Victims of Crime Commissioner, and a weekly case tracking meeting program. The role of the coordinating committee, which comprises senior staff from key partner agencies, is to identify and implement reforms across agencies in the ACT to meet the objectives of the FVIP. Participating agencies include the police, the Office of the Director of Public Prosecutions, the ACT Magistrates Court, domestic violence and rape crisis services, child protection, health and legal aid. The case tracking aspect of the FVIP program centres on a weekly inter-agency meeting that seeks to coordinate service responses to family violence matters that proceed to prosecution. Information sharing between member agencies is supported by a Memorandum of Agreement, which was updated and signed by all participating agencies in February 2014.

The Gold Coast Domestic Violence Integrated Response (GCDVIR) is a Queensland based multi-agency, community-based network that was established in 1996. The GCDVIR is a partnership between the Gold Coast Domestic Violence Prevention Centre (which comprises a specialist women’s family violence support service, a perpetrator program and a children’s counselling service), police, corrective services, local hospitals, a specialist family violence court, child protection, housing and local women’s refuges. Information sharing is governed by a protocol that outlines the roles and responsibilities of each agency. The Gold Coast Domestic Violence Prevention Centre is the lead agency.

Tasmania is currently in the process of developing an integrated multi-agency model through a new state wide Safe Families Co-ordination Unit led by the Tasmanian Police. The aim of the Safe Families unit is to bring together information from across a range of government departments, including health, human services, education and justice, to ensure families at risk are identified and supported as early as possible. Like RAMPs, the unit has a focus on high-risk cases. The Safe Families unit is currently in the process of developing information sharing protocols with non-government agencies.

5.7 Stakeholder meetings and inter-government collaboration

A number of stakeholders submitted that regular meetings are vital to collaborative working relationships. As discussed above, many commented favourably on the role of the Family Law Pathways Networks in facilitating meetings between stakeholders and hosting networking events. However, many stakeholders suggested the need for stakeholders to meet more regularly, and to ensure the ambit of these meetings include the range of relevant professional sectors, including those from the family law, family violence and child protection systems and representatives from the local magistrates courts.

In its Interim Report on this reference, Council commended the development of the Integrated Services Reference Committee in Western Australia, which comprises representatives from the Family Court of Western Australia, the Children's Court of Western Australia, the Department for Child Protection and Family Support, the Commonwealth and
State Attorney-General's Departments and Legal Aid Western Australia. Council’s report noted that this committee meets regularly to explore ways of developing an integrated approach to the management of cases involving families with multiple legal and support needs. Council also recommended the ‘convening of regular meetings of relevant stakeholder organisations’ to explore ways of developing an integrated approach to the management of cases involving families with complex needs.  

During its work on the second stage of this reference, Council received strong support for this recommendation, including from the Royal Commission into Family Violence. However, Council notes that a number of stakeholders, including the Royal Commission, suggested the need for inclusion of a wider range of stakeholders than was listed in Council’s recommendation. These include suggestions from stakeholders and the Royal Commission that specialist family violence services be included in any stakeholder meetings, and submissions that children and young people must be ‘provided with a place at this collaborative table’. Council’s consultations also revealed a strong view that representatives from Aboriginal and Torres Strait Islander Elders groups should be included in these meetings.

Finally, a number of stakeholders commented on the importance of inter-government collaboration to safeguard children, in line with the National Framework for Protecting Australia’s Children 2009-2020. Council notes in this regard that the COAG Advisory Panel on Reducing Violence against Women and their Children has recommended that:

> Commonwealth, state and territory governments should agree to work together to improve the intersections between family law, child protection and family violence legal systems by implementing the respective elements of the recommendations of the Family Law Council’s interim report on families with complex needs.

Among other things, this recommendation suggests that measures to increase cross-sector collaboration should include ‘stakeholder meetings, memoranda of understanding, removing legislative and other barriers, and co-location of agencies’.

The Royal Commission into Family Violence also made recommendations directed at enhancing collaboration between governments, including a recommendation that:

> The Secretary of the Department of Justice and Regulation [Victoria] liaise with the Secretary of the Commonwealth Attorney-General’s Department on a continuing basis to advocate for the adoption of family law reforms that reduce fragmentation of jurisdictions in cases involving family violence.
CHAPTER 6: STRENGTHENING WORKFORCE CAPABILITY & CREATING CULTURAL CHANGE

Many of those who engaged with Council’s reference suggested the need for targeted training and cross-professional development opportunities to enhance the development of collaboration and integrated services initiatives. These proposals echo the findings of the earlier research on inter-professional relationships discussed in Chapter 5 and the recent recommendations of the COAG Advisory Panel on Reducing Violence against Women and their Children and the Royal Commission into Family Violence.\textsuperscript{354} They also reflect the findings of a recent ANROWS research project, which indicates a shared understanding of the responsibilities, constraints and practices of the different agencies and professional groups that work with families with complex needs is central to the development of effective inter-agency working.\textsuperscript{355}

This chapter draws on the submissions to examine these opportunities. These include proposals for cross-professional development to support effective collaboration, training about confidentiality obligations, training about family violence and trauma-informed practice, proposals to enhance cultural safety for Aboriginal and Torres Strait Islander and culturally and linguistically diverse clients, and suggestions for the employment of court support workers.

6.1 Cross-professional development

A strong theme in the submissions was the importance of inter-agency training and joint professional development across the family law and allied service sectors. Key among these was a desire for joint training opportunities for family law and child protection sector professionals and for family law and family violence sector professionals.

The Commissioner for Children and Young People WA, for example, recommended joint professional development for the family law and child protection sectors in a way ‘that builds common understanding and acts to move the cultures of the agencies closer together’. This issue was also raised in Council’s \textit{Interim Report}, where Council suggested the need for joint professional development for lawyers in family law and child protection matters, including those who represent children, in order to gain a greater understanding of the different legislative frameworks and practices in these areas. This proposal responded to submissions from practitioner associations about the difficulties they face in adequately explaining to clients the legal complexities of the differences in approach across jurisdictions.\textsuperscript{356}

Other stakeholders suggested the importance of joint professional development for family violence sector professionals and family law system professionals. These calls reflect research (discussed in Chapter 5) that documented the ways in which the different mandates and service cultures of different service sectors that work with vulnerable families can impede collaboration.\textsuperscript{357} Council’s consultations suggest the importance of building an
understanding of these differences to developing effective working relationships between family law system and specialist family violence sector professionals, including a good understanding of the obligations and constraints affecting the practices of each sector and creating ways of working together as a team towards their ‘common goal of keeping children safe’. 358

Another theme in the consultations concerned the importance of joint training for judicial officers from the family courts and state and territory children's courts and family violence courts. As discussed in Council’s Interim Report, some stakeholders suggested the need for family law training for judicial officers from state and territory courts to support their powers to make interim parenting orders under the Family Law Act. The matter of cross-professional development for state-based judicial officers was also the subject of consideration by the Royal Commission into Family Violence, which recommended the Victorian Government fund the development of family law training for judicial officers and court staff in the Magistrates’ Court of Victoria and the Children's Court of Victoria. 359

Stakeholders also suggested the need for the development of information sharing protocols between different services to be supported by joint training, including about their (potentially) different approaches to risk assessment. These submissions reflect recent proposals in Canada for combined training for those who conduct risk assessments in the family law, child protection and family violence systems. In her Enhancing Safety report, Professor Neilson noted that one of the problems with risk assessments at the intersection of these systems is that ‘few assessors have an adequate understanding of how an evaluation in one sector can affect the family in another legal context’. 360 The submissions indicate a concern in this regard associated with the potential implications of an assessment made by a child protection department for decision-making in the family courts.

A number of submissions, including from Aboriginal and Torres Strait Islander legal services, suggested the importance of joint professional development to build collaboration between family law services and police, to support women and children who experience family violence. In particular, Aboriginal Family Law Services WA submitted that training ‘to frontline police regarding provision of accurate information’ about parenting orders to victim-survivors of family and domestic violence is ‘vital’ to addressing barriers to access to family law needs for Aboriginal people.

Another suggestion made by several stakeholders was for joint professional development in trauma-informed practice for practitioners across the different service sectors that work with families with complex needs. 361 This issue is discussed below.

6.2 Family violence training and trauma-informed practice

As discussed in Chapter 2, a number of submissions emphasised the importance of family violence risk assessment training for family law professionals. Many stakeholders also
pointed to a need for ongoing training about the nature and dynamics of family violence for the family law system’s workforce, including for judicial officers, court staff, legal practitioners and family report writers.  

The preparation of family reports is governed by the 2015 *Australian Standards of Practice for Family Assessment and Reporting*, which require report writers to assess the level and nature of risks to the welfare of the children, including an assessment of risks in relation to family violence, child abuse and neglect, mental illness and drug or alcohol misuse. However, Council notes that the Standards provide that family assessors ‘should only express opinions in areas where they are competent to do so, based on adequate knowledge, skill, experience and qualifications’. While the Child Dispute Services section of the family courts provides ongoing professional development to family report writers, there is presently no requirement that report writers have had family violence training.

A number of recent reports have also recommended the provision of family violence training for judicial officers. These include:

- the 2014 *Landscapes of Violence* report,
- the 2015 report of the Queensland Special Taskforce on Domestic and Family Violence, *Not Now, Not Ever*,
- the 2016 report of the Victorian Royal Commission into Family Violence,
- the 2016 Final Report of the COAG Advisory Panel on Reducing Violence against Women and their Children, and
- the 2016 reports of the Judicial Council on Cultural Diversity.

Council notes that the Royal Commission into Family Violence also recommended:

> The Victorian Attorney-General consider when recommending appointments to the magistracy, potential appointees’ knowledge, experience, skills and aptitude for hearing cases involving family violence.

Various reasons and benefits have been cited in support of the now many recommendations for family violence for judicial officers, including:

- to develop judges’ sensitivity to the complex and varied presentation of family violence victims and perpetrators;
- to support victims of family violence and minimise re-victimisation; and
- to ensure judicial officers are alive to the misuse of the justice system by perpetrators of violence to perpetrate further abuse.

Council notes the particular relevance of the last-mentioned issue for the family courts in light of the evidence described by the Royal Commission into Family Violence that:

> Perpetrators frequently manipulate family law and child contact systems to cause enormous difficulties for and impacts on women and children. Family law processes
can be used by the perpetrator to accentuate tactics of financial abuse (driving her further into debt through elongating family law contests), sabotage the children’s relationship with their mother (through manipulation tactics during unsupervised child access), monitor the mother’s movements and social connections, and much more.374

Council’s consultations indicate that many judicial officers are acutely aware of these dynamics. These consultations, along with the work of the Royal Commission, indicate that increased opportunities for judicial education on family violence and risk assessment and management will be an important complement to the Australian Government’s commitment to developing a National Family Violence Bench Book, which will be available in June 2017.375 This initiative, a response to recommendations in the Australian and New South Wales Law Reform Commissions’ 2010 family violence report,376 builds on a number of existing bench book resources for judicial officers that address family violence issues. These include the Solution-Focused Judging Bench Book developed by the Australian Institute of Judicial Administration, which contains a chapter on family violence,377 and the Family Violence Bench Book developed for Victorian judicial officers by the Judicial College of Victoria.378

A number of stakeholders submitted that it is essential that family violence training for family law system professionals incorporate an understanding of the experiences of women and children who are at higher risk of family violence, such as Aboriginal and Torres Strait Islander women and children and women with disabilities.379 Information provided to Council indicates that Aboriginal women experience domestic violence more often and more severely than their non-Aboriginal counterparts do and are statistically more prone to hospitalisation and death as a result of family and domestic violence.380 Council also notes in this context the data reproduced in the COAG Advisory Panel’s Final Report regarding women with disabilities, which suggest that women in this circumstance are 40% more likely to be the victims of domestic violence than women without a disability.381 The Advisory Panel’s report indicates that many service providers do not have a clear understanding of how to identify and support women with disabilities and their children who experience violence, and that there is a pressing need to ‘build awareness of the types of violence experienced by women with disabilities’ so that services and frontline workers can respond appropriately.382

A number of submissions to Council also noted concerns about the anti-therapeutic nature of the adversarial process and the damage to children’s development and attachment relationships associated with the impact of hearing delays on access to trauma recovery services.383 Some stakeholders also submitted that, as currently constructed, the family law system is ‘not well oriented towards prevention or de-escalation’ of family conflicts.384 These and other stakeholders emphasised the importance of early interventions to promote children’s recovery from trauma, and the need for a genuinely trauma-informed family law system that can respond consistently and appropriately to families affected by family violence or other safety concerns for children.385

The literature on trauma-informed practice indicates that human service systems that provide
services to children and parents who have experienced abuse or family violence without awareness of or attention to treating them for the consequences of the trauma they have experienced ‘can inadvertently re-traumatise consumers of these services’. Trauma-informed practice, then, requires the delivery of services with an awareness of the client’s past and current experience of abuse and an understanding of ‘the role that violence and victimisation plays’ in a person’s life. A recent ANROWS research paper suggests that at an organisational level, trauma-informed practice is underpinned by a number of principles, including:

- understanding the prevalence and nature of trauma arising from interpersonal violence and its impacts on other areas of life and functioning;
- ensuring that organisational, operational and clinical practice protect the physical and emotional safety of consumers/survivors;
- creating service cultures and practices that empower consumers in their recovery by emphasising autonomy, collaboration and strength-based approaches;
- recognising and being responsive to the lived, social and cultural contexts (that is, recognising the gender, race, culture and ethnicity) of consumers, which shape both their needs as well as recovery and healing pathways; and
- recognising the relational nature of both trauma and healing.

6.3 Training about confidentiality obligations and exceptions

In 2010 the Australian and NSW Law Reform Commissions proposed that the Attorney-General’s department develop guidance for family dispute resolution practitioners in identifying when disclosure of communications can be made without consent. The Commissions also recommended the development of training programs for family dispute resolution professionals to ensure the confidentiality exceptions in the Family Law Act and state and territory child protection laws are acted on appropriately. The federal Government’s response to the Family Violence – A National Legal Response report noted that these issues are covered by the AVERT training package, which provides resources such as training exercises for family dispute resolution practitioners. However, as noted in Chapter 3, submissions received by Council during its current reference highlighted the complexity of the current confidentiality provisions, and suggested that practitioners would benefit from further training on their confidentiality obligations, including about the circumstances in which they are permitted to disclose communications made during dispute resolution.

A number of stakeholders also suggested that training should be provided for counselling service providers regarding their capacity to object when counselling notes are subpoenaed. Women’s Legal Service NSW observed:

Many sexual assault services, women’s health centres and other counsellors rarely object to the production of sensitive counselling and therapeutic records in family law and child protection matters, despite a desire by the client and/or the counsellor to do so. This is largely due to a lack of knowledge or fear of the legal process, the
complexities that can arise from the broad discretion available when the best interests of the child is the paramount consideration, and limited resources to attend court events to speak to the objection.

The AOD Peaks Network suggested similarly that those working in the drug and alcohol treatment sector would benefit from training about their confidentiality obligations and what to do when a court requests information regarding a client’s drug use history for the purposes of family law proceedings.392

More generally, many stakeholders raised concerns about the complexities and lack of practitioner understanding regarding the confidentiality obligations of different service sectors, and the need for professional development to address this. In particular, Council’s consultations suggest a lack of understanding among some community sector post-separation services of the differences between confidentiality and inadmissibility, and between information and evidence.

Council notes that the recent report of the Royal Commission into Family Violence expressed concern about ‘the complexity of the confidentiality provisions’ in a number of statutes governing community sector service provision, and the ‘confusion and difficulty’ this creates for practitioners and services that work with children and families.393 This issue was also addressed by the COAG Advisory Panel on Reducing Violence against Women and their Children in its final report, which noted that:

Concerns about breaching privacy legislation are often cited as the primary reason for agencies and service providers to withhold information. However, many laws equally state that information must be shared in order to keep women and their children safe. The laws that govern information sharing without consent are complex, and misunderstanding privacy legislation can lead to a fear of information sharing. This can lead to cultural barriers to integration.394

In response, the Advisory Panel recommended that governments take steps to ‘improve staff understanding of privacy laws and protocols in order to reduce perceived barriers to information sharing’.395

6.4 Promoting cultural safety

As has been noted throughout this report, Council’s work on this reference revealed ongoing concern about the barriers affecting access to the family law system for Aboriginal and Torres Strait Islander families. This included concerns that both mainstream family law services and key support services are not presently designed for Aboriginal and Torres Strait Islander families or delivered in ways that recognise the lived experience of Aboriginal and Torres Strait Islander peoples. More particularly, NATSILS submitted that mainstream legal processes can be ‘culturally intimidating’ for Aboriginal clients, and that greater efforts need
to be made to ensure family law services are provided in a manner that is culturally safe and respectful of Aboriginal and Torres Strait Islander cultures and beliefs.

The recent report of the Royal Commission into Family Violence describes a culturally safe environment as one ‘where services are provided in manner that is respectful of a person’s culture and beliefs, and that is free from discrimination’. Council’s consultation with Aqua Dreaming suggests a similar understanding of cultural safety as providing:

… an environment, which is safe for people; where there is no assault, challenge or denial of their identity, of who they are and what they need. It is about shared respect, shared meaning, shared knowledge and experience, of learning together with dignity and truly listening.

The Family Law Council identified this issue in its 2012 report, Improving the family law system for Aboriginal and Torres Strait Islander Clients. That report revealed concerns among Aboriginal and Torres Strait Islander communities at the time about the limited availability of culturally appropriate family law services and the importance of ensuring services operate in a way that supports and affirms Aboriginal and/or Torres Strait Islander cultural identity. As Council noted in that report, this should extend to physical environments and modes of service delivery, as well as respect for cultural norms relating to gender and verbal and non-verbal modes of communication and recognition of Aboriginal and Torres Strait Islander notions of kinship. At that time, Council documented a number of examples of effective and promising culturally safe service delivery within the family law system. However, Council also noted that there was significant room for improvement in this area.

Stakeholders offered a number of proposals for addressing this issue. As recommended by Council in 2012, this included employing embedded workers from Aboriginal and Torres Strait Islander services as liaison officers in the family courts. Several organisations stressed the importance of this role in providing a culture broker for the courts and supporting Aboriginal and Torres Strait Islander families who need to move between the child protection and family law jurisdictions. Council notes that the Judicial Council on Cultural Diversity has also recently recommended the courts employ more Aboriginal and Torres Strait Islander peoples as ‘Indigenous Court Liaison Officers’. Council also notes the Koori Justice Worker role in the NJC, which is designed to both support Aboriginal and Torres Strait Islander clients of the court and strengthen links between the NJC and the local Aboriginal community.

In its Reconciliation Action Plan 2014-2016, the Federal Circuit Court committed to exploring funding opportunities to enable Indigenous Family Liaison Officers to be engaged in all registries across Australia. However, Council understands that there is presently only one funded Indigenous Family Liaison Officer position in the court, located in Cairns. This position involves providing information to Aboriginal and Torres Strait Islander clients (and,
where appropriate, members of the client’s family) about court processes and procedures, including assisting them to participate effectively in court events and appointments and to understand any orders the court makes. The Indigenous Family Liaison Officer role also includes advising court registry staff and family consultants about appropriate cultural practices with Aboriginal and Torres Strait Islander clients on a case-by-case basis.

Another proposal submitted to Council for improving the cultural safety of the family law system concerned the importance of including Aboriginal and Torres Strait Islander specialist family violence services in the development of any court-based services hubs. As noted in Chapter 2, a number of stakeholders raised particular concerns about risk assessments and safety planning for Aboriginal and Torres Strait Islander families and children, with forum participants indicating the need for a worker from a specialist Aboriginal and Torres Strait Islander family violence service with whom ‘they can establish trust’.

As noted in Chapter 5, a number of submissions also emphasised the importance for Aboriginal and Torres Strait Islander clients who have experienced family violence of referrals to Aboriginal and Torres Strait Islander-specific legal services, and to culturally appropriate behaviour change programs for Aboriginal men who have used violence. These submissions reflected concern about the inappropriateness of general men’s behaviour change programs for Aboriginal men, and a strong preference for healing-focused centres run by Aboriginal and Torres Strait Islander services that recognise the impact of personal histories of trauma and abuse and promote pride in, and connection to, culture while working with men to take responsibility for their violence. During its work on this reference, Council was made aware of Red Dust Healing, a cultural healing program that was developed for Aboriginal men and their families, but which can also be used by non-Aboriginal men. The program, which has been delivered to over 1,700 people in Western Australia, New South Wales and Queensland, is designed to examine the intergenerational effects of colonisation on the mental, physical and spiritual wellbeing of Aboriginal and Torres Strait Islander families. It also encourages individuals to confront and deal with the problems, hurt, and anger in their lives. Red Dust Healing uses a multifaceted approach covering four main areas:

- healing
- pro-social modelling
- professional development
- cultural awareness.

Other recommendations for enhancing the cultural safety of the family law system concerned the need for specialist family dispute resolution services for Aboriginal families delivered by practitioners situated in Aboriginal organisations, and the co-design and delivery of culturally appropriate post-separation parenting programs and supervised contact services.

An allied issue of cultural safety that was noted in Council’s Interim Report concerned calls for the preparation of culturally secure family assessment reports to assist decision-making in children’s matters. Stakeholders suggested these reports should be prepared in consultation...
with Elders and Grandmothers as appropriate, and that cultural reports should become an integral part of family reports in cases involving an Aboriginal or Torres Strait Islander child, and include reports on issues such as the obligations of family members in growing up children associated with totemic and country connection. 409

Stakeholders also raised concerns about the lack of any legislative requirement to prepare a cultural plan for an Aboriginal or Torres Strait Islander child in family law matters, that requires a clear articulation of how the child’s ongoing connection with kinship networks and country will be maintained. 410 As Council noted in its Interim Report, a requirement to prepare a cultural plan for an Aboriginal or Torres Strait Islander child is a central part of the statutory framework in Victoria’s child protection legislation. 411

In addition, several stakeholders suggested the importance of developing a culturally secure court hearing process for matters that involve Aboriginal and Torres Strait Islander children. 412 Council notes in this regard the Victorian Children’s Koori Court that deals with young Aboriginal people who have committed a criminal offence. The Children’s Koori Court involves the Aboriginal community in the court process through the participation of Elders and Respected Persons who provide cultural advice to the judge or magistrate in relation to the young person’s situation. 413 In a similar way to the Family Drug Treatment Court, the Koori Court uses a specially reconfigured courtroom design where everyone sits around an oval table. Several stakeholders proposed that a similar approach be considered for the family law system. 414

As noted in Chapter 2, submissions received during the first stage of Council’s work on this reference suggested that improved access to the family law system’s services could offer a way to reduce the high incidence of Aboriginal children being removed from their family by child protection authorities. 415 As a response to this concern, one proposal that was pressed in the forums and submissions during the second stage of Council’s work concerns the development of family group conferences for matters where the care arrangements for an Aboriginal or Torres Strait Islander child are in issue. 416 Family group conferences, which are used in child protection systems, bring together the child’s extended family and relevant professionals in a meeting where the family agree a plan for the child’s care and protection after safety concerns have been identified. 417 Underpinning this model is an acknowledgement of the importance of informal support networks for keeping children safe 418 and the need to expand the resource base for children at risk. 419 Family group conferencing first emerged in the 1980s in New Zealand in response to concerns about the over-representation of Maori children in the child protection system in that country, 420 and to a policy recognition that the child protection system did not adequately recognise Maori culture and community, particularly the role of extended family. 421 Reflecting similar concerns, stakeholders regarded the use of this model in family law matters as being particularly important for Aboriginal and Torres Strait Islander children where loss of identity for children who are removed from the care of kin is a significant source of trauma. 422
Another issue raised by stakeholders concerned the need for greater funding and resourcing of interpreters to overcome the language barriers experienced by Aboriginal and Torres Strait Islander peoples in their interactions with the family law system, so that clients are able to understand the processes that are relevant to them and participate appropriately.423 Others proposed greater resourcing of tailored community legal education about the family law and child protection systems for Aboriginal and Torres Strait Islander communities to enhance understanding of legal rights and awareness of how the family law system works.424 Council notes in this context the recent recommendations of the Judicial Council on Cultural Diversity that the family courts ‘should re-establish court information sessions for court users about their processes’.425

A final area of reform proposal concerned cultural competency training for family law system professionals.426 Stakeholders suggested that this should incorporate an understanding of the particular experiences and impacts of violence on Aboriginal and Torres Strait Islander women and children, including the multiple and diverse factors contributing to the high levels and severity of family violence in Aboriginal and Torres Strait Islander communities and the reasons for the reluctance of Aboriginal women to report experiences of family violence and to engage with mainstream legal services.427 Others emphasised the need for training to incorporate an understanding of Aboriginal and Torres Strait Islander family structures and child rearing practices, including the responsibilities of Grandmothers and Aunties for the safety and growing up of children.428

Council also received a number of submissions calling for the development of cultural safety and cultural competency training for family law system professionals in relation to culturally and linguistically diverse communities, and particularly in relation to the needs of migrant and refugee women who experience family violence. Research conducted with newly arrived communities in Australia points to a lack of culturally safe services, including unsympathetic attitudes among professionals from mainstream services and organisations,429 as a major barrier to clients accessing both legal and family support services.430 Cultural safety in this context includes not only respect for the person’s culture but also the lived experience and challenges faced by refugee background families associated with resettlement and integration into Australian society.431

As described above in relation to Aboriginal and Torres Strait Islander clients, cultural safety also includes an awareness among service providers of the multiple and complex barriers to accessing family law services affecting families from culturally and linguistically diverse backgrounds. These include the barriers to disclosing family violence affecting migrant and refugee women, such as a lack of knowledge about Australian family law and how to access legal assistance,432 fears of being isolated from family and friends,433 and immigration status concerns.434

Council notes the recent report from the Judicial Council on Cultural Diversity on this point, which details the multiple and significant barriers facing women from culturally and linguistically diverse backgrounds who seek to leave a violent relationship, including the
possibility that Australian family law differs significantly to the law governing family breakdown in the woman’s country of origin. As noted by Council in its 2012 report, *Improving the Family Law System for Clients from Culturally and Linguistically Diverse Backgrounds*, concepts such as no-fault divorce and ‘equal shared parental responsibility’ for children may be unknown in some migrant and refugee communities, which can lead to women staying in abusive relationships.

Stakeholders’ calls for cultural competency training in relation to both Aboriginal and Torres Strait Islander and culturally and linguistically diverse communities are broadly consistent with Council’s 2012 recommendations aimed at building cultural competency across the family law system. In that report Council recommended the development of a cultural competency framework for the family law system, including a flexible learning package and good practice guides for all family law professionals, as well as the embedding of workers from culturally and linguistically diverse-specific services as liaison officers in the family courts.

Council’s 2012 report noted a number of other aspects of importance to developing a culturally safe family law system environment for clients from migrant and refugee communities. These included the need for family dispute resolution and parenting support services that are tailored to the needs of families from culturally and linguistically diverse communities and that are developed ‘with’ communities and delivered collaboratively with culturally and linguistically diverse specific organisations. They also included the need for community legal education programs about Australian family law that are tailored to the needs of different cultural communities. In addition, Council recommended the development of specialist training in family law for legal interpreters.

### 6.5 Court support workers

Several submissions raised the issue of physical safety for victims of violence at premises of family courts and described their own or their clients’ experiences of feeling unsafe in the court environment during court proceedings. Women’s Legal Service Victoria pointed in particular to the experiences of women in regional locations, noting the recent *Landscapes of violence* report from Deakin University. This study reported that:

> Most interviewees had safety concerns in relation to court buildings. The older courts were particularly problematic because of the small size of waiting areas and the high level of visibility and lack of privacy in small towns. The wellbeing and security of children – often brought to court out of necessity – were also of concern.

Similar experiences are noted in the recent reports from the Judicial Council on Cultural Diversity, whose consultations indicated the existence of safety concerns for many Aboriginal and Torres Strait Islander women and women from culturally and linguistically diverse backgrounds when attending court.
The family courts’ *Family Violence Best Practice Principles* provide for ‘the creation of an individually tailored safety plan where appropriate’, which includes a safety plan for attendances at court. The submission from the Federal Circuit Court referred to this principle and indicated that processes ‘are in place in all family law registries to enable parties to identify safety concerns related to attending Court’.

However, some stakeholders proposed that a court support officer, along the lines of the Court Advisory and Support Officer developed in the Children's Court of Victoria or Court Network volunteers, should be appointed to support vulnerable parents in navigating their day in court. This was raised in particular in relation to supporting Aboriginal and Torres Strait Islander clients and clients from culturally and linguistically diverse backgrounds. Court Network volunteers, who are currently limited to state and family courts in Victoria and state courts in Queensland, ‘walk the floor’ offering help to people in court when a need is recognised. In addition to supporting parents with complex needs with referrals to support services, Court Network volunteers provide self-represented litigants with an understanding of court processes.
CHAPTER 7: BUILDING COURT SYSTEM INTEGRATION

The previous chapters of this report have focused on the problems facing families and service providers and the courts in the family law system where clients have complex support needs. In this chapter we revisit the terms of reference canvassed in Council’s Interim Report regarding families with complex legal needs. In that report, Council examined the problems facing families in this circumstance associated with the separation of the child protection, family violence and family law systems in Australia. Since Council delivered its Interim Report, this issue has been considered by a number of other bodies, including the Victorian Royal Commission into Family Violence, the COAG Advisory Panel on Reducing Violence against Women and their Children, and the Victorian State Coroner in his report on the death of Luke Batty. Council also received a number of submissions during the second stage of its work on this reference regarding the issues and recommendations in Council’s Interim Report.

This chapter examines these submissions and the reports and recommendations of other reviews regarding the intersections between the work of the federal family courts and state and territory courts exercising child protection and family violence jurisdiction. The chapter is in two parts. Part 1 explores recommendations for encouraging state and territory magistrates courts to make greater use of their Family Law Act powers so as to reduce the need for families to engage with multiple courts where they have both family law and family violence and/or child protection needs. Part 2 looks at the responses to Council’s Interim Report recommendations regarding the development of a national database of court orders.

7.1 State and territory courts and family law work

The material provided to Council during the first stage of its work on this reference indicated the significant extent to which family law clients have multiple legal problems that see them engage sequentially with courts and systems across the federal/state and territory divide. Some of these families will move to the family law system after engagement with a children's court or child protection department. Many more will move to the family law system after engaging with a state or territory magistrates court in relation to family violence concerns. Some will need family violence protection orders after their family law matter has been finalised, and some will find themselves engaging with all three systems and courts over a period of time. And some of those who need family law orders following engagement with a state or territory court or child protection system will not manage to access the family law system.446

Council’s Interim Report identified a range of problems affecting families with multiple legal needs. These included difficulties in negotiating different legal frameworks with different terminology, different procedural rules and different decision-makers across the various jurisdictions, and the burden on parents and children of having to repeat their story, engage with new legal representatives and re-litigate risks issues in different forums. They also
included the possibility of adjournments and ‘limbo periods’ while waiting for child protection investigations to be conducted, or for protective carers to obtain parenting orders from the family courts, or for legal practitioners to obtain permission to produce reports prepared for proceedings in one jurisdiction in another court. More significantly, they included the limited capacity for one court to exercise the jurisdiction of the other courts to address the family’s multiple legal needs. Council noted in its Interim Report that the families who are most likely to engage with more than one jurisdiction are those with legal and support needs associated with family violence, and that clients in this circumstance are likely to be engaging with these systems at a time of high-risk and vulnerability. Council also acknowledged that impact of these barriers are likely to be exacerbated for Aboriginal and Torres Strait Islander families.

The material provided to Council during the first stage of its work on this reference indicated that the first point of contact for many family law clients with complex needs is a state or territory magistrates court in relation to a family violence matter. In light of this evidence, Council’s Interim Report canvassed the benefits of these courts taking on a greater level of family law work, in order to reduce the burden on children and parents associated with navigating the complexities of the wider legal system. Reflecting the recommendations of the Queensland Special Taskforce on Domestic and Family Violence, Council noted the advantages of state and territory magistrates courts in general, as well as the particular advantages of specialist family violence courts, with their powers to adjudicate a range of related legal matters, including family violence, family law, child protection and victims of crime compensation matters. An illustration of the various family violence-related areas of jurisdiction exercised by the Magistrates’ Court of Victoria is provided in Appendix D.

Council expressed support for the (then) proposed expansion of specialist family violence courts in Queensland and Victoria, and recommended that state and territory magistrates courts be supported to increase their family law workload through amendments to the Family Law Act that:

- Provide a simplified decision-making framework for interim parenting matters, and
- Enable judicial officers to deliver ‘short form’ judgments in interim proceedings.

Council also envisaged benefits for families in children's courts being enabled to make consent parenting orders and to hear and determine interim applications for parenting orders after a child protection matter has been finalised where the relevant court and child protection department are familiar with the family’s circumstances. In order to support this, Council recommended that s 69J and s 69N of the Family Law Act, which vest courts of summary jurisdiction with powers to make parenting orders, be amended to remove any doubt that children's courts, no matter how constituted, are able to make family law orders under Part VII of the Family Law Act in the same circumstances that are currently applicable to courts of summary jurisdiction.

Since the release of its Interim Report, Council’s views and recommendations on these issues have attracted strong support from a number of quarters, including from key stakeholders.
(such as state and territory courts) and Aboriginal and Torres Strait Islander organisations. As the submission from Aboriginal Family Law Services (WA) expressed:

Subjecting the victim-survivors of family and domestic violence to prolonged and confusing court processes is counter-intuitive to working effectively with those who have experienced trauma. Court environments can be intimidating for professionals let alone for those who are required to engage with them to resolve their legal issues. If courts were allowed to diversify outside their normal areas of law to facilitate a smoother passage for someone who requires a violence restraining order, a recovery order and a parenting order, and providing them the infrastructure and training to do so, seems the sensible approach to take.

A number of subsequent reports, including the reports of the Royal Commission into Family Violence and the COAG Advisory Panel, have also provided support for Council’s recommendations on this issue. In relation to children's courts exercising family law jurisdiction, the Royal Commission into Family Violence made a mirror recommendation to that made by Council in its Interim Report, proposing that:

The Victorian Government, through the Council of Australian Governments Law, Crime and Community Safety Council, pursue amendments to the Family Law Act 1975 (Cth) [within 12 months] to make it clear that the Children’s Court of Victoria can make orders under Part VII of the Family Law Act in the same circumstances as the Magistrates’ Court of Victoria (sections 69J and 69N).

The Royal Commission’s report also notes that many people who engaged with the Commission’s work spoke of the difficulties they had experienced in having to engage with more than one court to address their multiple legal needs. The Royal Commission agreed with the Family Law Council that encouraging magistrates to exercise their family law powers ‘will make it easier for families to resolve such matters without having to navigate both state and federal courts’, and concluded that:

As the first point of contact with the legal system for many victims, the Magistrates’ Court should be able to deal with as many issues as possible relating to their protection. Magistrates should be encouraged and supported to exercise their family law jurisdiction, and parties should be advised that magistrates have the power to make some family law orders.

The Royal Commission also noted in this context that while the Family Law Act gives magistrates the power to hear cases relating to division of property, it had received evidence that ‘magistrates often leave property matters to the family law courts’.

The Commission expressed its concern that this practice, coupled with the barriers that face families with complex needs in accessing the family law system, could ‘result in victims foregoing their right to property, especially if the asset pool is small’. The Commission took the view that magistrates should be encouraged to use their Family Law Act powers to determine small
property claims, and that the monetary limit of this jurisdiction should be increased to facilitate this, so that victims of family violence do not have to be ‘drawn into long and expensive federal property disputes’. Accordingly the Commission recommended that:

The Victorian Government, through the Council of Australian Governments Law, Crime and Community Safety Council, pursue amendments to the Family Law Act 1975 (Cth) [within 12 months] to increase the monetary limit on the jurisdiction of the Magistrates’ Court of Victoria to divide the property of parties to a marriage or a de facto relationship. Accordingly the Commission recommended that:

The Royal Commission also made several professional development recommendations to enhance the capacity of the Magistrates’ Court of Victoria to use its family law powers, including that:

- The Victorian Government fund the development of family law training for judicial officers in the Magistrates’ Court of Victoria and Children's Court of Victoria; and
- The Victorian Attorney-General consider, when recommending appointments to the magistracy, potential appointees’ knowledge of relevant aspects of federal family law.

These recommendations, which are consistent with Council’s views in its Interim Report, offer the prospect of significant benefits to families with complex needs in Victoria whose first point of contact with the justice system is a magistrates court. In addition to reducing the need for families to navigate different courts across the state and federal law divide, these reforms, which the Victorian Government has committed to implementing, will also mean that those affected by family violence will be able to access the ‘wrap around’ support services of the Family Violence Courts Division of the Magistrates Court of Victoria. These include:

- the Court Integrated Services Program (CISP), the case-managed integrated services program described in Chapter 5, which seeks to help perpetrators with underlying difficulties such as drug and alcohol misuse and mental health problems;
- co-located family violence services, which provide information, advocacy and referrals for court users, including specialist family violence services for women from culturally and linguistically diverse communities; and
- applicant and respondent support workers, who conduct risk assessments and make referrals to support services and men's behaviour change programs.

In addition, the Royal Commission made two other recommendations that are worth noting here. Firstly, the Commission acknowledged the concerns raised by stakeholders during Council’s consultations that people may not understand how family law orders interact with family violence protection orders. This issue was canvassed in the Coroner’s report on the death of Luke Batty. In response to this problem, the Royal Commission recommended
Victoria’s *Family Violence Protection Act* be amended to require magistrates to explain the effect of any parenting orders they make under the *Family Law Act* and how they interact with family violence protection orders. Secondly, the Royal Commission recommended the Victorian Government pursue amendments to the *Family Law Act* through the Council of Australian Governments Law, Crime and Community Safety Council to provide that a breach of an injunction for personal protection made under the *Family Law Act* is a criminal offence, so as to facilitate the prosecution of breaches of *Family Law Act* protection orders by state police. Council also notes the references in the Royal Commission’s report to the issue of increased financial support from the Commonwealth for the conduct of family law work by state courts.

In addition to supporting state and territory courts to undertake greater levels of family law work, Council’s consultations during the second stage of its reference suggested there may also be value in out-posting Federal Circuit Court registry staff and judicial officers in state and territory family violence courts on a circuit basis.

### 7.2 Information sharing between the federal family courts & state and territory courts

A related concern raised in Council’s *Interim Report* involved the scope for courts to make inconsistent orders because of a lack of awareness of previous orders made in another jurisdiction. The current mechanism for informing the family courts about relevant orders of state and territory courts relies on the parties bringing these to the court’s attention. Parties to parenting proceedings are also required to inform the court, if to their knowledge, a child is under the care of a child welfare law or there has been a notification to or investigation of a child by the child protection authority. As noted in Council’s *Interim Report*, a number of stakeholders raised concerns about this approach, noting that its reliance on self-reports could see the family courts make orders in the absence of knowledge about prior orders or child protection involvement with the family. Council also received a number of submissions to this effect during the second stage of its work on this reference.

In its *Interim Report*, Council expressed the view that a more coordinated national approach to the protection of children and protection from family violence is essential, and recommended the Attorney-General engage with his State and Territory counterparts as well as with Ministers with responsibility for child protection to find ways in which this could be achieved. In particular, Council recommended the Attorney-General raise the following matter at the COAG level:

The development of a national database of court orders to include orders from the Family Court of Australia, the Family Court of Western Australia, the Federal Circuit Court of Australia, state and territory children's courts, state and territory magistrates courts and state and territory mental health tribunals, so that each of these jurisdictions has access to the other’s orders.
The submissions received by Council during the second stage of its reference suggest there is broad support among stakeholders for the creation of a national repository of family law, family violence and children's court orders that is accessible by each relevant court. In particular, stakeholders pointed to the limitations of the current onus on parties to provide the courts with relevant information about other orders, especially for those who are not legally represented, and noted that many parties assume the courts have ready access to this information. Supporters of this recommendation also noted the importance of leveraging technology to address issues of cross-border movement and that the use of this kind of technology will be vital to the safety of women and children in a country of differing jurisdictions with varying family violence and family law legislation.

Since the publication of Council’s Interim Report, its recommendation for a national database of court orders has received support in other reviews, including from the COAG Advisory Panel on Reducing Violence against Women and their Children and the Royal Commission into Family Violence. In its Final Report, the Advisory Panel recommended that the Commonwealth, state and territory governments ‘should agree to work together to improve the intersections between family law, child protection and family violence legal systems by implementing the respective elements of the recommendations of the Family Law Council’s interim report on families with complex needs,’ including by:

Developing a national database of court orders, which could include examining the feasibility and cost of extending the national domestic violence order information sharing system once it is implemented and fully operational.

The Royal Commission into Family Violence also supported Council’s recommendation for the development of a national database of family law, children's courts and family violence orders. The Royal Commission also proposed that the content of the proposed database be expanded to include transcripts and other relevant court documentation that is accessible to each of the relevant state, territory and Commonwealth courts and other agencies as necessary.

This recommendation was informed by a submission from the Law Institute of Victoria, which noted the difficulties for family court judges in making parenting decisions ‘without having a transcript of the evidence in a FVIO case in the Magistrates’ Court.’ The Royal Commission’s report noted in this regard that in determining the best interests of the child for the purposes of making a parenting order, s 60CC(3)(k) of the Family Law Act requires family court judges to consider the inferences that can be drawn from the order having regard to, among other things, the circumstances in which the order was made and the evidence admitted in proceedings for the order. In light of this section, the Commission saw value in including these materials in any database of court orders.
In their joint submission to Council’s reference, the Magistrates’ Court of Victoria and the Children’s Court of Victoria also proposed a greater range of information be shared between the courts, including:

- expert medico/legal and therapeutic reports prepared for magistrates court matters, including the CISP and/or credit bail and the Drug Court;
- details of drug and alcohol screening; and
- expert reports prepared by the Forensicare and other mental health service providers.

This submission also identified information that the Magistrates’ Court of Victoria and the Children's Court of Victoria considered should not be shared without client consent. These included:

- risk assessments conducted by support agencies;
- child protection department reports; and
- risk assessments prepared by applicant support workers and assessments prepared by a respondent support worker.

The NSW Department of Family and Community Services also cautioned against reliance on children's court clinic reports in family law proceedings, noting that such reports are prepared for the specific purpose of child protection proceedings and not for post-separation parenting disputes. More generally, many stakeholders indicated they did not support the automatic sharing of reports generated by child protection departments in the course of their investigations, pointing to the limited evidentiary value of allegations of risk.478

In the course of considering Council’s recommendation regarding a national database of court orders, the Royal Commission into Family Violence had regard to the current information sharing protocol between the federal family courts and the Magistrates’ Court of Victoria, and the evidence of barriers affecting its use to ensure efficient, speedy and reliable information exchange between these courts. This included evidence from the Magistrates’ Court of Victoria about inadequacies with its own IT systems, and inadequate case and family identification and matching across the jurisdictions.479 These are clearly matters that will need to be addressed in each jurisdiction in the course of developing a national repository of court orders.

In recognition of this issue, some submissions advised Council to be cautious about the development of a broad scale national information sharing database,480 with some recommending an ‘agile and iterative’ approach to this development, such as scoping an evaluation pilot based on a metropolitan registry of the Federal Circuit Court and a state magistrates court and children's court in the same location.481
CHAPTER 8: RESEARCH NEEDS

Terms of reference 5 asked Council to report on any limitations in the data currently available to inform Council’s work on the reference. This chapter discusses the current research gaps in relation to:

- cases that cross between state and territory courts and the federal family law system;
- the making of consent parenting orders where child safety concerns have been raised;
- self-represented litigants and family violence.

8.1 Crossover cases

Council’s Interim Report examined terms of reference 2, which asked Council to report on the possible benefits of vesting the federal family courts and state and territory family violence and children's courts with a measure of co-extensive jurisdiction. In order to inform its consideration of this question, Council sought to identify the extent to which client families have multiple legal needs that require their engagement with courts across these jurisdictions. However, as Council noted in its Interim Report, this investigation revealed that the extent of ‘crossover’ between these systems is not known.

In the absence of this information, Council’s consideration of terms of reference 2 was greatly assisted by a file analysis conducted by VLA, which analysed data relating to clients who had received legal aid services for matters in more than one system over the five-year period prior to 2014. This analysis showed that that a significant minority of VLA’s clients, ‘representing thousands of families’, had received legal assistance for both parenting proceedings in a federal family court and a child protection or family violence protection matter in a state court within a two year period. While the majority of VLA clients in the dataset had received assistance for only one type of legal problem in this period (either for a parenting dispute, family violence protection matter or child protection issue), 12% (11,969 people) had received assistance for at least two types of problems, and 915 people had received assistance for all three problems (that is, they received a grant of legal aid for a parenting dispute, a child protection matter and a family violence matter).

The VLA analysis further showed that around 30% of clients who received assistance for a parenting dispute under a grant of legal aid in 2012-13 also received assistance with a child protection or family violence issue either one year before, or one year after, receiving assistance for the parenting dispute. The most common ‘cluster’ for this type of client was the combination of a parenting dispute and a family violence matter in the year prior to the parenting dispute. The second and third most common clusters were a parenting dispute with a family violence matter in the year after the parenting dispute and family violence issues both before and after receiving assistance for the parenting dispute. Of the VLA clients who received assistance for two or three types of family-related legal issues, one of which was a parenting dispute, the most common second issue was family violence (76%). This
compared to 16% of clients whose second issue was child protection, and 8% of clients who received assistance for all three issues.

Council’s *Interim Report* also noted an earlier study of court files conducted by Kelly and Fehlberg in 2002, which found that a much greater number of cases in its dataset travelled from the child protection system to the family law system than in the opposite direction.\(^{484}\) This study also indicated that a significant number of protective carers who are advised by a child protection department to seek parenting orders fail to initiate an application for orders in the family courts.\(^{485}\)

The Kelly and Fehlberg research is now 14 years old, and, to Council’s knowledge, the VLA file analysis is the best data currently available about the number of cases that move between the family law, family violence and child protection courts. As Council noted in its *Interim Report*, while the VLA figures provide important insights into the patterns and pathways between these systems, there are a number of limitations affecting these data. For one thing, the analysis is necessarily confined to one particular jurisdiction and to clients who received legal aid assistance. It may well be, for example, that much greater numbers of families were actually engaged in proceedings in more than one jurisdiction in the relevant period but did not receive a grant of legal assistance for each (or any) matter. The file analysis also excluded crossover data between family law and criminal proceedings in the magistrates court, which are a not uncommon feature of litigated parenting cases.\(^{486}\) In addition, the analysis of legal aid files does not capture the extent to which family members who are advised to seek parenting orders by a child protection department fail to achieve consent orders or initiate an application for proceedings in the family courts. As Council noted in its *Interim Report*, this circumstance can have a significant negative impact on the child’s safety and connection to family and culture.

In Council’s view, it will be important to the development of effective collaboration and information sharing between the family law, family violence and child protection systems to obtain a clearer empirical picture of the numbers and experiences of families that seek and either succeed or fail to engage with more than one of these jurisdictions.

### 8.2 Consent orders and child safety concerns

A number of stakeholders who participated in the forums Council held during the second stage of this reference raised concerns about the safety of children in the context of consent parenting arrangements.\(^{487}\) These and other stakeholders suggested that it is not uncommon, in their experience, for contested cases in which allegations of family violence have been made to settle at the door of the court because the party with the safety concerns ‘capitulates’ and agrees to the proposed arrangement. It was suggested to Council that these matters often come back to court as a fresh application for parenting orders or as contravention proceedings, because the arrangement is not workable and/or the parent continues to have safety concerns and refuses to comply with the consent order.
A 2002 study of contravention proceedings revealed that the overwhelming majority of the surveyed files involved applications to enforce consent orders, not judicially determined arrangements. This study also found that the most frequently cited concern about contact arrangements in the enforcement matters related to the issue of domestic violence, and that in most of these cases the orders were ultimately varied to impose restrictions on a parent’s contact with the child.

Since that time, changes have been made to both the Family Law Rules and the Federal Circuit Court Rules to address the issue of consent parenting orders where safety concerns for children are raised. Consent orders can be achieved in a number of ways, including during the hearing of proceedings before a judicial officer and, where there are no current proceedings, by filing an application for consent orders that will be considered by a court registrar in chambers. Each set of rules makes provision for the court or registrar to require a party to provide additional information if needed. More recent amendments require parties who allege abuse or family violence to provide the court with an explanation of how the proposed consent orders attempt to deal with those concerns.

Rule 10.15A of the Family Law Rules provides as follows:

(1) This rule applies if an application is made to the court in a current case for a parenting order by consent.

(2) If an application is made orally during a hearing or trial, each party, or if represented by a lawyer, the party's lawyer:

(a) must advise the court whether the party considers that the child concerned has been, or is at risk of being, subjected to or exposed to abuse, neglect or family violence;

(b) must advise the court whether the party considers that he or she, or another party to the proceedings, has been or is at risk of being subjected to family violence; and

(c) if allegations of abuse or family violence have been made--must explain to the court how the order attempts to deal with the allegations.

(3) For any other application each party, or if represented by a lawyer, the party's lawyer:

(a) must certify in an annexure to the draft consent order whether the party considers that the child concerned has been, or is at risk of being, subjected to or exposed to abuse, neglect or family violence;
(b) must certify in the annexure whether the party considers that he or she, or another party to the proceedings, has been or is at risk of being subjected to family violence; and

(c) if allegations of abuse or family violence have been made--must explain in the annexure how the order attempts to deal with the allegations.

The Federal Circuit Court Rules provide for a similar approach in relation to a wider range of risks. Rule 13.04A provides as follows:

(1) This rule applies if an application is made to the Court for a parenting order by consent in relation to a family law proceeding.

(2) The parties must advise the Court whether or not any of the following allegations have been made in the proceeding:
   (a) allegations of child abuse or neglect, or a risk of child abuse or neglect;
   (b) allegations of family violence, or a risk of family violence;
   (c) allegations of mental ill-health that is alleged to adversely impact on parenting capacity;
   (d) allegations of drug or alcohol abuse;
   (e) allegations of serious parental incapacity;
   (f) any other allegation involving a risk to the child.

(2A) Each party must also advise the Court, apart from any allegations made during the proceedings:
   (a) whether the party considers that the child concerned has been, or is at risk of being, subjected or exposed to abuse, neglect or family violence; and
   (b) whether the party considers that he or she, or another party to the proceedings, has been, or is at risk of being, subjected to family violence.

(3) If an allegation mentioned in subrule (2) has been made, or a party advises the Court of any concerns mentioned in subrule (2A), the parties must explain to the Court how the parenting order attempts to deal with the allegation.

(4) If the application for the parenting order will be considered in chambers, the parties must attach to the draft parenting order the approved form signed by each party or their legal representative.

Stakeholders who raised concerns with Council about this issue tended to suggest the need for greater court oversight of parenting agreements before orders are made when one or both parents have raised concerns about the child’s safety. Some stakeholders also indicated the need for a risk assessment to be conducted.

The recent AIFS evaluation suggests fewer shared care time arrangements are being made by
consent after proceedings since the reforms to the court rules described above, but that there has been little change to the rate of orders for shared parental responsibility.492 The AIFS Court Outcomes report notes that the latter finding may reflect ‘the bargaining dynamics and trade-offs pertinent to negotiation’ in this context.493 However, little is known about how the requirements in these rules are operating in practice, including the strategies available to and used by registrars and judges when they have continuing concerns about the proposed arrangements, and the extent to which the rules are working to prevent the making of unsafe arrangements for children.

8.3 Self-represented litigants and family violence

As noted earlier in this report, a number of stakeholders raised concerns about the significant numbers of self-represented litigants in family law matters in which family violence has been alleged or identified. These submissions and consultations canvassed several inter-related problems.

One issue concerns the problem of victims of family violence being cross-examined by an abusive former partner in family law proceedings. This matter was the subject of comment by the Royal Commission into Family Violence in relation to federal family court hearings,494 and is an issue of current concern in family law proceedings in other jurisdictions.495

There is abundant evidence that for women and children who have been assaulted or psychologically abused, direct examination in court by the person who perpetrated the abuse can result in them being re-traumatised.496 For this reason, many jurisdictions have enacted ‘vulnerable witness protection’ legislation, which prevents complainants in sexual assault and domestic violence offence cases being examined in chief or cross-examined by the defendant.497 Such legislation also generally allows witnesses to give evidence by alternative means, such as closed-circuit television or other similar technology,498 or via a video or audio recording made prior to the hearing.499

Council’s consultations suggest that in the absence of similar provisions in the Family Law Act, some judicial officers rely on ‘court craft’ – such as putting the person’s questions to the witness themselves or warning self-represented litigants about the implications of aggressive questioning for the court’s findings of credit – in an attempt to reduce the trauma of cross-examination for parties in this circumstance. However, this response has limitations as a solution to the broader question of how to balance the competing interests in these cases of ensuring a therapeutic process, good quality evidence and procedural fairness.

Stakeholders also raised concerns about the implications of being unrepresented for victims of family violence, including concerns about their capacity to narrow the issues in dispute prior to trial and their ability to run their case. In its submission to the Royal Commission into Family Violence, Women’s Legal Service Victoria noted that little research exists on the experiences of victims of violence who are unrepresented in family law proceedings.500
Professor Rosemary Hunter and her colleagues conducted a study of self-represented litigants in the Family Court of Australia in 2002, which included findings in relation to the impact of non-representation on the kinds of evidence presented to the court. However, to Council’s knowledge, there has been little research on self-represented litigants and family violence since that time. Council notes in this regard that two recent reviews of research on self-represented litigants contain only one reference to cases involving domestic violence. In Council’s view it will be important to the consideration and development of appropriate support services models for unrepresented clients to gain an understanding of the extent, experience and dynamics of self-representation in family law matters involving families with complex needs, including matters where there are family violence and mental health issues.

8.4 Parental mental illness and child safety concerns

The recent AIFS evaluation of the 2012 family violence amendments indicates that parental mental illness is a common feature of parenting disputes. Its 2014 survey of court outcomes revealed that parental mental health issues were present in 33% of judicial determination files while 62% of the parents surveyed in 2014 who held safety concerns for their child identified the other parent’s mental illness as a key source of their concerns. These data raise questions about the over-representation of parents with mental illness in litigated parenting disputes and the ways in which mental health issues intersect with safety concerns for children in this context.

There is abundant research evidence that the overwhelming majority of people with mental illness, including those with psychotic disorders, do not commit violent offences. While mental illness is among the individual risk factors associated with the perpetration of family violence (along with misuse of alcohol and other drugs and exposure to violence as a child), the police data reproduced in the Royal Commission into Family Violence Report show that for the majority of perpetrators of family violence, risk factors associated with mental illness are not present. Evidence provided to the Royal Commission by the Chief Psychiatrist from the Victorian Department of Health and Human Services also showed that on a population level, mental illness is ‘a small contributor to violence’, with other factors such as gender, a prior history of violence (including being exposed to violence as a child), age and use of substances being more powerful predictors of violent behaviour.

These data raise questions about how to understand the significant proportion of parents in the AIFS study who identified a parent’s mental illness as a source of safety concerns for their child. It is not clear, for example, to what extent the behaviours associated with the parent’s mental illness in these reports might have been more accurately characterised as family violence, where there has been threatening or coercive and controlling behaviour that causes a person to be fearful. Council notes that recent research by Domestic Violence Resource Centre Victoria (DVRCV) of intimate partner homicide trials found that a common narrative in the cases was the presentation of family violence as a mental health problem. This report pointed to concerns expressed by practitioners who work with abusive men about
‘the extensive reliance on mental illness to explain violence against women’.

Secondly, it may be that reports of safety concerns associated with parental mental illness reflect the operation of negative stereotypes and misconceptions (and misrepresentations in the media) of the mentally ill as dangerous. Chief Judge Pascoe of the Federal Circuit Court raised this issue in a 2013 article, in which he expressed concerns about how these stereotypes may be playing out in family law matters.

Thirdly, it is not clear to what extent reports of safety concerns for a child associated with mental illness might reflect the heightened rates of depression and post-traumatic stress among parents who have experienced family violence, and the (actual or perceived) impacts of these conditions on the person’s parenting capacity. As the Royal Commission into Family Violence noted in its recent report, there is strong evidence of increased risk of mental health issues such as depression and anxiety from exposure to intimate partner violence.

Fourthly, Council’s consultations indicate the importance for developing service responses for children of understanding the extent to which disputes involve parents with an untreated or undiagnosed mental health condition, and the extent to which the family courts are dealing with matters in which a parent with a mental illness has no legal representation.

These knowledge gaps point to a need to gather a clearer understanding of the ways in which parental mental illness intersects with family violence and other safety concerns for children in family law disputes, and among the population of separated parents more generally, as well as the experiences of separation/post-separation disputes of children who have a parent with mental illness. This information will be critical to informing the design of appropriate policy responses, including the development of effective collaboration and information sharing between the family law, mental health and family violence services sectors.
CHAPTER 9: COUNCIL’S VIEWS AND RECOMMENDATIONS

At the heart of Council’s reference is a desire to improve the family system’s responses to children in families with complex needs, including families affected by family violence or other safety concerns for the child where there are co-occurring issues of mental ill health and/or misuse of alcohol or other drugs. Recent research by the Australian Institute of Family Studies has confirmed that these features are pertinent to a significant proportion of the family law system’s clients, and particularly among those who appear before the family courts.

The presence of these features means that these families are more likely than families without these issues to engage with multiple legal systems, including in child protection and/or family violence-related proceedings in a state or territory court, and to require the services of a range of therapeutic and other support services. From a child mental health perspective, it is also likely that the security of the child’s welfare and caregiving relationships, which are the primary resource for a child’s healthy development and the paramount concern of the family law system, has been compromised by exposure to these dynamics.

Against this background, Council’s terms of reference asked it to report on the opportunities for strengthening the family law system’s capacity to safeguard and support children and families with complex needs. In its Interim Report, Council examined the issues affecting families with multiple legal needs associated with the separation of the federal family courts and the state and territory family violence and child protection systems. Council’s second tranche of work on this reference focused on ways of improving the family law system’s responses to clients with complex support needs, including through enhanced collaboration and information sharing with relevant service sectors.

Australia’s family law system has evolved and adapted over its history in response to the changing nature of its workload and the growing recognition of the prevalence of family violence and other child safety concerns among the families who use its services. This has included major legislative reforms, such as the family violence amendments to the Family Law Act in 2012, as well as significant procedural and service system innovations, such as the introduction of the Magellan program, LAT and Family Relationship Centres, and the development of lawyer-assisted family dispute resolution services, sophisticated risk screening tools and the co-location of child protection practitioners in the family courts.

Despite these developments, Council’s work on this reference has revealed a number of gaps, barriers and continuing concerns about the system’s responses to families with complex needs. In Council’s view there is a pressing need to build on the initiatives outlined above to address these gaps and further enhance the system’s responsive capacity. Council acknowledges the growing community awareness of the negative impacts on children of being exposed to family violence and other problematic behaviours within families, and the expectation of reforms to the justice system to address these issues. This is evidenced by the
number of recent reports that have sought to address these concerns, including the 2015 report of the Queensland *Special Taskforce on Domestic and Family Violence* and the 2016 reports of the Victorian *Royal Commission into Family Violence* and the COAG Advisory Panel on Reducing Violence against Women and their Children.

Given the complexity of the issues and the diversity of stakeholders and service sectors involved, reform to the family law system will require a network of changes on a number of different levels, including legislative changes, the development of dedicated services and processes to support collaboration and information sharing, and the building of workforce capability. In considering these issues and the suggestions made by stakeholders, Council has been guided by the principles outlined in its *Interim Report*. At that time, Council indicated its view that any redevelopment of the justice system to improve responses to families with complex needs should:

- Ensure a client-centred design, with services that are comprehensible and accessible to families with multiple and complex needs;
- Provide timely responses to child safety concerns, including early assessment of risk and exposure to trauma;
- Support the use of flexible problem-solving approaches to clients’ needs, including the exercise by judicial officers of powers under multiple jurisdictions where appropriate;
- Incorporate tailored services for specific problems and demographic groups, including dedicated case-managed responses to family violence and child abuse and specialised services for Aboriginal and Torres Strait Islander families;
- Employ a teamed approach, including integrated legal and support services; and
- Facilitate information sharing and collaboration across jurisdictions.

Council has also been mindful of the importance of building on existing initiatives that have proved effective in responding to families with complex needs both within and beyond the family law system, as well as the many innovative and promising practices we have become aware of during the consultations for this reference.

Council’s views and recommendations about these issues are set out below. It is important at the outset to note that, just as views in the wider community differ on these issues, there were different views among the members of Council regarding the extent and types of reform initiatives needed to enhance the responsive capacity of the family law system. Where there were different views, these are noted in the discussion and the range of options that Council considered is described.
9.1 Building collaborative and integrated services and identifying, assessing and responding to risks to children

Council received a strong message from a range of stakeholders during its work on this reference that the family law system needs to maximise the opportunities for safeguarding children by facilitating access to a range of relevant services in an integrated and case managed way. Central to the success of this endeavour will be the strengthening of collaborative relationships between the family law system and other relevant sectors, including family violence, mental health and drug and alcohol services and state and territory courts. It will also require the incorporation of effective strategies for identifying children who are at risk of harm at whatever point families enter the family law system, and the development of effective information sharing protocols between services.

Family safety services

The recent AIFS research and the other material before Council point to the need to develop a systematic approach to safeguarding children and families who use the services of the family law system. Council’s work on this reference suggests that a critical component of this development will be the building of positive working relationships between the family law system and specialist family violence services, the majority of which are located in the state system. Council notes in this respect the findings of a recent analysis of child protection cases involving parents with multiple risk factors, which recommended the active integration of the ‘expertise of family violence services’ into the work of that sector.518

Council considered a number of options for incorporating this expertise and building capacity in the family law system to respond to families where there are issues of family violence or other safety concerns for children. A minimalist option (Option 1), which seeks to address the needs of family law clients who begin in the state system, would involve the Commonwealth providing funding to specialist family violence services already located in state and territory magistrates courts or who provide services in those courts, so that those services can continue to support clients with family violence issues who move to the family law system to seek parenting or other orders.

The advantages of this option include continuity of support for the client and a reduction in the need for the client to re-tell their story to a new set of professionals, a problem identified in Council’s Interim Report. This model also carries the potential for significant information sharing benefits: when the specialist family violence worker at the state court ‘crosses the road’ with the client to the federal family law system, they can pass on the information about the client to the family court or family law service with the client’s consent.

There are, of course, several limitations associated with this proposal as a stand-alone option. To begin with, it does not address the support needs of the many families who do not use the courts or who enter the family law system via a different pathway. Nor does it address the
capacity building needs of the family law system, as these workers will continue to be located in the state system. Another potential limitation on its effectiveness is the indication in the Victoria Legal Aid file data supplied to Council that not all families who transition from a state or territory court to a federal family court do so immediately, and that there may be some period of time before a client who has obtained family violence protection orders from a state and territory court is ready to seek family law orders. This circumstance might mean that the information held by the family violence worker who supported the client in the state system is not up to date at the time the client transitions to the family law system. A further issue to note is the possibility that the family violence worker attached to a state or territory court may have limited familiarity with the practices of the family law system.

However, this reform could be coupled with a second option (Option 2), which seeks to address the needs of people who come directly to a federal family law service or who engage with the family law system some time after disconnecting with the state system. This option would involve the family law system adopting the purchaser/provider model of state and territory family violence courts to employ embedded workers from specialist family violence services in the family courts and Family Relationship Centres. These embedded family violence workers could conduct risk assessments, prepare safety plans and make referrals to relevant support services. The experience of the NJC and other courts that use this model suggest its potential to address the issues of capacity building and to ensure the provision of specialist family violence expertise and support for children and families with safety concerns. By including Family Relationship Centres in this model, the benefits of the embedded worker approach would extend to those families who do not approach the courts.

However, absent a broader integrated services approach (discussed below), this option does not address the wider risk management and support needs of the many children and families where safety concerns relate to, or are complicated by, issues of mental illness and/or misuse of alcohol or other drugs.

A third option (Option 3) would involve building on the 2006 and 2012 reforms to create a dedicated family safety service within the family law system that could provide a broader range of support services for families with complex needs, including the conduct of risk assessments and the preparation of safety plans for family law clients and the provision of case management services for the courts. This longer term reform strategy would require the Australian Government to develop an agency with a range of embedded services, including specialist family violence sector staff and mental health and drug and alcohol services workers, that is independent of the family courts.

Such an agency could be tasked with providing a range of services for client families and family law system professionals, including the courts. Council envisages this including the conduct of risk assessments for clients who are referred to the service by lawyers when risk factors have been identified (discussed below), as well as parties who are referred by the courts following identification of risk factors in the Notice of Risk. A dedicated family safety service could also effect referrals to and liaison with relevant services, such as parenting
courses and men's behaviour change programs, where the court orders a person's participation in these programs. Like Cafcass in the United Kingdom, a family safety service could also be used to monitor a client's engagement with such services and provide assessment reports to the court. Ideally a family safety service would provide a case worker or support person for the child, and be able to continue working with a family following court proceedings. Building on the development of Family Relationship Centres as gateway services to the family law system, a family safety service could be co-located within Family Relationship Centres with out-posted services at the courts.

Council acknowledges that Option 3 would require significant resources and time to develop. Council also notes that both Options 2 and 3 potentially overlap with some services currently provided by other professionals within the family law system, such as family consultants, and would require, therefore, review and streamlining of current service provisions in the courts as well as Family Relationship Centres.

**Recommendation 1: Family safety services**

The Australian Government consider ways of incorporating the expertise of specialist family violence services into the family law system to improve responses to families where there are issues of family violence or other safety concerns for children. This may include a combination of:

1) funding family violence services that provide embedded services in state and territory courts to continue to support clients with family violence issues when they move to the family law system to seek parenting or other orders;
2) embedding workers from specialist family violence services in the family courts and Family Relationship Centres;
3) creating a dedicated family safety service within the family law system.

**Early whole-of-family risk assessments**

Underpinning Council’s reference is evidence that a significant proportion of the dispute workload of the family law system, and particularly among client families with complex needs, is characterised by a history of family violence or other behaviours that raise safety concerns for children. In order to support protective responses to children in these cases, it is critical that each of the family law system’s services and organisations, including the family courts, family lawyers and family dispute resolution services, is able to screen, identify and assess the presence of risk to the child at the earliest opportunity.

In recognition of this need, a number of risk assessment tools and practice changes designed to enhance the system’s capacity to identify and assess the risk have been implemented in recent years. These include the creation of the DOORS tool for use by family lawyers, the introduction of a mandatory Notice of Risk form by the Federal Circuit Court and a mandatory pro-forma affidavit by the Family Court of Western Australia, and the
development of a Family Violence Screening Tool for use by family consultants. Council commends these initiatives.

However, the recent AIFS *Evaluation of the 2012 family violence amendments* revealed that despite these processes, many children and adults who use the system’s services are not asked about these issues. Reflecting concern about such practices, the 2016 report of the COAG Advisory Panel on Reducing Violence against Women and their Children recommended that all governments ‘develop early intervention initiatives to improve identification of’ risks of harm to children.

Council agrees that additional measures are needed to ensure that risks of harm to children are identified and assessed at the earliest opportunity regardless of the client’s entry point to the family law system. This should include talking to children themselves about safety concerns where appropriate. Council also believes that consistency of risk assessment approaches for client families is desirable.

It is important at this point to distinguish between the *identification* of risk factors and processes that are designed to *assess* the level of risk and the likelihood of future harm to children. The former process underpins many of the current entry point practices in the family law system. This reflects the recommendations of Professor Chisholm in his 2009 *Family Courts Violence Review*, which emphasised the need to develop ‘a process of scrutiny’ that ‘seeks to identify any risk that requires urgent attention’. The focus on identifying rather than assessing risk at an early stage of engagement with the family law system may also reflect the historical emphasis on the courts as the key site of risk assessment in children’s matters.

It is also important to articulate the purposes of these processes, and the links between the assessment of risk and responses to ameliorate the effects of past harm and reduce the likelihood of further harm occurring. Council notes in this regard the research evidence of the cumulative effects of prolonged exposure to abuse, neglect or family violence in childhood, which include changes to the child’s brain development and ‘an inability to regulate emotion, and cognitive and behavioural developmental delays’. Child protection system practice principles indicate that children who have suffered cumulative harm ‘need to be made safe’ as quickly as possible so as to support their recovery and help them ‘make sense of their experiences’. This includes ‘calm, patient, safe and nurturing parenting’ and (possibly multi-systemic) therapeutic services.

Council notes in this regard the recommendation of the COAG Advisory Panel that all governments ‘build on emerging research and best practice approaches to develop child-focused responses to support, and build resilience in, children and young people’, including by identifying and expanding best practice programs ‘that strengthen children’s resilience and promote healing from trauma’.

In addition to triggering these therapeutic responses, risk assessment processes are critical to
putting appropriate mechanisms in place to reduce the ongoing impact and likelihood of further harm. In the context of family law disputes, this is likely to include services to enhance the safe parenting capacity of a person who has used violence or abuse in the past in appropriate cases, as well as services to repair the child’s attachment relationship with the parent whose parenting capacity may have been compromised by the violence or abuse and support that parent to recover from trauma.

Council acknowledges the concerns of stakeholders to ensure timely risk assessments so as to enable referrals to therapeutic interventions for children that address trauma and cumulative harm, and to ensure referrals to services to support safe parenting and repair damaged attachment relationships. Council agrees there is a need for timely psycho-social assessments within the family law system to support these responses.

Council also acknowledges stakeholder concerns to ensure all members of the family are included in the risk assessment process, in order to gain an accurate picture of the risks to the child. Council supports these calls. In Council’s view, a whole-of-family risk assessment process should be established in the family law system. Such a process could be conducted by a dedicated family safety service (as outlined in Recommendation 1) or by a family consultant or a court-based or Family Relationship Centre-based specialist family violence service worker.

It is Council’s view that such risk assessments should be non-confidential and admissible. This will mean that conclusions based on the risk assessment, which should be contained in a brief report, may be shared between professionals and services and agencies providing services to family members where appropriate and made available to the family courts.

**Recommendation 2: Early whole-of-family risk assessments**

Having regard to the issues of abuse, neglect and family violence and the need for such evidence to be broadly available to protect children, the Australian Government should incorporate a whole-of-family risk assessment process into the family law system that is non-confidential and admissible.

**Family lawyers and risk identification**

For many clients with complex family law needs, a legal practitioner will be their first point of contact with the family law system. For these professionals, the DOORS tool provides a multi-level approach to identifying risk. However, the material set out in Chapter 2 points to some challenges in these areas in legal practice. In part these challenges arise from the nature of the solicitor/client relationship and the fact that legal practice is situated in an adversarial context where each practitioner has a duty to their client and an obligation to act on their client’s instructions. Furthermore, contact between lawyers and family law system clients may take place in a range of settings and may be brief – such as when a parent seeks information from a publicly funded telephone service or from a publicly funded legal advice
In each of these contexts, where risk is dynamic and the presence or absence of risk (on a short or longer term basis) is one of the central issues in dispute between the parties, and from a legal perspective, is untested as a question of fact, identifying, assessing and managing risk may pose challenges. In addition to the complex issues that arise in this context, particularly from the perspective of a practitioner who may be acting for a client who denies the presence of risk, are a range of practical questions including the time it takes to identify, assess and potentially develop strategies to manage risk and the extent to which existing mechanisms are effective in time-pressured practice contexts involving clients with limited literacy or whose first language is not English.

The material before Council indicates that there is both a desire and a need for a simpler tool to identify risk for use in some areas of legal practice. In Council’s view there is also a need to develop a systematic approach to the assessment and management of risk for families across the family law system, including for clients who engage with lawyers. Council recommends consultation with legal practitioners and their professional bodies to consider how a systematic approach to risk identification, and risk assessment and management, may be implemented for families who engage with lawyers in relation to family matters. Council also supports the development of a simplified tool that practitioners can use to identify the presence of risk factors as a basis for referring clients for a more comprehensive risk assessment by a specialist family violence service or other family safety service.

**Recommendation 3: Family lawyers and risk identification**

The Australian Government consult with the Family Law Section of the Law Council of Australia, legal practitioner regulation bodies, including National Legal Aid, and family law practitioners more broadly, to support the development of:

1) a simplified risk identification mechanism for parents and children for use by the legal profession
2) protocols and guidelines to assist practitioners to utilise strategies to ensure that risk is identified and managed effectively, including through warm referrals to specialised family violence services
3) the development of a strategy to support the implementation of these measures among legal practitioners who practice family law in the context of their professional obligations to their clients, their ethical responsibilities as legal practitioners and the professional indemnity issues that responses to risk raise.
Family dispute resolution practitioners and risk management strategies

The intake process for family dispute resolution provides another key site for identifying risk to children when families enter the family law system. Regulation 25 of the Family Law (Family Dispute Resolution Practitioners) Regulations 2008, which governs parents’ eligibility for these services, provides that a family dispute resolution practitioner must assess whether the ability of any party to negotiate freely in the dispute is affected by such things as a history of family violence, the likely safety of the parties, the emotional, psychological and physical health of the parties, or the risk that a child may suffer abuse. If, after considering these matters, the practitioner is not satisfied that family dispute resolution is appropriate, he or she ‘must not’ provide a family dispute resolution service to the parties. In such cases, the family dispute resolution practitioner may issue a certificate to this effect under s 60I of the Family Law Act, or a certificate under s 66H of the Family Court Act 1997 (WA).

Council notes that there is presently no linked obligation on the part of family dispute resolution practitioners to make follow-up referrals to relevant support services in this situation. Material from Council’s consultations and submissions suggests that some family dispute resolution services make these referrals, but that this is not consistent practice. Council agrees with the statement made by one practitioner that this circumstance represents a ‘weakness in the system’.

In Council’s view, support for a more systematic approach to responding to the needs of parents and children where family dispute resolution does not proceed or safety concerns for a child or parent are identified is warranted. In particular, in these instances, the following steps may be required:

- preparation of a safety plan and referral to a specialised family violence support service;
- referral for legal advice on personal protection orders and options for addressing parenting arrangements;
- referral for therapeutic support for affected parents and children;
- referral to a men’s behaviour change program and other referrals in relation to other support needs, such as housing, mental health or substance misuse needs.

Additionally, Council considers that follow up within a six month time frame to assess the clients’ situation and see whether further action or support might be required would be justified for some clients.

Recommendation 4: Family dispute resolution practitioners and risk management strategies

The Australian Government consult with key stakeholders, including Family & Relationships Services Australia, to identify how best to support a systematic approach to
meeting client needs once an assessment that family dispute resolution should not proceed is made or risk is identified. The following options should be considered:

1) an amendment to Regulation 25 of the *Family Law (Family Dispute Resolution Practitioners) Regulations 2008* to extend the obligations of family dispute resolution practitioners to their clients to encompass the following steps as required:
   (a) preparation of a safety plan and referral to a specialised family violence support service;
   (b) referral for legal advice on personal protection orders and options for addressing parenting arrangements;
   (c) referral for therapeutic support for affected parents and children;
   (d) referral to a men’s behaviour change program and other referrals in relation to other support needs, such as housing, mental health or substance misuse needs.

2) amendments to relevant funding agreements to support this extension of obligations.

**Judicial risk assessments and court ordered programs**

Many of the submissions that Council received about the sharing of information between services focused on the litigation stream of the family law system, and on the evidentiary needs of judicial officers to support their assessments of risk to children in contested matters. This included discussion of the courts’ capacity to access information about the parties held by a range of different services, including therapeutic treatment services (such as family counselling and mental health services), as well as court ordered programs such as men's behaviour change programs and post-separation parenting programs.

While Council’s work revealed significant support for the sharing of information between some services that work with families with complex needs, particularly where this can assist the courts to assess the child’s best interests, it also revealed significant concerns about the potential for harm to children and parents from non-consensual disclosure of information from other services. In particular, stakeholders emphasised the importance of client consent to disclosure of treatment records from counselling and other mental health services, where confidentiality is critical to the therapeutic process.

In contrast to this position, the submissions regarding access to information from men's behaviour change programs and post-separation parenting programs indicated strong support for the provision of a limited form of assessment report to the courts where the person has been ordered to attend. These stakeholders, which included relevant service providers, saw this approach as being consistent with the justification for court ordered attendance at these programs and as a way of both ensuring the accountability of parents who are referred to such programs and assisting the court to assess the client’s safe parenting capacity. As this suggests, underpinning the apparent distinction between stakeholders’ views about access to information from therapeutic services versus court ordered programs was an understanding of
the centrality of confidentiality to the success of the former process, and the importance of accountability to children and partners with regards to the latter. More particularly, program providers noted that unlike counselling services, where privacy is critical to the therapeutic process, the primary method used to work with clients in men's behaviour change programs and post-separation parenting programs involves a group course format.

Council acknowledges that men's behaviour change programs are increasingly working with men on their fathering, and notes the view of the COAG Advisory Panel that behaviour change programs that 'engage perpetrators as fathers can motivate them to change their behaviour and prevent further acts of violence against women and their children'. Council understands that while the family courts in the United Kingdom make extensive use of referrals to such programs for fathers who have used violence, this is not common practice in the Australian family courts.

Council’s consultations with program providers, including from No To Violence, the peak body for men's behaviour change programs in Australia, and Relationships Australia Victoria, a primary provider of behaviour change programs in the family relationships sector, proposed that there is considerable potential for the family courts to make greater use of these services, including to obtain assessment reports where a parent has been ordered to attend the program. This was particularly noted in relation to the men's behaviour change programs where work on fathering is embedded into the course.

Program providers suggested the family courts could develop a standard ‘tick box’ feedback form for use in family law matters, which would require the service to indicate (1) whether the person attended each session and (2) whether the person engaged effectively and participated positively in the process. A possible third feedback question that was canvassed during Council’s consultations concerns the possibility of seeking the practitioner’s opinion about whether the client’s attitude to parenting had been positively affected by the course. Council notes that some stakeholders foresaw problems with this question for program providers, suggesting there may not be enough one-to-one engagement in a group course for practitioners to make a good clinical judgment about this issue. Other stakeholders, however, including No To Violence, took the view that it is possible for practitioners to assess whether the person is making the changes required to provide safe parenting, particularly where the course extends over 26 weeks.

Council is aware that a key obstacle to the courts seeking assessment reports from men's behaviour change programs are the current professional standards governing these programs in each state and territory. These standards generally provide that behaviour change programs must not provide a court with any information about a person’s engagement with the service, other than a report that they attended and completed the program, in the absence of client consent. Council understands that changes to the professional standards in several states are in train to remove this constraint, and that this change is supported by No To Violence and other program providers.
Council also notes the limited capacity for the family courts to order a parent to attend a men’s behaviour change program at an interim hearing, because there is rarely a finding of family violence until the court has had the opportunity to determine disputed facts at the final hearing, and there is doubt that a court has power to make stand-alone orders of this kind at trial. However, Council is aware that the family courts have power under s 69ZR of the Family Law Act to make early determinations about issues of fact, including about allegations of family violence. Council understands that this practice is not widespread. In Council’s view, it would align with the principles of timeliness and flexibility guiding Council’s consideration of this reference if this practice were adopted on a more consistent basis. Where a positive finding is made in relation to family violence, it may be appropriate for the court to order attendance at a men’s behaviour change program and seek an assessment report before concluding the final hearing.

Council also notes the submissions regarding assessment reports from post-separation parenting programs. A court may order a person to attend a post-separation parenting program as a condition of parenting orders, or where they have contravened a parenting order. However, evidence of anything said, or of any admission made, by a person attending a post-separation parenting program is not admissible. Council acknowledges the view of some stakeholders that program providers should be required to provide the court with an observational assessment report where a client has been ordered to attend, as a way of ensuring the accountability for parents who are referred to such programs to address unsafe parenting behaviours. Council’s consultations indicate support for a standard feedback form covering the same questions as noted above in relation to men’s behaviour change programs, namely, information about whether the person attended each session of the course, whether they engaged effectively and participated positively in the process and the practitioner’s opinion about whether the client’s attitude to parenting or violence if relevant has been positively affected by the course.

Council sees value in either legislative change and/or the development of protocols between the courts and post-separation parenting programs and men’s behaviour change programs to facilitate such assessment reports.

**Recommendation 5: Judicial risk assessments and court ordered programs**

The Family Law Act 1975 be amended to facilitate the making of court orders for observational assessment reports where the court orders a party to attend a post-separation parenting program or a men’s behaviour change program.

**Judicial risk assessments and police records**

In its Interim Report, Council noted that many parents who enter the family law system have been involved in prior proceedings in a state or territory court in relation to family violence protection orders, and that the majority of applications for these orders are brought by police.
However, in many cases there may be police records of call outs to domestic violence incidents that did not result in an application for a family violence protection order. Access to police records is therefore a potentially important source of information for the family courts when it comes to assessing the risk of harm to a child.

As described in Chapter 4, judicial officers have power under s 69ZW of the *Family Law Act* to make an order in child-related proceedings that requires the police (and child protection agencies) to provide the court with documents or information related to child abuse or family violence. The submissions from stakeholders in Western Australia made clear that s 69ZW of the *Family Law Act* is used often and effectively by the Family Court of Western Australia to obtain information about family violence call out records, family violence protection orders, safety notices and criminal convictions.

Council notes the views of stakeholders from Western Australia regarding the importance to s 69ZW requests of building a collaborative working relationship between the court and the police. Council supports efforts by the family courts to build effective working relationships with state and territory police to support a greater use of s 69ZW orders to obtain police records in appropriate cases. Council also considers that the development of stakeholder meetings as recommended by Council in its *Interim Report* should include the police.

**A common risk assessment framework**

Council notes the diversity of risk assessment tools within and beyond the family law system and acknowledges the importance of organisations and services being able to tailor risk assessment tools for their own purposes. Council notes in particular the development of the Family Violence Screening Tool by the Child Dispute Services section of the family courts as an example of a tool that has been successfully tailored for the purpose of s 11F conferences and tools that have been developed by family relationship services to screen for suitability for family dispute resolution. Council also acknowledges that the effectiveness of a risk assessment process lies in the skilled exercise of professional judgment rather than the particular tool, and agrees with the COAG Advisory Panel’s view that the usefulness of any risk assessment tool is contingent on the capacity of frontline staff to apply it appropriately.

Council acknowledges stakeholders’ support for the development of a national framework to support the application of different risk assessment tools in a consistent way. Council supports the recommendation of the COAG Advisory Panel that such a framework be developed by the Commonwealth and state and territory governments through a collaborative process, and be regularly evaluated and updated to ensure ongoing relevance and accuracy. Council agrees with the Advisory Panel’s recommendation that a shared framework should:

- include nationally agreed principles, draw on existing best practice and specify nationally agreed core content
- inform risk assessment tools that are flexible and tailored to different jurisdictions
and/or to different high-risk groups

- be applied accurately and consistently by professionals who should also receive regular, high-quality training
- ensure risks associated with all forms of violence against women and their children are appropriately accounted for (including, but not limited to, risks associated with technology, disability, finances or immigration status)
- incorporate guidance on appropriate referral pathways for victims of violence (both women and their children) and perpetrators
- be evaluated and updated at least every three years to ensure relevance and accuracy.  

Council also agrees with the COAG Advisory Panel’s view that the framework should include a nationally agreed set of indicators which build on current best practice, including both mandatory content – such as indicators of perpetrator risk, other risk factors (for example, disability, immigration status, financial risk, risk of lateral violence) and guidance on appropriate referral pathways for victims (including children) and perpetrators – and flexible content that ensures risk assessments can be tailored to different jurisdictions, sectors, services and contexts.  

**A court-based integrated services model**

As noted above, Council recommends the incorporation of embedded workers from specialist family violence services and other service sectors into the family law system in order to support family law clients with complex needs. Council also acknowledges the strong message from stakeholders that client referrals to these support services should be case managed in a coordinated way. This included calls for the development of an integrated services model attached to the family courts.

The idea of integrating legal and support services within the court precinct is not new to the family law system. Underpinning the creation of the Family Court of Australia was the concept of a ‘helping court’, which incorporated an in-house counselling service for family law clients.  

In recent years the provision of court-based family consultants has been supplemented by the co-location of child protection practitioners in several registries of the family courts, in recognition of the overlaps between the family law and child protection systems for many client families. Council also notes the coordination of ‘court kiosks’ by Family Law Pathways Networks in some family court registries. Whilst the model for these varies across court registries, some kiosks are staffed by rostered service providers such as Family Relationship Centre workers with information provided to parents, self-represented litigants and legal practitioners about available services and programs, eligibility criteria and wait times. At some courts, kiosk workers are able to contact service providers immediately to make appointments for clients, including while the court adjourns.  

In Council’s view, the recent AIFS research, which shows that increasing cohorts of the family law system’s clients have a mix of legal and therapeutic support needs associated with
family violence, drug and alcohol misuse and mental ill health, highlights the need to provide court clients with access to a broader range of service representatives within the court precinct. These data also indicate that more is needed than simply ‘warm referrals’ to a range of services, and the critical importance of developing a case management framework and protocols to support the exchange of information between services. Council notes in this regard the discussion of integrated services models in the COAG Advisory Panel’s Final Report, which acknowledges that central to the success of these models in supporting clients with complex needs are ‘robust information-sharing protocols’.

Of particular relevance to Council’s terms of reference is the NJC model in Victoria, which brings together a range of on-site services and agencies to support the NJC’s clients and provide assessment and referral services for the court. This includes a mix of employed and embedded support service providers, including a Koori Justice worker, a migrant settlement service, a drug and alcohol counselling service, a local mental health service, a housing service, a financial counselling service, a legal aid service and a specialist family violence support worker.

Council notes that these agencies provide services to the NJC’s clients in an integrated and coordinated fashion within a framework of therapeutic justice, where service provision by multiple agencies is case managed and information sharing between the services is facilitated by a protocol and client consent. Council’s consultations with the NJC’s client services manager and its embedded family violence worker suggest that the co-location model supports the development of effective working relationships between the various service providers and helps to build client trust in the court, facilitating the client’s consent to workers sharing information with other services.

Council also notes the CISP, which currently operates in three registries of the Magistrates’ Court of Victoria. This program offers an intensive (4 month) case managed program of integrated services, including mental health, drug and alcohol and acquired brain injury services to eligible offenders.

Council considers that government should explore the development of an integrated services model to be based at the family courts with embedded workers from:

- mental health services
- specialist family violence services
- alcohol and other drug services
- Aboriginal and Torres Strait Islander organisations
- migrant resource centres or other appropriate culturally and linguistically diverse-specific services,
- family relationship services, and
- the legal assistance sector.
In Council’s view it will be important that the design of the model incorporates a case management structure and a protocol to facilitate the sharing of information between the services and between the services and the court.

**Recommendation 6: A court-based integrated services model**

1) To provide evidence and a better structured system in a more child-focused way, the Australian Government should consider establishing a client-centred integrated service model to trial collaborative case management approaches to families with complex needs, to be piloted initially in one court registry and evaluated pending further roll out. Part of that trial should include the development of effective information sharing protocols.

2) In order to support the development of effective information sharing protocols, Council recommends the government clarify the confidentiality status of family dispute resolution intake assessments.

**Case managed integrated services in the family relationships sector**

Council’s consultations and the AIFS research demonstrate that family relationship services are also seeing large numbers of client families with multiple and complex needs, albeit to a lesser extent than the family courts. Council notes that many agencies in the family relationship sector already work in a collaborative way with other services, including referring clients to and liaising with specialist family violence services, legal assistance services, mental health and drug and alcohol services, and specialist services for Aboriginal and Torres Strait Islander and culturally and linguistically diverse clients. Council is also aware that some larger agencies in the family relationship sector are able to provide client families with a range of services within their own organisations, including family dispute resolution services, men’s behaviour change programs, counselling and parenting programs. This makes the family relationship sector well placed to case manage a client’s engagement with multiple services.

Council notes in particular the Family Safety Model developed by RAV, which uses a case manager role attached to its men’s behaviour change programs (described in Chapter 5). RAV’s Family Safety Model involves three levels of practice, incorporating:

- a thorough safety, risk and whole-of-family psycho-social assessment;
- an information and referral source to meet the ongoing safety and support needs of children and family members; and
- a function that coordinates and tracks the family’s involvement with external agencies and systems.

This model, whose integrated services response is triggered by a client’s involvement in a men's behaviour change program, ensures all family members are linked with relevant
support and therapeutic services, including services that address the attachment needs of children affected by family violence. As such the Family Safety Model reflects the recent recommendations of the COAG Advisory Panel, which supported inter-agency alliances and integration of services that aim to reduce trauma and build resilience in children who are affected by family violence.539

Council understands that RAV has recently moved to expand its Family Safety Model so that case management of integrated services will also be triggered by engagement with a family dispute resolution service. Council also notes WA Anglicare’s Safety Assessment Model, which operates in its Family Relationship Centres to provide assessment of risk to children and families and managed referrals to outside services as required.540

Council commends these initiatives and supports the expansion of integrated service models that are case managed by family relationship sector agencies.

Recommendation 7: Case managed integrated services in the family relationships sector

To better address the complex nature of children’s disputes, the Australian Government consult with Family & Relationship Services Australia with a view to further developing a case managed integrated services approach attached to family dispute resolution and men's behaviour change programs across the whole family relationship services sector.

Self-represented litigants with complex needs

Information provided to Council demonstrates that more than half of the family law cases that come before the courts involve parties who are unrepresented for some or all of the proceedings. Council notes that previous research has revealed the significant burdens for litigants,541 as well as for Independent Children's Lawyers542 and the courts, in matters where parties are not represented, particularly where the safety and best interests of the child are affected by risk factors associated with family violence, parental mental illness and/or drug and alcohol misuse.

Council understands that vulnerable people self-representing may face a range of challenges as their matter proceeds through the court system to a final hearing. Where the matter involves an unrepresented person who has experienced family violence, this may include a risk of cross-examination that perpetuates the abuse and the provision of incomplete or poor quality evidence to the court. In such cases, issues of procedural fairness will also be significant. Council was also advised that it is not uncommon for parenting matters to involve unrepresented parties who have significant untreated mental health issues.543

Council is aware that if an Independent Children’s Lawyer is appointed in a matter where one or both parties is unrepresented, the Independent Children’s Lawyer will be tasked with
gathering evidence to assist the court to make a decision that is in the child’s best interests. The Independent Children’s Lawyer will also be asked to assist the court to manage the litigation in an effort to ensure procedural fairness is afforded to all parties. Council acknowledges the limited capacity for the Independent Children's Lawyer in this circumstance to address some of the issues described above. The Independent Children’s Lawyer acting on the child’s best interests is not responsible for advocating for appropriate protections to be put in place during examination of a party who has experienced family violence where the other party is unrepresented. Nor is it within the scope of the Independent Children’s Lawyer’s role for them to implement safety plans for vulnerable self-represented parties. In addition, whilst the Independent Children’s Lawyer in the course of a hearing might lead off the questioning process or try to ensure that a party is cross-examined from all angles to reduce potential power imbalances and ensure appropriate perspectives on the evidence are put before the court, an Independent Children’s Lawyer is not tasked with advocating for the position of both parties.

Council is conscious that the provision of publicly funded legal representation for all parties in child-related matters involving concerns about family violence or mental illness would have significant resource implications. Against this background, some members of Council considered there would be value in government exploring the viability and benefits of a Counsel Assisting model to assist the courts in cases where one or both parties is self-represented and issues of family violence or other safety concerns for a child have been identified. The use of this model in such cases would assist the court’s determination of the child’s best interests by ensuring that all relevant evidence is identified and collated and that all relevant issues are ventilated before the court in a coherent and efficient way.

Council also notes the potential benefits of a Counsel Assisting model for an unrepresented party who has experienced family violence, including by assisting them to narrow the issues in dispute. Council further notes the potential for this approach to help maintain a focus on the best interests of the child throughout the hearing, which may be otherwise compromised in the context of adversarial proceedings where one or both parents is not legally represented, particularly where an unrepresented person has significant untreated mental health issues.

**Recommendation 8: Self-represented litigants with complex needs**

The Australian Government explore the viability of piloting a Counsel Assisting model in cases with self-represented litigants and allegations of family violence or other safety concerns for children.

**Support services for families in rural and regional areas**

A number of submissions drew Council’s attention to the particular barriers affecting access to family law and associated support services for clients living in remote, rural and regional areas of Australia. These include issues of isolation and distance from urban-centred services.
and the courts and the lack of locally based specialist family law legal services and specialist family violence services.

Council is aware of a number of successful initiatives that have sought to address these issues. Council notes in this regard the Family Relationship Advice Line (FRAL), which was established in July 2006 as an initiative of the Attorney-General's Department. The FRAL is a national telephone and virtual service established to assist families affected by relationship or separation issues. The advice line provides information on family relationship issues and advice on parenting arrangements after separation, including family violence and safety issues for children and parties. It also refers callers to local services that can provide assistance.

The advice line has three distinct components. The first is represented by an initial intake involving safety and family violence screening, an identification of the presenting legal and social science needs and assistance with the presenting social science needs with the initial call taken by the FRAL centre based in Brisbane. Callers can be referred to the second component, the Telephone Dispute Resolution Service (also based in Brisbane), which is a telephonic and virtual Family Dispute Resolution Service designed to assist callers with family dispute resolution in circumstances whereby they are unable to attend a dispute resolution service in person. Callers with presenting legal needs are referred to the third component of the advice line, The Legal Advice Service, which is based in Perth and Adelaide. The calls are categorised on an urgent basis (immediate call back), priority (call back with 4 working hours) and normal basis (call back within one working day).

The FRAL service operates through a national free 1800 number and a free international number for callers outside the Commonwealth. The family relationship advice line is available from 8 am to 8 pm, Monday to Friday, and 10 am to 4 pm on Saturday. The advice line has established protocols in relation to dealing with and providing assistance with family violence and child-related matters on both an urgent and priority basis. The advice line regularly provides assistance to callers seeking legal and procedural advice in relation to securing family violence orders. In the year ending 30 June 2015, the legal advice component of the advice line engaged in 18,462 calls related to family law issues including family violence, child safety concerns, child recovery and general family law legal information. In the year ending 30 June 2015, the total number of callers to the advice line was 66,330 calls answered by the advice line.

Council also notes the Link Virtual Outreach program offered by WLSV, which provides free specialist legal advice and representation to women living in regional Victoria who experience family violence. This collaborative program, which partners with specialist family violence services, community health centres, women’s refuges and generalist community legal centres in regional Victoria, uses Skype and other internet-based tools to provide a virtual legal practice in which WLSV lawyers can ‘meet with’ clients from multiple locations around the state. Since January 2016, the Link Virtual Outreach program has provided 254 women experiencing family violence with 333 appointments for specialised legal advice in
the security of a support agency in a location convenient to them, an increase of over 20% on the previous year. Of these clients: 84% were on low incomes, 72% were sole parents, 68% were relying on Centrelink as their main income, and 12% had a disability.

Council commends these initiatives. Council also supports the greater resourcing and use of virtual outreach programs such as the Link Virtual Outreach service in Victoria to provide legal advice and specialist family violence support to client families in regional and rural Australia.

In addition, Council notes that some stakeholders suggested the need to make more widely available the ability for electronic attendance at court hearings where distance is an issue. Council supports the greater use of video and internet-based technologies to enhance access to the courts for families in remote, rural and regional areas of Australia. Council acknowledges that this will require a coordinated national plan to build, maintain, and support the necessary digital infrastructure. Council understands that video conferencing for legal, health and education purposes often operate in separate silos, with little coordination of access across jurisdictions. In Council’s view this problem needs to be addressed.

Council considers that the policy and program initiatives to develop broadband across Australia, including in Aboriginal communities, need to distinguish between high-speed Internet and broadband networks capable of sustaining real-time audio and video communication. High-speed Internet allows fast email and web browsing, but does not guarantee the quality of service required for reliable video conferencing. Council believes that these developments should be accompanied by education in the use of technologies for families living in remote communities to ensure its cultural acceptability. It is important that the use of technology does not add to the level of remoteness experienced by Aboriginal people in their dealings with the non-Indigenous judicial system.\(^{544}\)

Council also supports greater opportunities for access to courts for people living in regional areas by way of increased circuits conducted by the Federal Circuit Court. This would enable the court to hear and determine matters closer to where people in rural areas live and have their support networks, and would overcome the practical difficulties sometimes associated with video appearances.

**Recommendation 9: Support services for families in rural and regional areas**

Given the needs in regional areas for access to courts and court services;

1) The Australian Government provide funding to the family courts and family relationship services for improved technology to enable more video appearances and conferencing.

2) The Australian Government provide increased funding to the Federal Circuit Court and state and territory magistrates courts to enable the Federal Circuit Court to expand its regional circuits.
Increased collaboration between family law and state and territory courts

As noted in its Interim Report, Council supports an increased use of family law powers by state and territory magistrates and children's courts. However, Council acknowledges that in many circumstances a magistrate will not be in a position to make family law orders, either because of limitations on the court’s time or the magistrate’s capacity or because the magistrate is required to transfer the matter to a family court under the Family Law Act. For example, a magistrate must transfer proceedings to the Federal Circuit Court, the Family Court of Australia or the Family Court of Western Australia where the respondent seeks an order different from that sought in the application or the parties do not consent to the magistrates court hearing the matter.545

Council’s Interim Report outlined a number of problems faced by families in negotiating the transition between jurisdictions and the limited assistance available to families who are required to do so.546 In such circumstances, Council considers it would be useful if a judicial officer from the Federal Circuit Court could be out-posted on a circuit basis at a state or territory regional magistrates court, including to specialist family violence courts and courts such as the NJC notwithstanding they may be city based. Council envisages significant capacity building benefits associated with this level of collaboration between the Federal Circuit Court and state and territory magistrates courts.

Recommendation 10: Collaboration between family law and state and territory courts

The Australian Government explore through COAG or LCCSC the possibilities for increasing circuiting of Federal Circuit Court judicial officers and registry staff in state and territory magistrates courts, including specialist family violence courts and community justice centres.

9.2 Creating cultural change and strengthening workforce capability

Many of those who engaged with Council’s reference suggested the need for dedicated training and joint professional development opportunities to enhance the development of collaboration and integrated services initiatives. Council notes that these submissions reflect the findings of a recent ANROWS research project, which found that a shared understanding of the responsibilities, constraints and practices of the different service sectors that work with families with complex needs is central to the development of effective inter-agency working. The material before Council also indicates the importance of incorporating an understanding of the views of children and young people who have experienced parental separation and the services of the family law system into the development of new service models.
Family violence competency

In light of the significant proportion of family law matters that involve safety concerns for children associated with issues of family violence, many stakeholders considered that a sophisticated understanding of these dynamics should be a core competency for work in the family law system. Some proposed that this should incorporate ongoing family violence and trauma awareness training for professionals and staff at all levels in the system. Council supports these proposals. Council believes a sophisticated understanding of family violence dynamics should be a core competency for all family law system professionals, including family report writers, family lawyers and professionals and staff of family relationships services.

Some stakeholders proposed that family report writers should undergo specialist family violence training before being engaged as a court expert. Council is aware that the Child Dispute Services section of the family courts provides valuable ongoing professional development for family report writers. However, Council understands that there is presently no requirement that these professionals have family violence training, nor is there any accreditation requirement akin to that required of family dispute resolution practitioners. Council notes in this regard the COAG Advisory Panel’s recommendation that governments ‘work with education institutions and professional bodies to ensure that professionals likely to come into contact with victims and perpetrators of violence’ have appropriate training, including, where possible, as part of ongoing accreditation.\textsuperscript{547}

Council supports the development of a specialist accreditation in family violence requirement by an appropriate clinical professional panel (not a legal body) for family report writers. In Council’s view, this should include a requirement for compulsory training or the completion of an accredited program in family violence.

In addition, a number of stakeholders proposed that there should be a specialist accreditation requirement in family violence for lawyers who practice in the family law jurisdiction. Since 1990, all family lawyers in Australia have had the benefit of a National Family Law Specialist accreditation scheme, administered by the state and territory law societies on a national basis. To become accredited as a Family Law Specialist, a legal practitioner must:

- have a minimum of five years’ full time practice experience post admission and a minimum of three years’ experience in their area of specialisation;
- maintain a high degree of professional development in their area of specialisation;
- pass a comprehensive examination process, developed by legal professional experts; and
- apply for re-accreditation every three years.

Council supports the introduction of a specific family violence module into the National Family Law Specialist accreditation scheme at the examination phase, professional development phase and re-accreditation phase as a compulsory requirement.
Council notes, however, that the specialist accreditation scheme is not compulsory and lawyers who are not an accredited family law specialist may practice in the family law jurisdiction. In all Australian states, lawyers are able to practice family law on an unsupervised basis after the completion of 2 years of supervised practice (usually known as ‘restricted practice’) following admission in the relevant Supreme Court, without any form of accreditation, training or demonstration of family violence training. This is in contrast to the regulation of family dispute resolution practitioners, who are required to have such accreditation.

Council acknowledges the realities of day-to-day legal practice, particularly in regional centres where lawyers tend to have a generalist legal skill base. However, Council understands that all lawyers in Australia are regulated by specific continuing professional development (CPD) requirements, and that lawyers practicing in regional areas are required as part of their CPD to engage in specific family violence training.

In recognition of the importance of family violence competency to ensuring best practice family law system responses to clients with complex needs, Council supports a requirement that lawyers who practice family law have accreditation in family violence or work under the supervision of a person who has family violence accreditation. Council considers that this requirement should extend to Legal Aid Commissions across Australia, who engage private practitioners to undertake family law work on their behalf. Council notes in this regard the AIFS review of Independent Children's Lawyers, which reported a lack of confidence among some practitioners regarding their ability to detect and respond to safety issues for children and young people. In Council’s view, it would be desirable for funding bodies to consider requiring Legal Aid Commissions to incorporate into their selection criteria a condition that legal practitioners demonstrate a sound awareness of family violence and trauma informed practice as well as competency to work with victims of family violence.

Council acknowledges the limited powers of the Australian Government to regulate legal practitioners and family report writers. However, Council believes that all professionals who work in the family law system should have expertise in family violence, and considers that the following recommendations represent best practice in this regard.

**Recommendation 11: Family violence competency**

The ability of professionals working in the family law system to understand family violence dynamics be strengthened by training programs and, more specifically:

1) The Australian Government develop, in partnership with other stakeholders, a learning package for professionals working in the family law system that provides both minimum competencies and in-depth and technical content designed for a range of roles, including family dispute resolution practitioners, family report writers and family lawyers (including Independent Children's Lawyers).
2) There should be a specific family violence and child sexual abuse module in the National Family Law Specialist accreditation scheme at the examination phase, professional development phase and re-accreditation phase as a compulsory requirement of being accredited.

3) That Legal Aid Commissions across Australia should consider requiring their in-house lawyers as well all legal practitioners on their family law practitioner panels to demonstrate a sound awareness of family violence, trauma informed practice and an ability to work with victims of family violence.

Council acknowledges the views of stakeholders that family violence training should be extended to judicial officers, and the recommendations about this issue in a number of recent reviews, including:

- the 2015 Queensland Special Taskforce on Domestic and Family Violence report, *Not Now, Not Ever*;\(^{549}\)
- the 2016 report of the Royal Commission into Family Violence;\(^ {550}\)
- the 2016 *Final Report* of the COAG Advisory Panel on Reducing Violence against Women and their Children;\(^ {551}\) and
- the 2016 reports of the Judicial Council on Cultural Diversity.\(^ {552}\)

Council also notes that the Australian Government has commissioned the development of a *National Family Violence Bench Book*, which will be finalised in June 2017, to support the family violence work of judicial officers. Council is aware that the Senate Finance and Public Administration References Committee report into Domestic Violence in Australia recommended training for judicial officers presiding over family violence matters to accompany the development of the Bench Book.\(^ {553}\)

Council supports the provision of further and on-going training on family violence for judicial officers in the family law system. In light of the evidence discussed in Council’s *Interim Report* concerning the engagement by many client families with complex needs in proceedings in state or territory courts, and Council’s recommendations in that report supporting a greater use of their family law powers by state and territory courts, Council believes that this training should incorporate opportunities for joint professional development for judicial officers from the family courts and state and territory courts that exercise family violence and child protection jurisdiction.

Council also notes the calls from stakeholders to create opportunities for joint professional development for family law and specialist family violence sector professionals to enhance cross-professional understanding. Council notes in this regard the concerns raised in the COAG Advisory Panel’s *Final Report* regarding the significant cultural barriers to collaboration associated with different and potentially incompatible understandings of the
problems facing families with complex family violence-related needs. Council also notes the general consensus among practitioners and researchers that collaboration between the family violence and child protection sectors is essential to improving outcomes for vulnerable children. Council considers it is important that family law system professionals are included in this training.

**Recommendation 12: Joint professional development**

1) To ensure there is consistent and national training, the National Judicial College of Australia develop a continuing joint professional development program for judicial officers from the family courts and state and territory courts in which judicial officers preside over matters involving family violence to strengthen understanding of family law and family violence and the impact of trauma.

2) The Australian Government engage with relevant professional bodies within the child protection, family law and family violence systems with a view to encouraging collaboration in designing and delivering joint training opportunities aimed at strengthening cross-professional understanding.

**Children’s views and experiences**

Council notes that a number of submissions expressed a concern to ensure respect and due weight is accorded to children’s views and experiences when assessing and responding to risk within the family law system. Council notes in this regard the findings of the 2014 Independent Children's Lawyers Study, which confirmed that children hold strong views about their needs and the kinds of professional supports they require. This study suggests that children and young people expect to be consulted and to have their views taken seriously in relation to decisions about their post-separation care. This is consistent with Article 12 of the United Nations Convention of the Rights of the Child, to which Australia is a signatory, and the guiding principles of the National Framework for Protecting Australia’s Children 2009-2020.

More generally, a number of stakeholders consulted for this reference urged Council to ensure that children’s experiences of the family law system are used to help guide the development of any policy and service responses to families with complex needs. In its Interim Report, Council recommended the ‘convening of regular meetings of relevant stakeholder organisations’ to explore ways of developing an integrated approach to the management of cases involving families with complex needs (Rec. 5).

Several stakeholders pointed to the importance of ensuring that children and young people are ‘provided with a place at this collaborative table’. Council acknowledges that in some jurisdictions, children and young people have input into family justice systems via advisory groups that allow them to provide feedback about their experiences of the system. An example is the United Kingdom’s Family Justice Young People's Board. Council understands
that in South Australia, a trial will soon commence of a youth board, which will act as an advisory group to the family courts. Council commends this initiative.

In Council’s view the development of client centred services must incorporate input from children and young people with experience of the family law system. Council notes in this regard the recommendation by the COAG Advisory Panel that all governments ‘work with children and young people to design services that can best support them to report violence’. Council supports this recommendation.

Council also discussed the question of whether decision-makers should be encouraged to meet directly with children who wish to express their views, as permitted by s 60CD(2)(c) of the Family Law Act. Council notes that children’s views are typically incorporated into the decision-making process in a number of other ways, including through the use of s 11F reports and s 62G reports by family consultants and by an order under s 68L for the appointment of an Independent Children's Lawyer. However, Council understands that it is the experience of other jurisdictions, such as New Zealand, North America, Canada and the United Kingdom, that the participation of children in court processes is a more common practice. Council was advised that this involvement is often supported by system-wide guidelines to assist decision-making on the issue. Council was also made aware of some recent scholarship and calls for greater use of judges receiving direct evidence from children in family law cases in Australia.

Council’s discussions reflected a diversity of opinions about the implications and mechanisms for judicial officers meeting with children. However, it is of concern to Council that there are currently no guidelines or other procedural documents to guide this decision. Guidelines are necessary from a process and evidentiary point of view to ensure that a child’s involvement occurs in a safe, transparent and child-inclusive manner. Importantly, the availability of guidelines would assist children in understanding how they might have the opportunity to participate directly in court proceedings about their lives.

**Recommendation 13: Children’s views and experiences**

1) The Australian Government establish a young person advisory panel to assist in the design of child-focused family law services that build on an understanding of children’s and young people’s views and experiences of the family law system’s services.

2) The Australian Government consult with children and young people as key stakeholders in developing guidelines for judges who may choose to meet with children in family law proceedings.
Family dispute resolution and confidentiality

Council received a large number of submissions about the confidentiality provisions of the *Family Law Act*, and whether the current exceptions to these should be expanded to relax the restrictions on sharing information about communications made during family dispute resolution with the family courts. While some submissions supported a change to this effect, many stakeholders from both the legal and family dispute resolution sectors expressed strong reservations about this proposal. Council notes in particular the concerns about the potential impact of this change on the willingness of parties to raise safety concerns during the process, as well as concerns that such a change may inhibit admissions of unsafe behaviours and impede agreements to address safety concerns. In addition, Council acknowledges the view of some stakeholders that s 60I certificates which indicate the matter was assessed as ‘not appropriate’ for family dispute resolution already operate as a signal to the courts that there are risk concerns.

Council also notes that the *Family Law Act* already provides a number of exceptions to the confidentiality obligations of family dispute resolution practitioners. These include an obligation to disclose information where the practitioner ‘has reasonable grounds for suspecting that a child has been abused, or is at risk of being abused’. They also include permission to disclose information where the person who made the communication consents to the disclosure or the practitioner ‘reasonably believes that the disclosure is necessary’ to protect a child from a risk of ‘physical or psychological’ harm. Other exceptions to confidentiality arise when the family dispute resolution practitioner ‘reasonably believes’ that disclosure of a communication is necessary to prevent ‘a serious and imminent threat to the life or health of a person’ or to report the commission or prevent the likely commission ‘of an offence involving violence or a threat of violence to a person’. In addition, a family dispute resolution practitioner is permitted to disclose a communication if he or she reasonably believes it is necessary to assist an Independent Children’s Lawyer to represent a child’s interests under an order under s 68L of the *Family Law Act*.

A number of submissions and recent reports have expressed a view that some non-legal professionals who are subject to confidentiality obligations may not be familiar with the details of the law or the extent to which there are exceptions permitting disclosure of information. Council notes in this regard the concerns raised by the Royal Commission into Family Violence about the complexity of privacy and confidentiality laws and the reluctance of professionals to disclose information about safety concerns when they are permitted to do so because of a lack of knowledge about the precise parameters of their legal obligations. The COAG Advisory Panel expressed similar concerns in its *Final Report*, and recommended that governments take steps to ‘improve staff understanding of privacy laws and protocols in order to reduce perceived barriers to information sharing’.

Council supports the COAG Advisory Panel’s recommendation. Council also agrees with the view expressed by the Australian and NSW Law Reform Commissions in their 2010 *Family
Violence - A National Legal Response report that the word ‘imminent’ should be removed from s 10H(4)(b) of the Family Law Act.

Council also notes that there is an unresolved question about the status of intake screening assessments and whether they are covered by the confidentiality and inadmissibility provisions of the Family Law Act relating to communications made ‘in family dispute resolution’. In 2011, Council wrote to the (then) Attorney-General in relation to this matter, suggesting the need to clarify this issue. That letter was a response to the decision of Reithmuller FM (as he then was) in Rastall & Ball, 567 regarding the application of the relevant provisions to family dispute resolution intake assessments. His Honour’s decision in that case was that family dispute resolution had not yet commenced when the screening process was conducted, as a certificate had been issued certifying that family dispute resolution had been assessed as not appropriate. As a consequence, his Honour ruled that evidence of the intake assessment itself was not inadmissible within the terms of the Family Law Act.

Council’s 2011 letter supported a recommendation by the National Dispute Resolution Advisory Council (NADRAC) that the Family Law Act be amended to provide expressly for the inadmissibility of communications made during the intake assessment process for family dispute resolution. At the time, Council considered that both the legal profession and the family relationships sector required clarity around this issue. Based on the submissions received during this reference, Council remains of this view.

**Recommendation 14: Family dispute resolution and confidentiality**

1) The Australian Government consider ways to improve understanding among family dispute resolution practitioners of the nature of their confidentiality and admissibility obligations in order to reduce any perceived barriers to information sharing.

2) The word ‘imminent’ be removed from s 10H(4)(b) of the Family Law Act 1975.

3) The Australian Government clarify the admissibility status of family dispute resolution intake assessments.

**State and territory courts exercising family law jurisdiction**

During the first stage of this reference, Council was asked to examine the possibilities for vesting the federal family courts and state and territory family violence and children’s courts with a measure of co-extensive jurisdiction (terms of reference 2). The material provided to Council during its consideration of this issue revealed little stakeholder support for vesting the family courts with the jurisdictions of the various state and territory courts, and significant Constitutional barriers to doing so. The submissions and the legal aid file data that
Council received also suggested that greater numbers of clients move from the state system to the federal family law system than in the opposite direction. These data pointed to the potentially significant benefits for families with complex needs of supporting state and territory magistrates courts to exercise their existing family law jurisdiction for these clients.

Council also expressed the view in its Interim Report that there are circumstances where an interim decision by a state or territory children's court would be beneficial for families who need parenting orders following finalisation of a child protection matter. Council also supported a greater use of their Family Law Act powers by state and territory magistrates courts for existing clients who have family law needs. In light of these considerations, Council recommended state and territory magistrates courts and children's courts be supported to exercise jurisdiction under the Family Law Act where appropriate, including by enacting amendments to the Family Law Act to:

- remove any doubt that children's courts, no matter how constituted, are able to make family law orders under Part VII of the Family Law Act in the same circumstances that are currently applicable to courts of summary jurisdiction;
- provide a simplified decision-making framework for interim hearings in Part VII; and
- provide for the making of short-form judgments in interim matters to simplify the process of providing judgments in family law matters.

Council’s Interim Report also expressed support for the (then) proposed expansion of state-based specialist family violence courts in Victoria and Queensland.

The submissions and consultations for this reference revealed in principle support for these recommendations, including from relevant courts. Council also notes the support for its recommendations by the Royal Commission into Family Violence, which made a number of additional recommendations designed to support an increase in family law work by the Magistrates’ Court of Victoria and the Children's Court of Victoria. These include recommendations that:

- The Victorian Government fund the development of family law training for judicial officers in the Magistrates’ Court of Victoria and Children's Court of Victoria; and
- The Victorian Attorney-General consider, when recommending appointments to the magistracy, potential appointees’ knowledge of relevant aspects of federal family law.

Council notes that the Royal Commission into Family Violence also recommended increasing the monetary limit on the jurisdiction of state and territory courts to divide the property of parties to a marriage or a de facto relationship under the Family Law Act, as a way of supporting clients of these courts to achieve some measure of economic independence without having to initiate proceedings in the family courts. Council supports this recommendation.

A number of stakeholders submitted that any increase in family law work by state and territory courts should be supported by an additional funding contribution from the
Commonwealth. Council supports these calls. Council also considers that this shift should be supported by the development of a continuing joint professional development program in family law for judicial officers from the family courts and relevant state and territory courts.

**Recommendation 15: State and territory courts exercising family law jurisdiction**

1) The National Judicial College of Australia develop a continuing joint professional development program in family law for judicial officers from the family courts and state and territory children's courts and magistrates courts.

2) If the Australian Government accepts Rec 15.1, then Council recommends amendment of the *Family Law Act 1975* to increase the monetary limit for property division by courts of summary jurisdiction.

3) Council recommends an increase in Commonwealth funding to state and territory courts of summary jurisdiction to enable them to take on more family law work.

### 9.3 Tailored services for Aboriginal and Torres Strait Islander and culturally and linguistically diverse families

During its work on this reference Council received a number of submissions suggesting the need for the family law system to provide tailored services for Aboriginal and Torres Strait Islander families. In particular, a range of organisations and services pointed out that Aboriginal and Torres Strait Islander clients are more likely than non-Aboriginal clients to have complex needs, including family violence and child safety related needs. These stakeholders noted that the family law system’s services are under-utilised by Aboriginal families, and that there continue to be significant barriers affecting their access to the family courts. The submissions indicate that key among these are the formality of the courts and fears for the removal of children from their families associated with the links between the family law and child protection systems, particularly if family violence is reported. Council’s *Interim Report* noted the potentially devastating implications for Aboriginal and Torres Strait Islander children when family members are unable to access the family law system to obtain parenting orders for a child who is in the care of the child protection system, including loss of the child’s cultural connections and sense of Aboriginal identity and belonging.

A number of stakeholders also noted that mainstream legal processes can be ‘culturally intimidating and unresponsive to an Aboriginal world view’, and called for a greater focus on developing culturally safe family law processes for Aboriginal and Torres Strait Islander clients. The recent report of the Royal Commission into Family Violence describes a culturally safe environment as one ‘where services are provided in manner that is respectful of a person’s culture and beliefs, and that is free from discrimination’. As noted in
Chapter 5, Council’s consultations suggest a similar understanding of cultural safety as providing

… an environment, which is safe for people; where there is no assault, challenge or denial of their identity, of who they are and what they need. It is about shared respect, shared meaning, shared knowledge and experience, of learning together with dignity and truly listening.575

Within this framework, promoting cultural safety requires mainstream service providers to analyse their organisational culture and ensure that ‘services are provided in manner that is respectful of a person’s culture and beliefs, and that is free from discrimination’.576 Council acknowledges the importance of improving the delivery of family law services in a way that promotes cultural safety for Aboriginal and Torres Strait Islander clients seeking to resolve disputes about the care of children, especially where there are safety concerns for the child.

Stakeholders proposed a range of reforms to achieve this. These included building pathways between the family law system and Aboriginal and Torres Strait Islander services and communities by:

- embedding workers from Aboriginal and Torres Strait Islander services in the family courts and Family Relationship Centres as family liaison officers to support Aboriginal clients with complex needs;
- working with Aboriginal and Torres Strait Islander communities and organisations to develop and deliver culturally appropriate post-separation parenting programs and family dispute resolution services;
- developing and resourcing tailored education programs about family law for Aboriginal and Torres Strait Islander communities to enhance understanding of legal rights and awareness of how the family law system works; and
- ensuring ongoing cultural competency training for family law system professionals, including judicial officers.

Council notes the views of stakeholders that cultural competency training for family law system professionals should incorporate an understanding of the multiple and diverse factors contributing to family violence in Aboriginal communities, as well as an understanding of Aboriginal and Torres Strait Islander family structures and child rearing practices. Council notes the recent recommendations by the Judicial Council on Cultural Diversity on this point.577

Council supports these proposals, which reflect the recommendations made by Council in its 2012 report, Improving the Family Law System for Aboriginal and Torres Strait Islander Clients. Council urges the Australia Government to implement the recommendations from its 2012 report.
The submissions received by Council during the present reference included a number of additional concerns and proposals, including reform suggestions in relation to Aboriginal and Torres Strait Islander clients who have experienced family violence. Among these were calls to ensure the development of any court-based integrated service hubs incorporate embedded workers from Aboriginal and Torres Strait Islander specific family violence organisations, in order to provide support clients through the court process ensure referrals to culturally sensitive trauma-informed support for Aboriginal children who have been exposed to family violence. Alongside these submissions were concerns to incorporate a focus on holistic healing in working with Aboriginal and Torres Strait Islander male perpetrators of family violence to address behaviour,578 and calls for a greater use of referrals to Aboriginal-specific men's behaviour change programs. Council notes the success of programs such as Red Dust Healing in this context (discussed in Chapter 6).

Council supports greater liaison between family law system services and family violence services that support Aboriginal and Torres Strait Islander people, including Indigenous-specific healing programs to engage Aboriginal fathers who have used violence in behavioural change and taking responsibility for their actions. Council also recommends that workers from Aboriginal and Torres Strait Islander family violence organisations be included in the development of any integrated services approaches that are developed in the family courts or Family Relationship Centres as recommended in Recommendations 6 and 7.

Council acknowledges the concerns discussed in its Interim Report about the lack of any legislative requirement to prepare a cultural plan for an Aboriginal or Torres Strait Islander child in family law matters, which would require a clear articulation of how the child’s ongoing connection with kinship networks and country will be maintained.579 In addition, Council notes stakeholder calls for the preparation of culturally secure family assessment reports to assist the courts in decision-making in children’s matters. The submissions on this issue proposed that these reports should address issues such as the obligations of family members in growing up children associated with totemic and country connection. Aqua Dreaming and NATSILS suggested that cultural reports should be prepared in consultation with Elders and Grandmothers as appropriate, and that these should become an integral part of family reports in cases involving an Aboriginal or Torres Strait Islander child.

Council supports the calls for cultural reports to be included in family reports in cases involving an Aboriginal or Torres Strait Islander child, and for the family reports in such cases to include a cultural plan setting out how the child’s ongoing connection with kinship networks and country may be maintained.

A further reform pressed in the forums and consultations concerns the need to develop the use of multi-stakeholder family group conferences for family law matters where care arrangements for an Aboriginal or Torres Strait Islander child are in dispute. As NATSILS noted in its submission, this model, which is presently used in child protection settings, ‘provides an important forum in which the best interests of the child can be discussed and planned by all the relevant stakeholders.’ While this reform was proposed for families with
complex needs more generally, it was regarded as being a particularly important strategy for safeguarding Aboriginal and Torres Strait Islander children, where loss of identity when children are removed from the care of kin is a significant source of trauma.

Council supports the development of family group conferences for Aboriginal and Torres Strait Islander families within the family law system, and acknowledges the research evidence that this process offers greater potential for a culturally safe and responsive approach to determining care arrangements for children than court-based decision-making. Council notes in this regard that the concern to promote the sharing of responsibility for children’s safety and wellbeing between family, kin and professionals that underpins the family group conference model reflects the priorities and principles underpinning the National Framework for Protecting Australia’s Children. Its incorporation of extended family to help plan the care of Aboriginal and Torres Strait Islander children is also consistent with Australia’s obligations under the United Nations Declaration on the Rights of Indigenous Peoples.

Council understands that some organisations within the family relationships sector are experienced in conducting family group conferences in the child protection context with Aboriginal and Torres Strait Islander families in collaboration with Aboriginal Child Care Agencies. In Council’s view, this experience should be leveraged to support the development of family group conferences for Aboriginal and Torres Strait Islander families within the family law system.

Council acknowledges the view of Aqua Dreaming that the preparation phase of family group conferences with Aboriginal families would benefit from the development of a network of Elders who can be called on to assist coordinators to identify relevant family members. This submission suggested that the network of Elders, which could be drawn from the list of ‘representative bodies’ that have been endorsed under Part 11 of the Native Title Act 1993 (Cth), could also be used to assist family report writers to identify appropriate people with localised cultural knowledge of the child’s country to prepare a cultural report for the court and to assist in developing a cultural plan for the child.

Several stakeholders also suggested the importance of developing a culturally secure court hearing process for family law matters that involve Aboriginal and Torres Strait Islander children, along the lines of the Children’s Koori Court in Victoria and the (recently re-instated) Murri courts in Queensland. These court processes involve the participation of Elders and Respected Persons who can provide cultural advice to the judge or magistrate in relation to the young person’s situation and a specially reconfigured, less ‘culturally intimidating,’ courtroom design. Council supports the consideration by the Australian Government of ways of adapting court hearing processes in family law matters to enhance cultural safety for Aboriginal and Torres Strait Islander families, including consideration of the approach used in the Victorian Children’s Koori Court and the Queensland Murri courts.

Council further recommends the Australian Government consult with Aboriginal and Torres
Strait Islander representative institutions in the development of any reforms arising from Council’s work that affects Aboriginal and Torres Strait Islander children. This recommendation reflects the Australian Government’s obligations as a signatory to the United Nations Declaration on the Rights of Indigenous Peoples, Article 9 of which provides that:

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Council also considers that the development of stakeholder meetings as recommended by Council in its Interim Report should include a representative organisation from the Aboriginal and Torres Strait Islander service sector.

**Recommendation 16: Aboriginal and Torres Strait Islander families**

1) The Australian Government implement the recommendations made by the Family Law Council in its 2012 report *Improving the Family Law System for Aboriginal and Torres Strait Islander Clients*.

2) Part VII of the *Family Law Act 1975* be amended to provide for the preparation of Cultural Reports, which may be included in Family Reports for Aboriginal and Torres Strait Islander children where a cultural issue is relevant, and for the Family Report to include a cultural plan which sets out how the child’s ongoing connection with kinship networks and country may be maintained.

3) The Australian Government implement a process, including through amendments to the *Family Law Act 1975*, to support the convening of family group conferences for Aboriginal and Torres Strait Islander families in appropriate family law matters to assist informed decision-making in the best interests of the child, to allow them to be cared for within their own families and communities wherever possible, based on the Aboriginal and Torres Strait Islander Child Placement Principles.

4) The Australian Government consider a pilot of a specialised court hearing process in family law cases that involve an Aboriginal or Torres Strait Islander child to enhance cultural safety for Aboriginal and Torres Strait Islander families, including through the participation of Elders or Respected Persons who can provide cultural advice to the court in relation to the child or young person and a specially reconfigured courtroom design.

5) The Australian Government consult with Aboriginal and Torres Strait Islander representative institutions in the development of any reforms arising from Council’s work that affects Aboriginal and Torres Strait Islander children.
The concerns raised above in relation to the need for culturally safe family law services for Aboriginal and Torres Strait Islander families also apply to clients from culturally and linguistically diverse backgrounds. This is particularly so for those who have recently arrived in Australia as migrants or refugees and who have experienced similar levels of trauma in their lives to Aboriginal and Torres Strait Islander peoples, including enforced migration from homelands causing loss of identity, kinship ties and belonging, as well as disconnection from family and, in many cases, the loss of children through involvement with child protection systems.

Council’s work on its 2012 report, *Improving the Family Law System for Clients from Culturally and Linguistically Diverse Backgrounds*, acknowledges the under-utilisation of family law services and the diverse range of barriers that affect access to the family law system for people from culturally and linguistically diverse communities, including a lack of knowledge of the law and available services, language and literacy barriers, and a lack of culturally safe and culturally responsive services. 581 Council also notes that clients from migrant and refugee backgrounds are likely to have multiple and complex needs, including needs associated with housing, immigration, employment and family violence. 582

Council is aware of a number of outreach initiatives and partnerships between family law services and culturally and linguistically diverse and other service sectors – including migrant settlement services – that have been developed to address these needs. Council commends these programs. However, a number of submissions to this reference urged Council to recommend further collaborative strategies. These included calls for workers from specialist family violence services for women and children from culturally and linguistically diverse communities, such as inTouch Multicultural Centre against Family Violence, to be included in the development of any court-based integrated services model.

Stakeholders also suggested the need for greater community legal education for culturally and linguistically diverse communities about Australian family law, including the intersections between migration law and family law. Others pointed to the importance of liaison between family law services and faith based communities to enhance the understanding of community leaders who provide dispute resolution services for separating families about Australian family law. As with submissions regarding Aboriginal and Torres Strait Islander families, there were also calls for ongoing cultural competency training for family law system professionals.

In its 2012 report on *Improving the Family Law System for Clients from Culturally and Linguistically Diverse Backgrounds*, Council recommended:

1. The development of family law legal literacy and education strategies for people from culturally and linguistically diverse backgrounds.
2. The development of strategies to build cultural competence among family law system personnel.
3. The development of strategies to build collaboration between migrant services and organisations and the mainstream family law system, including the establishment of service kiosks in the family courts.
4. Workforce development strategies, including employment of court-based liaison offers from migrant-specific organisations.
5. Strategies to enhance collaboration between culturally and linguistically diverse-specific services and organisations and family law system services.
6. Strategies to improve the accreditation and use of specialist interpreters for family law matters.
8. Tasking the Federation of Ethnic Communities’ Councils of Australia with monitoring the accessibility of family law system services for people from culturally and linguistically diverse backgrounds.

Council re-affirms these recommendations. Council also supports the calls for culturally and linguistically diverse-specific services to be incorporated into the development of any court-based and family relationship sector-based integrated services models as recommended in Recommendations 6 and 7. In addition, Council supports the development of family group conferences for children of culturally and linguistically diverse families within the family law system in light of the research evidence noted above that this process offers greater potential for a culturally safe and responsive approach to determining care arrangements for children than court-based decision-making.

**Recommendation 17: Culturally and linguistically diverse families**

1) The Australian Government implement the recommendations made by the Family Law Council in its 2012 report *Improving the Family Law System for Clients from Culturally and Linguistically Diverse Backgrounds*.

2) The Australian Government ensure that workers from Culturally and Linguistically Diverse-specific services are incorporated into the development of any court-based and family relationship sector-based integrated services model as recommended by Council in Recommendations 6 and 7.

3) The Australian Government implement a process, including through amendments to the *Family Law Act 1975*, to support the convening of family group conferences for families from culturally and linguistically diverse backgrounds in appropriate family law matters to assist informed decision-making in the best interests of the child, to allow children to be cared for within their own families and communities wherever possible.
Council notes the calls in a number of submissions for the use of a support service for self-represented litigants. This role, which reflects the work of the Court Network volunteers in the family courts in Victoria, centres on supporting parents to navigate their day in court, including providing self-represented litigants with an understanding of court processes and ‘translating’ court jargon. Council commends the work of Court Network, particularly its work with self-represented litigants, and considers that such a role provides a valuable service for court clients who are unrepresented and unfamiliar with court processes.

In its two 2012 reports on *Improving the Family Law System for Aboriginal and Torres Strait Islander Clients* and *Improving the Family Law System for clients from Culturally and Linguistically Diverse Backgrounds* Council observed the existence of a series of challenges for the family law system in meeting the support needs of people from these diverse backgrounds and communities. In both reports it was recommended that the capacity of the family law system to meet the support needs of these clients would be enhanced by a range of measures such as cultural competency training.

In light of these recommendations, Council believes that any measures to provide a volunteer workforce to support families with complex needs in the court environment must ensure that any support staff are trained in the dynamics of family violence and be culturally competent.

**Recommendation 18: Court support workers**

The Australian Government increase funding and resources to provide family violence trained court support workers, including workers from, or who have been appropriately trained to work with, Aboriginal and Torres Strait Islander and Culturally and Linguistically Diverse clients.

**9.4 Research needs**

**Self-represented litigants and misuse of process**

Council received a number of submissions raising concerns about the difficulties faced by the significant and growing numbers of self-represented litigants in family law matters in which family violence is alleged or identified. These included concerns about victims of family violence being cross-examined by an abusive former partner in family law proceedings, and concerns about the implications of being unrepresented for victims of family violence, including concerns about their capacity to narrow the issues in dispute prior to trial and their ability to run their case. Council was also advised that it is not uncommon for contested parenting matters to involve an unrepresented party with significant (and often untreated) mental health issues, which can exacerbate the difficulties associated with non-representation for decision-makers and the other parties.

However, to Council’s knowledge, there has been little research on self-represented litigants
and family violence in family law matters since a study by Professor Rosemary Hunter in 2002.\footnote{In Council’s view it will be important to the consideration and development of appropriate support services models for family law clients to gather information about the extent, experience and dynamics of self-representation in family law matters involving families with complex needs, including matters where there are family violence and mental health issues.}

Council also acknowledges the concerns raised by some stakeholders about the potential for the processes of the family law system to be used by perpetrators of family violence to continue abuse.\footnote{Council notes that similar concerns have been expressed over a long period of time in relation to the potential for legal systems (including courts and other relevant frameworks such as the child support system and child protection systems) to be misused by a person who wishes to maintain a campaign of harassment against their former partner.} Council is concerned about the implications of this for the wellbeing of the children and adults who experience it. In particular, Council notes that this dynamic can see children become subject to litigation for substantial portions of their childhood, potentially excluding them from receiving psychological assistance for their trauma until litigation is finished. It may also absorb financial resources that may otherwise be available for the support of the child and their parent, and it may cause significant stress to the child and parents who experience it. Moreover, it represents the misuse of publicly funded services and agencies.

At present, however, there is little systematic evidence that would support an understanding of the extent of this problem or how it may be identified and responded to within the family law system. Council notes that since 2012, courts have powers under Part VIB of the \textit{Family Law Act} to dismiss vexatious proceedings, in addition to their powers under s 118 of the \textit{Family Law Act} to dismiss frivolous or vexatious proceedings and make costs orders and their powers of summary dismissal. However, Council notes that information on the use and impact of these powers is lacking.

Council also notes the concerns raised by some stakeholders about misuse of the subpoena process to obtain access to sensitive therapeutic treatment records that are inadmissible or serve no legitimate forensic purpose. These submissions suggested that counsellors and other mental health service providers often fail to object to the production of therapeutic records in family law matters, despite a desire by the client and/or the service provider to do so, because of:

- a lack of knowledge or fear of the legal process,
- the complexities that can arise from the broad discretion available when the best interests of the child is the paramount consideration, and/or
- limited resources to attend court events to speak to the objection.

Council notes in this context Professor Chisholm’s proposals for reform to the law on subpoenas for counselling records, including suggestions for creating an absolute prohibition on the production of inadmissible documents.\footnote{Council also notes the Family Court of}
Western Australia Practice Direction, which provides that a subpoena directed to a family counsellor will not be issued unless the subpoena ‘is accompanied by a letter certifying that reasonable efforts have been made’ to discuss the ‘possible consequences of compliance with the subpoena, including the impact on the family or children involved’ with the person against whom the subpoena is directed. Council understands that the issuing of this Practice Direction was a response to concerns about misuse of the subpoena process in that state. However, Council notes that there is currently no systematic evidence of the existence or extent of this problem in other states.

Council considers that complaints about the misuse of legal and administrative processes and frameworks raise significant public policy concerns. Further research evidence is required in order to support an empirical understanding of the extent of this problem and the development of strategies to address it.

**Recommendation 19: Self-represented litigants and misuse of process**

1) The Australian Government commission research that would support an understanding of how and to what extent the intentional and unintentional misuse of legal processes, such as the request for subpoenas, and other agencies and services relevant to family breakdown (family law services and courts, the child support system, child protection systems and civil family violence protection order systems) occurs and how this may be prevented.

2) The Australian Government commission research that would support an understanding of the extent, experience and dynamics of self-representation in family law matters involving families with complex needs, including matters where there are family violence and mental health issues.

**Crossover cases**

Council notes the lack of empirical evidence regarding the volume and circumstances in which cases crossover or fail to crossover between state and territory family violence and children's courts and the federal family courts. The data analysis provided to Council by Victoria Legal Aid during the first stage of its work on this reference provided important insights into the patterns and pathways between these systems. However, there are a number of limitations affecting this data. These include the fact that the analysis was necessarily confined to one particular jurisdiction and to clients who received legal aid assistance. The file analysis also excluded crossover data between family law and family violence related criminal proceedings in the state system. In addition, the analysis did not capture the extent to which family members who are advised to seek parenting orders by a state or territory child protection department fail to obtain family law orders or initiate proceedings in the family courts.
In Council’s view, it will be important to the development of effective collaboration and information sharing between the family law, family violence and child protection systems to obtain a clearer empirical picture of the numbers of families that seek and either succeed or fail to engage with more than one of these jurisdictions, as well as their experiences of this process. This should include analysis of the dynamics involved when people have accessed state and federal systems and/or engaged with a child protection system, and the implications of migration between different legal and service systems for clients and their children and service providers, including the courts.

**Recommendation 20: Crossover cases**

The Australian Government commission research to examine the extent to which the client bases of state and territory police and justice systems overlap those of the family courts to support the development of strategies to respond to these cases more effectively.

Council also notes the calls for research on the making of consent orders where child safety concerns have been raised, and the extent to which court rules introduced in 2012 are operating to ensure safe arrangements for children. Council notes that Rule 13.04A of the Federal Circuit Court Rules and Rule 10.15A of the Family Law Rules require parties who allege abuse or family violence to provide the court with an explanation of how the proposed consent orders attempt to deal with those concerns. The rules apply to applications that are made orally during a hearing or trial, as well as to applications made by lodging a draft consent order with the court or by tendering minutes of consent to a judicial officer during a court event.

**Consent parenting orders**

Council notes stakeholder concerns about the safety of care arrangements for children made in the context of consent parenting arrangements where matters settle ‘at the door of the court’, and the suggestion that many matters that are settled in this way come back to court as a fresh application for parenting orders or as contravention proceedings.

In Council’s view these concerns warrant research into this issue, including an investigation of:

- how Rule 13.04A of the Federal Circuit Court Rules and Rule 10.15A of the Family Law Rules are operating in practice, particularly in the context of orders that are settled ‘at the door of the court’; and
- the extent to which disputes that are resolved by consent orders return to the court as a fresh application for parenting orders or as a contravention proceeding.
Recommendation 21: Consent parenting orders

The Australian Government commission research to examine the dynamics of matters that resolve by consent, including the extent to which the arrangements consented to respond to any matters of risk that have been raised prior to the consent orders being made, and the extent to which orders made by consent are followed by further litigation.

9.5 Legislative reform

Council’s consideration of the various issues raised by its terms of reference has led it to a view that Part VII of the *Family Law Act*, which guides the resolution of children’s matters, requires reform. As a result of the 2006 amendments to Part VII of the *Family Law Act* and the increased use of family dispute resolution services since that time, it is clear that the client base of the courts, in particular, now has a concentration of families with complex issues, including a significant proportion of matters where there are safety concerns for the child. The research evidence base on the implications of exposure to family violence and other behaviours that affect the child’s security has also expanded in recent years, establishing the adverse impact of these issues for children’s development.

Against this background, Council considers a review of Part VII is needed with a view to ensuring child safety is prioritised in both decision-making and advice-giving contexts. Council notes that the 2012 amendments to the *Family Law Act* prioritise a child’s right to be protected from harm when it conflicts with their right to a meaningful relationship with each parent. However, Council also acknowledges that the findings of the AIFS evaluation of the 2012 family violence amendments and other analyses suggest that these amendments have had a limited impact to date. Council is concerned about the evidence showing that the time frames for resolving parenting matters in and out of court have become extended since the 2012 reforms, as well evidence showing that the complexity of the existing legislative framework impedes expeditious decision-making.

On this basis, Council recommends that consideration be given to a comprehensive reform of Part VII of the *Family Law Act* to support more child-focused and efficient decision-making in light of the features of the contemporary client base of the courts.

Recommendation 22: Legislative reform

The Australian Government instigate a review of Part VII of the *Family Law Act 1975* with a view to supporting expeditious decision-making in matters involving risk to the child or other complex characteristics.
Notes

1 See L. Qu, R. Weston, L. Moloney, R. Kaspiew and J. Dunstan, Post-Separation parenting, property and relationship dynamics after five years (Australian Institute of Family Studies, Melbourne, 2014), 43, 44 and 59-65.


5 Ibid at 95.

6 Ibid 28.

7 Ibid 30-31, 38-39.

8 Ibid 102.

9 Ibid, Recommendation 1.

10 Ibid, 102.

11 Ibid, Recommendations 2 and 3.


14 Ibid.

15 Family Law Council, Interim Report, above n 2, 96.

16 Ibid, 106.


19 Kaspiew et al, Synthesis report, above n 13, 16-17.

20 Figures provided by the Federal Circuit Court of Australia and the Family Court of Western Australia.


22 See for example, Bryant and Faulks, above n 17, 93-96.


29 H. Rhoades, C. Frew and S. Swain, ‘Recognition of violence in the Australian family law system: A long journey’ (2010) 24(3) Australian Journal of Family Law 296. The only acknowledgement of family violence in the original FLA was an injunctive provision that allowed judges to exclude a threatening spouse from the matrimonial home.

30 See for an evaluation of this program, D. J. Higgins, Cooperation and coordination: An evaluation of the Family Court of Australia’s Magellan case-management model (Australian Institute of Family Studies, 2007).

31 Family Law Act 1975 (Cth), s 69ZT.

32 See for a description of this process, Bryant and Faulks, above n 17.


Family Law Act 1975 (Cth), s 69ZQ.

Kaspiew et al, Synthesis report, above n 13, 18.


Kaspiew et al, Synthesis report, above n 13, ix.


Family Law (Family Dispute Resolution Practitioners) Regulations 2008 (Cth), Reg. 25.

Family Law (Family Dispute Resolution Practitioners) Regulations 2008 (Cth), Reg. 25


Cleak et al, above n 45, 1; Royal Commission into Family Violence, Report and Recommendations: Volume IV (March 2016), 209.

Family Law Act 1975 (Cth), ss 67Z and 67ZBA


Family Law Act 1975 (Cth), s 67ZBB.

Family Law Act 1975 (Cth), ss 67ZA.

Family Law Act 1975 (Cth), s 69ZQ.

Family Law Act 1975 (Cth), s 11A.


Family Law Act 1975 (Cth), s 11E.


Family Law Council and Family Law Section of the Law Council of Australia, Best Practice Guidelines for lawyers doing family law work (2nd ed, 2010), Part 9.


Kaspiew et al, Synthesis report, above n 13, 45.

Kaspiew et al, A survey of family law practices, above n 42, 59.

Ibid, 188.

Ibid, 61.

Ibid, 63.

Ibid, 63.

Family Court of Australia, Federal Circuit Court of Australia and Family Court of Western Australia, Australian Standards of Practice for Family Assessment and Reporting (February 2015).

Ibid, Principles 26 and 27.

Consultation with Jane Reynolds, A/Principal, Child Dispute Services, Family Court of Australia and Federal Circuit Court of Australia.

Family Court of Australia, Federal Circuit Court of Australia and Family Court of Western Australia, Australian Standards of Practice for Family Assessment and Reporting (February 2015), Principle 28.

For example, Relationships Australia; Court Network; Safe Steps; Domestic Violence Resource Centre Victoria; Central Coast Family Law Pathways Network; WEAVE Inc.; Child Protection Unit, Princess Margaret Hospital for Children WA.
72 For example, Safe Steps, Commissioner for Children and Young People WA, Domestic Violence NSW, Women’s Legal Service Victoria, No To Violence, Berry Street (Consultation).
73 Aboriginal Family Law Services WA
75 No To Violence, Consultation.
76 Professor Cathy Humphries, Consultation.
78 Children, Youth and Families Act 2005 (Vic), s10(3)(e).
80 Family Law Council, Interim Report, above n 2, 34.
82 Aboriginal Family Violence Prevention and Legal Service Victoria; National Family Violence Prevention Legal Services; Aboriginal Family Law Service WA.
84 Aboriginal Family Law Service WA
86 Victorian State Coroner, Inquest into the death of Luke Geoffrey Batty (28 September 2015), [500] and [503].
87 Tamworth Family Law Pathways Network; FRSA; Women’s Legal Service Victoria
88 CatholicCare
89 Participant, Parramatta Forum 1, 9 September 2015.
90 Participant, Parramatta Forum 2, 9 September 2015.
91 MacKillop Family Services; Women’s Legal Service Tasmania; Discussion, Parramatta Forum 1, 9 September 2015; Family Law Council Stage 2 Working Group.
92 Women’s Legal Service Tasmania
93 See eg, Aboriginal Legal Service WA
95 See C100: Application under the Children Act 1989 for a residence, contact, prohibited steps, specific issue section 8 order or to vary or discharge a section 8 order, http://www.family-law-advice.org/wp-content/uploads/2013/02/C100-Form.pdf
96 NATSILS, Aboriginal Legal Service of Western Australia
97 See eg, NATSILS, Submission, [4.2].
98 Victorian Legal Aid.
100 Domestic Violence Victoria, Specialist family violence services: The heart of an effective system - Submission to the Royal Commission into Family Violence, 19 June 2015, 16.
101 Central Coast Family Law Pathways Network; Women’s Legal Service Victoria
102 Criminal Justice and Court Services Act 2000 (Eng), s 12. The Welsh version is called CAFCASS Cymru: see http://cafcaSS.gov.wales
103 This work is supported by section 16A of the Children Act 1989, which was introduced by the Children and Adoption Act 2006.
105 Canada Department of Justice, Making the Links in Family Violence Cases: Collaboration among the Family, Child Protection and Criminal Justice Systems (November 2013), 52.
See on this point, Robinson and Moloney, above n 46, 4.


Women’s Legal Service Victoria


Ibid, 112.

Women’s Legal Service Victoria. See also on this point, Victorian State Coroner, above n 86, [475].

CatholicCare

Safe Steps; WLSV.

Sydney Aboriginal and Torres Strait Islander Forum.

See also Victorian State Coroner, above n 86, Recommendation 1.

Women’s Legal Service Tasmania


MacKillop Family Services

Victorian State Coroner, above n 86, [279] and [515].

COAG Advisory Panel, above n 111, 113.

Toowoomba Forum, 13 August 2015.

Relationships Australia Victoria, Consultation; Rodney Vlais, No To Violence, Consultation. See on this, Humphreys et al, 2011, above n 74, 167.


Ibid, 54.

Ibid, 55-56.

For example, National Aboriginal and Torres Strait Islander Legal Services; Aboriginal Family Violence Prevention and Legal Service Victoria; National Family Violence Prevention Legal Services, Parramatta Forum 2, 9 September 2015.

See eg, NATSILS, *Aqua Dreaming*

Aboriginal Family Law Services (WA).


See for example, L. Moloney, L. Qu, R. Weston and K. Hand, ‘Evaluating the work of Australia’s Family Relationship Centres: Evidence from the first 5 years’ (2013) 51 *Family Court Review* 234; Qu et al (2014), above n 1, xvi.


*Family Law Act 1975* (Cth), s 67ZA(2). See also Standard 13 of The Families and Children Activity Administrative Approval Requirements, which provides the service standards for post-separation service providers.


Ibid, 80.

Relationships Australia, Relationships Australia Canberra region, Relationships Australia NT; Relationships Australia SA, Women’s Legal Service Victoria, Women’s Legal Services NSW, Victoria Legal Aid.

Legal WA, Women’s Legal Service Victoria

Relationships Australia South Australia, Relationships Australia Canberra, Victoria Legal Aid, Women’s Legal Services Victoria, National Legal Aid.

Relationships Australia South Australia, Relationships Australia Northern Territory, Victoria Legal Aid, Tamworth FLPN; National Legal Aid.

Relationships Australia, Relationships Australia Northern Territory, Relationships Australia Canberra region, Victoria Legal Aid, National Legal Aid.

*Family Law Act 1975* (Cth), s 67ZA.

For example, Victoria Legal Aid; Relationships Australia

Relationships Australia Northern Territory, Family Relationship Services Australia, Victoria Legal Aid, Legal Aid Western Australia. See also J. Harman, ‘Confidentiality in family dispute resolution and family counselling: recent cases and why they matter’ (2011) 17 *Journal of Family Studies* 204, 210.

For example, Commissioner for Children and Young People Western Australia

See eg, Commissioner for Children and Young People Western Australia

For example, VLA, National Legal Aid, Legal Aid WA

Family Law Act 1975 (Cth) s 60I(8).

Cleak et al, above n 45, 23.

For example, the submission from the Law Society of NSW to the Australian and NSW Law Reform Commission family violence review: see Australian Law Reform Commission and NSW Law Reform Commission, Family Violence – A National Legal Response (2010), [22.102], footnote 122.

Federal Circuit Court, Tamworth Family Law Pathways Network, MacKillop Family Services, Legal Services Commission South Australia.

Relationships Australia, Legal Aid Western Australia, National Legal Aid. Women’s Legal Services Tasmania also identified this concern and noted that information could be provided to the court if the matter proceeds rather than be included on the certificate that is provided to both parties.

Victoria Legal Aid, Relationships Australia South Australia.

Victoria Legal Aid, National Legal Aid.

National Legal Aid, Legal Aid Western Australia and Relationships Australia South Australia.

Family Law Section of the Law Council of Australia.

Relationships Australia Canberra Region.

Victorian State Coroner, above n 86, [458].


Royal Commission into Family Violence, Report and Recommendations Volume I (March 2016), 134.

FLPA WA; The Advocacy and Support Centre.

Rastall & Ball & Ors [2010] FMCAfam 1290

Rastall & Ball & Ors [2010] FMCAfam 1290, [25] and [33].

CatholicCare; FRSA; Women’s Legal Service NSW

Family Law Council, Letter of Advice to the Attorney-General on Rastall & Ball, 3 June 2011.


Western Australia Commissioner for Children and Young People; Court Network; Legal Aid Western Australia; MacKillop Family Services; WEAVE.


Victoria Legal Aid.

This quote, which summarises the tenor of many of the submissions on this issue, comes from the submission of the Western Australia Commissioner for Children and Young People.

See also COAG Advisory Panel, above n 111, 106.

Domestic Violence NSW; AOD Peaks Network; Aboriginal Family Law Services Western Australia; Women’s Legal Services NSW.

Family Law Section, Law Council of Australia; Legal Services Commission South Australia.

Victoria Legal Aid; Women’s Legal Service Victoria

Relationships Australia.

Women’s Legal Service Victoria, MacKillop Family Services

Crimes (Domestic and Personal Violence) Act 2007 (NSW), s 98D(1).

Crimes (Domestic and Personal Violence) Act 2007 (NSW), s 98A.

Crimes (Domestic and Personal Violence) Act 2007 (NSW), s 98F.
183 Family Violence Act 2004 (Tas), s 37.
184 Royal Commission into Family Violence, Summary and Recommendations (March 2016), Recommendation 5.
186 Relationships Australia, Domestic Violence NSW, Legal Services Commission SA, Legal Aid NSW, Aboriginal Family Law Services WA.
187 Federal Circuit Court.
188 Legal Aid Western Australia.
190 Family Law Act 1975 (Cth), s 65F. Note that the Act includes exceptions to this requirement where it is not practicable, where the matter is urgent or where other ‘special circumstances’ exist, such as family violence.
191 Family Law Act 1975 (Cth), s 10B. A family counsellor is a person who is ‘authorised to act on behalf of an organisation designated by the Minister’: Family Law Act 1975 (Cth), s 10C(b).
192 Evidence Act 1995 (NSW) ss 126A-126B; Evidence Act 2011 (ACT) ss 126A-126B; Evidence Act 2001 (Tas) ss 126A-126B.
193 Evidence Act 1995 (NSW) s 126B(3)(b); Evidence Act 2011 (ACT) s 126B(3)(b); Evidence Act 2001 (Tas) s 126B(3)(b).
194 Evidence Act 1995 (NSW) s 126B(4); Evidence Act 2011 (ACT) s 126B(4); Evidence Act 2001 (Tas) s 126B(4).
195 Evidence Act 1995 (NSW) s 126A; Evidence Act 2011 (ACT) s 126A; Evidence Act 2001 (Tas) s 126A.
196 See on this point, R. Chisholm, Confidentiality and information sharing in family law dispute resolution: Aspects of current law, policies and options, Paper presented to the FRSA Conference, Gold Coast, November 2011, 38. See also Wenlack & Cimorelli [2013] FAMCA 602, [9].
197 See also Jermyn v Carling [2012] FMCAFam 814 [94]-[96], [101].
199 Women’s Legal Services NSW submission. See also Jermyn v Carling [2012] FMCAFam 814 [94]-[96], [101].
200 Women’s Legal Services NSW submission. See also Jermyn v Carling [2012] FMCAFam 814 [94]-[96], [101].
S. Alderson, L. Kelly and N. Westmarland, ‘Domestic Violence Perpetrator Programmes and Children and Young People’, Project Mirabel Briefing Note 3 (December 2013), 2.

COAG Advisory Panel, above n 111, Recommendation 3.3.

No To Violence


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Northern Territory Department of Children and Families; Department of Communities, Child Safety and Disability Services Queensland; Legal Aid Western Australia; NSW Department of Family and Community Services.

Federal Circuit Court; Legal Aid Western Australia. The Federal Circuit Court noted that the procedure is currently used mainly in relation to child protection agencies and is not often used in relation to police.

Family Court of Western Australia, Practice Direction No. 1 of 2014.

Federal Circuit Court of Australia; FACS NSW.

FACS NSW.

Legal Aid NSW; Tamworth Family Law Pathways Network.

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Legal Aid NSW, Central Coast FLPN, Women’s Legal Services Tasmania.

See example, Relationships Australia, Submission.


No To Violence, Submission and Consultation

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See Children Act 1989, s 16A, introduced by the Children and Adoption Act 2006.

See C100: Application under the Children Act 1989 for a residence, contact, prohibited steps, specific issue section 8 order or to vary or discharge a section 8 order, http://www.family-law-advice.org/wp-content/uploads/2013/02/C100-Form.pdf

Cafcass officers also prepare Welfare Reports under section 7 of the Children Act 1989 along similar lines as those prepared by family consultants under s 62G of the Family Law Act in Australia.

Children Act 1989, s 11A(3) and (5).

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267 Ibid at 426.
268 COAG Advisory Panel, above n 111, 111.
271 Ibid at 2.
272 Ibid at 9-14.
273 Ibid at16-20.
274 Ibid, Recommendations 4 and 5.
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276 Encompass Family & Community, above n 270, Recommendation 3.
277 Higgins, above n 30, 22.
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279 Relationships Australia; Child Protection Practitioners Association Queensland; David Fanning; Law Society of NSW.
280 Law Society of NSW.
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282 Central Coast FLPN; WEAVE Inc.; Beccy Summers.
283 Federal Circuit Court of Australia; Victoria Legal Aid
284 See eg, NATSILS.
286 Ibid.
287 Royal Commission into Family Violence, Summary and Recommendations (March 2016), Recommendation 137.
289 Henrietta Barclay, Family Law Legal Service (Consultation).
290 Family and Relationship Services Australia; Women’s Legal Services Australia; Women’s Legal Services NSW; Relationships Australia.
292 AOD Peaks Network, MacKillop, Legal Aid WA.
293 Child Protection Unit, Princess Margaret Hospital for Children, WA; MacKillop Family Services; Associate Professor Andrea Reupert, Monash University (consultation).
294 MacKillop Family Services; Women’s Legal Service Tasmania.
295 Gayle Vermont & Irabina Autism Services (Submission); Associate Professor Andrea Reupert, Monash University (Consultation).
297 Domestic Violence Victoria, Specialist family violence services: The heart of an effective system - Submission to the Royal Commission into Family Violence, 19 June 2015, 11.
298 Ibid.
300 A. George and B. Harris, Landscapes of Violence: Women Surviving Family violence in Regional and Rural Victoria (Deakin University, 2014), 3.
301 WLSV, DV NSW, No to Violence, Safe Steps.


NATSILS, Relationships Australia Canberra Region, Relationships Australia NT, Aboriginal Family Law Services WA

NATSILS, Submission, at 3.


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See this, Senate Community Affairs References Committee, *Out of Home Care* (Commonwealth of Australia, August 2015), at 10.79.

For example, National Aboriginal and Torres Strait Islander Legal Services; Aboriginal Family Violence Prevention and Legal Service Victoria; National Family Violence Prevention Legal Services.

Aboriginal Family Law Services WA

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Ibid, 86.

H. M. McDonald, S. Forell, Z. Wei and S. A. Williams, *Reaching in by joining-up: Evaluation of the legal assistance partnership between Legal Aid NSW and Settlement Services International* (Law and Justice Foundation of NSW, September 2014), 70.


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CatholicCare; Domestic Violence Resource Centre Victoria; safe steps; Family and Relationship Services Australia.


Northern Territory Legal Aid Commission; Relationships Australia Northern Territory

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NATSILS; Commissioner for Children and Young People Western Australia; MacKillop Family Services.

Aboriginal Forum; Aqua Dreaming

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425 See also on this, COAG Advisory Panel, above n 111, Recommendations 2.7 and 5.1; Judicial Council on Cultural Diversity, The Path to Justice: Aboriginal and Torres Strait Islander Clients Report, above n 302, 51.
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430 Family Law Council, Clients from Culturally and Linguistically Diverse Backgrounds Report, above n 313, Chapter 2; Queensland Special Taskforce, above n 366, 128.
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536 *Commonwealth of Australia, Parliamentary Debates*, House of Representatives, 28 November 1974 at 4322 (Prime Minister Whitlam).

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548 Kaspiew et al, Independent Children's Lawyers Study, above n 239, 119, Table 7.3.

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Women’s Legal Service Victoria, Submission to the Australian Royal Commission, *Royal Commission into Family Violence*, 19 June 2015

Appendix A – Forums and Consultations

Consultations for the Interim Report

ORGANISATIONS

ACT Magistrates Court
Amanda Nuttall, Registrar

Children’s Court of New South Wales
Judge Peter Johnstone, President

Children’s Court of Victoria
Gregory Levine, Magistrate
Elisa Buggy, Project Manager, Family Drug Treatment Court

Department for Child Protection and Family Support (WA)
Michele Cohen, Child Protection Consultant

Department of Communities, Child Safety and Disability Services (Queensland)
Megan Giles, Director Child and Family Strategic Policy and Design

Department for Education and Child Development (South Australia), Families SA
Pam Hemphill, Executive Director Families SA, Country Operations & Statewide Services

Department of Family and Community Services (NSW)
Derek Smith, Assistant Director Care Litigation and Support, Legal Services

Department of Health and Human Services (Victoria)
David Soanes, Practice Leader Strategic Projects, Office of Professional Practice
Anna Sandt, Child Protection Practice Leader (Family Law Liaison)
Nathan Fenelon, Senior Cultural Program Advisor, Office of Professional Practice

Family Court of Australia
Chief Justice Bryant
Justice Ryan
Justice Finn
Justice Austin
Justice Ainslie-Wallace
Justice Forrest
Richard Foster, Chief Executive Officer

Family Court of New Zealand
Judge Ryan, Principal Family Court Judge

Family Court of Western Australia
Chief Judge Thackray

Federal Circuit Court
Chief Judge Pascoe
Legal Aid Western Australia
Julie Jackson, Director, Family Division

Legal Aid Queensland
Nicky Davies, Director, Family Law and Civil Justice Services

Magistrates’ Court of Victoria
Peter Lauritsen, Chief Magistrate
Felicity Broughton, Deputy Chief Magistrate
Anne Goldsbrough, Magistrate
David Fanning, Magistrate (Neighbourhood Justice Centre)

Northern Territory Office of the Attorney-General and Minister for Justice
The Hon. John Elferink, Attorney-General

Office of the Minister for Families and Children Victoria
The Hon. Jenny Mikakos, Minister for Families and Children

Victoria Legal Aid
Bevan Warner, Managing Director
Nicole Rich, Director Family Youth and Children’s Law

Women’s Legal Service Victoria
Joanna Fletcher, Chief Executive Officer
Pasanna Mutha, Policy and Campaigns Manager

INDIVIDUALS

Dr Becky Batagol, Law Faculty, Monash University

The Hon. Justice Jennifer Coate, Family Court of Australia, former President of the Children's Court of Victoria

The Hon. Professor Richard Chisholm AM, Adjunct Professor, ANU College of Law

Professor Belinda Fehlberg, Melbourne Law School, University of Melbourne

Professor Cathy Humphreys, Department of Social Work, University of Melbourne

The Hon. Alastair Nicholson AO, former Chief Justice of the Family Court of Australia

Professor Patrick Parkinson AM, Law Faculty, University of Sydney

Assoc. Professor Rosemary Sheehan AM, Department of Social Work, Monash University

Professor Clare Tilbury, School of Human Services and Social Work, Griffith University

FORUMS

Perth 31 March 2015

Family Court of Western Australia
Chief Judge Thackray
Principal Registrar Monaghan
Melbourne 26 February 2015

Family Court of Australia
The Hon. Justice Bennett
Manuela Galvao (Regional Co-ordinator Child Dispute Services)

Magistrates’ Court of Victoria
Anne Goldsborough, Magistrate

Department of Health and Human Services
David Soanes (Practice Leader, Office of Professional Practice)
Anna Sandt (Child Protection Practice Leader)
Nathan Fenelon (Senior Cultural Program Advisor, Office of Professional Practice)
Leng Phang
Sascha Gelford
Rebecca Sharpe

Victoria Legal Aid
Bevan Warner (Managing Director)
Nicole Rich (Director Family Youth and Children’s Law)
Freia Carlton (Manager Family Dispute Resolution Service)
Emma Smallwood
Caroline Smith
Brigid Jenkins
Marika Ruzyla
Andrew McKay
Alla Epelboym
Siobhan Mansfield
Amy Schwebel
Daniel Piekarski
Lucia Danek
Louise Akenson

Family Law Pathways Network (Melbourne)
   Jill Raby

Women’s Legal Service Victoria
   Helen Matthews
   Henrietta Barclay

Relationships Australia Victoria
   Katrina Marwick
   Sue Yorston

Our Watch
   Selina Getley

Private Practice
   Jackie Campbell, Forte Family Lawyers
   Ian Kennedy, Kennedy Partners Lawyers
   Andrew McGregor, Dowling McGregor Pty Ltd Barristers and Solicitors
   Jason Walker, Gadens

La Trobe University
   Hannah Robert, Law Faculty

University of Melbourne
   Professor Cathy Humphreys, Department of Social Work
   Dr. Lucy Healey, Department of Social Work
   Professor Belinda Fehlberg, Melbourne Law School
   Professor John Tobin, Melbourne Law School

CHILD PROTECTION WORKING GROUP

Megan Giles, Director Child and Family Strategic Policy and Design
Department of Communities, Child Safety and Disability Services Queensland

Judge Peter Johnstone, President
Children’s Court of New South Wales

Andrew McGregor, Principal
Dowling McGregor Pty Ltd Barristers and Solicitors (Victoria)

David White, Executive Solicitor
Crown Solicitor’s Office (South Australia)
Consultations for the Final Report

ORGANISATIONS

Australian Children’s Contact Services Association
Sue Thomson, Convener

Berry Street Northern Family & Domestic Violence Service (NFDVS)
Zoe Ross

Child Dispute Services, Family Court of Australia & Federal Circuit Court of Australia
Jane Reynolds, A/Principal Child Dispute Services and Regional Registry Manager, Victoria Tasmanian

Children’s Court of Victoria
Amanda Chambers, President

Coroner’s Court of Victoria
The Hon. Judge Ian Gray, State Coroner

Family Law Legal Service
Henrietta Barclay, Senior Lawyer

Magistrates’ Court of Victoria
Felicity Broughton, Deputy Chief Magistrate
Anne Goldsbrough, Magistrate

Neighbourhood Justice Centre
David Fanning, Magistrate
Kerry Walker, Director
Sue Marshall

Northern Territory Magistrates Court
Sue Oliver, Magistrate

No to Violence and Men’s Referral Service
Rodney Vlais, CEO

Portable
Andrew Apostola
Simon Goodrich

Relationships Australia Victoria
Andrew Bickerdike, CEO
Ed Shackell, Family Dispute Resolution Practice Development Specialist
Emily McDonald, Senior Manager Practice Development

Women’s Legal Services Australia
Pasanna Mutha
Angela Lynch
Heidi Guldbaek

INDIVIDUALS

Professor Marie Connolly, Chair of Social Work, School of Health Sciences, University of Melbourne

Dr Ian Freckleton QC, Victorian Bar

Ian Kennedy AM, Senior Partner, Kennedy Partners, Executive Member of the Family Law Section of the Law Council of Australia

Jason Walker, Partner, Gadens (Melbourne)

FORUMS

Toowoomba 13 August 2015

Aboriginal and Torres Strait Islander Legal Service
   Allison Glanville

Act for Kids
   Heidi Fowler

Aqua Dreaming Ltd
   Lynette Johannessen

Australian Association of Social Workers
   Dr Fotina Hardy

Centacare
   Brenda Holman
   Geoff Argus

Department of Communities, Child Safety and Disability Services
   Brooke Winters

Downs and South West Law Association
   Andrew McCormack

Family Law Pathways Network
   Gail Sanderson

Foundations Care
   Megan Wilson

Legal Aid Queensland
   Nathan Hall
   Darren Lewis
LifeLine Darling Downs
   Megan Halliday
   Maria O’Keefe

MDA
   Mitra Khakbaz
   Kelly Buckingham

Mental Health Review Tribunal
   Barry Thomas

Mercy Community Services
   Frances Klaassen

Private practice
   Brook Pugh

Relationships Australia
   Sonia Kupfer

RHealth
   Julia Keogh

The Advocacy and Support Centre
   Kirsten Dengler
   Arlene Holly

Toowoomba Contact Centre
   Angela Kendall

**Darwin 19 August 2015**

Amity Community Services
   Rian Rombouts

Anglicare Resolve
   Caroline Schopfer
   Gary Childs

Catholic Care
   Rebecca Hollard
   Bianca Hambly

Domestic Violence Legal Service
   Annabel Pengilley
Federal Circuit Court
  Suzie Gye

North Australia Aboriginal Justice Agency
  Matthew Strong

North Australian Aboriginal Family Violence Legal Service
  Natale Little
  Joanna Lau

Northern Territory Legal Aid Commission
  Jaquie Palavra
  Sally Bolton

Northern Territory Police
  Janelle Tonkin
  Tanya Woodcock

Private practice
  Eileen Tyrell

Relationships Australia
  Marie Morrison
  Sue Foster
  Anne Ellison

**Parramatta 9 September 2015**

Aboriginal Legal Service
  Gemma Slack-Smith

Anglicare
  Natalie Sawtschek

Bankstown Family Relationship Centre
  Barbara Bolt

Catholic Care
  Suzie Scott

Department of Family and Community Services
  Robyn Booler

Family Court of Australia
  Judge Foster
  Mark Palmer
Federal Circuit Court
Judge Harman

Law Society of NSW
Glen Thomson

Legal Aid New South Wales
Nicola Callander
Susanna O’Reilly

McArthur Legal Centre
Robyn Roelandts

People with Disabilities Australia
Jess Cadwallader

Relationships Australia
Wayne Nugent

Sydney Women’s Counselling Centre
Margherita Basile

Unifam
Tara Housman

Wirringa Baiya Aboriginal Women’s Legal Centre
Rachael Martin

Women’s Legal Service NSW
Janet Loughnan

**Parramatta Culturally and Linguistically Diverse Clients 9 September 2015**

Department of Family and Community Services
Paul Mortimer

Family Court of Australia
Paul Le Large
Dinh Tranh

Immigrant Women Speakout
Jane Brock

Law and Justice Foundation NSW
Suzie Forrell
Legal Aid NSW
   Rouada El-Ayoubi
   Ruth Pilkinton

Migrant Resource Centre
   Faiza Shakori

NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS)
   Jasmina Bajraktarevic-Hayward

Private practice
   Wajiha Ahmed

Settlement Services International
   Janet Irvine
   Thanh Nguyen

United Muslim Women’s Association
   Maha Abdo
   Maha Najjarine

University of Western Sydney
   Professor Susan Armstrong

Women’s Legal Service NSW
   Carolyn Jones
   Liz Snell

Sydney Aboriginal and Torres Strait Islander Forum

Forum convened by Rick Welsh from the Men’s Shed Mt Druitt, with participation from a number of Aboriginal organisations and individuals from the Sydney area.
Appendix B - Submissions

Submissions were received from the following persons and organisations in response to terms of reference 1 and 2 (in alphabetical order):

Aboriginal Family Law Services Western Australia 11 May 2015
Aboriginal Family Violence Prevention & Legal Service Victoria 7 May 2015
Aboriginal Legal Service of Western Australia 11 May 2015
Aqua Dreaming Pty Ltd 18 May 2015
Bar Association of Queensland 30 April 2015
Bravehearts Inc 5 May 2015
The Honourable Chief Justice Diana Bryant AO (Family Court of Australia) [confidential] 15 May 2015
Central Australia Women’s Legal Service 6 May 2015
Child Protection Practitioners Association of Queensland 24 April 2015
Children’s Court of New South Wales 24 April 2015
Children’s Court of Victoria 1 June 2015
David Fanning (Magistrate) 9 June 2015
Department for Child Protection and Family Support Western Australia 5 May 2015
Department of Children and Families Northern Territory 11 May 2015
Department for Education and Child Development South Australia [confidential] 7 May 2015
Department of Family and Community Services New South Wales 5 May 2015
Professor Heather Douglas, Assoc Professor Tamara Walsh and Ms Kathryn Thomas (University of Queensland) 30 April 2015
Eastern Suburbs Domestic Violence Network 1 May 2015
Family Court of Western Australia 8 May 2015
Family Law Practitioner’s Association of Queensland 30 April 2015
Family Law Practitioner’s Association of Tasmania Inc 8 May 2015
Family Law Section, Law Council of Australia 14 May 2015
Federal Circuit Court 4 May 2015
Professor Belinda Fehlberg (University of Melbourne) 18 February 2015
Professor Cathy Humphreys (University of Melbourne) [confidential] 29 April 2015
Law Institute of Victoria 6 May 2015
Law Society of NSW – Indigenous Issues Committee 14 August 2015
Law Society of South Australia 30 April 2015
Legal Aid Commission of Tasmania 30 April 2015
Legal Aid New South Wales 7 May 2015
Legal Aid Western Australia 8 May 2015
Legal Services Commission of South Australia 30 April 2015
David Lewis (Barrister, Tasmania) 30 April 2015
Magistrates’ Court of Victoria 1 June 2015
Dr Elspeth McInnes AM (University of South Australia) 28 April 2015
National Child Protection Alliance 27 April 2015
National Family Violence Prevention Legal Services 6 May 2015
National Legal Aid 1 June 2015
New South Wales Department of Justice 24 April 2015
Northern Territory Legal Aid Commission 6 May 2015
Queensland Family and Child Commission 29 April 2015
Tasmanian Department of Health and Human Services 30 April 2015
Victims of Crime Assistance League (Robyn Cotterell-Jones) 30 April 2015
Victims of Crime Assistance League (Kassie Pitkin) 30 April 2015
Victoria Legal Aid 30 April 2015
Victorian Commission for Children and Young People 4 May 2015
Western Australia Commissioner for Children and Young People 20 May 2015
Women’s Legal Services New South Wales 4 May 2015
Submissions were received from the following persons and organisations in response to terms of reference 3 and 4 (in alphabetical order):

Aboriginal Family Law Services (WA) 15 October 2015
Alcohol and other Drugs Peak Network 30 September 2015
Beccy Summers 1 October 2015
CatholicCare Melbourne and Gippsland 29 September 2015
Centacare NENW and Tamworth Family Law Pathways Network 30 September 2015
Central Coast Family Law Pathways Network 29 September 2015
Child Protection Unit, Princess Margaret Hospital for Children 16 September 2015
Children’s Court of Victoria and Magistrates’ Court of Victoria 6 November 2015
Children with Disability Australia 29 October 2015
Commissioner for Children and Young People Western Australia 27 August 2015
Court Network 30 September 2015
Domestic Violence NSW 13 October 2015
Domestic Violence Resource Centre Victoria 30 September 2015
Family and Relationship Services Australia 30 September 2015
Family Issues Committee of the Law Society of New South Wales 20 October 2015
Family Law Practitioner’s Association of Queensland 1 October 2015
Family Law Practitioners’ Association of Western Australia 30 September 2015
Family Law Section, Law Council of Australia 7 January 2016
Family Life 30 September 2015
Federal Circuit Court of Australia 20 October 2015
Federation of Ethnic Communities' Councils of Australia 29 September 2015
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<td>The Advocacy and Support Centre</td>
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Confidential submission 4 1 October 2015
Confidential submission 5 2 November 2015
Confidential submission 6 2 November 2015
Confidential submission 7 15 January 2016
Appendix C – Council’s Interim Report Recommendations

In its Interim Report to the Attorney-General on Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems, the Family Law Council recommended:

Recommendation 1

(i) That section 69J and section 69N of the Family Law Act be amended to remove any doubt that children's courts, no matter how constituted, are able to make family law orders under Part VII of the Family Law Act in the same circumstances that are currently applicable to courts of summary jurisdiction.

(ii) That the government consider the appropriate process of appeal from family law decisions made by state and territory courts.

Recommendation 2

That Part VII of the Family Law Act be amended to provide a simplified decision-making framework for interim parenting matters.

Recommendation 3

That the Family Law Act be amended to enable judicial officers to deliver ‘short form’ judgments in interim proceedings.

Recommendation 4

That the government implement the relevant part of Recommendation 16–5 of the Australian and NSW Law Reform Commissions’ 2010 report, namely that:

Section 68T of the Family Law Act 1975 (Cth) should be amended to provide that, where a state or territory court, in proceedings to make an interim protection order under state or territory family violence legislation, revives, varies or suspends a parenting order under s 68R […] that parenting order has effect until:

(a) the date specified in the order;

(b) the interim protection order expires; or

(c) further order of the court.

Recommendation 5

The Attorney-General raise the following matters at the COAG level:

a) The development of a national database of court orders to include orders from the Family Court of Australia, the Family Court of Western Australia, the Federal Circuit Court of Australia, state and territory children's courts, state and territory magistrates courts and state and territory mental health tribunals, so that each of these jurisdictions has access to the other’s orders.
b) The convening of regular meetings of relevant stakeholder organisations, including representatives from the children's courts, child protection departments, magistrates courts, family courts, legal aid commissions and Attorney-General's Departments, to explore ways of developing an integrated approach to the management of cases involving families with multiple and complex needs.

c) Amending the prohibition of publication provisions in state and territory child protection legislation to make it clear that these provisions do not prevent the production of reports prepared for children's court proceedings in family law proceedings.

d) The entry into Memoranda of Understanding by state and territory child protection agencies and the federal family courts to address the recommendations of Professor Chisholm’s reports.

e) The co-location of state and territory child protection department practitioners in federal family court registries.

f) The development of dual competencies for Independent Children's Lawyers to achieve continuity of representation for children where appropriate.

Recommendation 6

(i) The Family Law Council has previously made recommendations in relation to a number of issues that are covered by the present terms of reference in its 2009 report, Improving Responses to Family Violence in the Family Law System. These include:

- Recommendation 7.3.1:
  The adoption of consistent terminology in orders relating to children across relevant State and Commonwealth legislation so that orders are more readily understood by parents and carers of children and those working in family law and child protection, including law enforcement.

- Recommendation 9.3:
  The Attorney-General facilitate the development of protocols for the collaborative exchange of information between the family courts and child protection departments, police, and mental health services.

Council recommends that these matters be placed on the COAG agenda.

(ii) The Family Law Council has previously made recommendations in relation to the issue of Aboriginal and Torres Strait Islander family liaison officers in its 2012 report, Improving the Family Law System for Aboriginal and Torres Strait Islander Clients. These include:

- Recommendation 6:
  The Australian Government provides funding for further positions for Indigenous Family Consultants and Indigenous Family Liaison Officers (identified positions) to assist the family law courts to improve outcomes for Aboriginal and Torres Strait Islander families.

Council recommends the government implement this recommendation.
Appendix D – Family Violence Incident Flow Chart Jurisdictions exercised by Victorian Magistrates

Family Violence Incident Flow Chart: Jurisdictions exercised by Victorian Magistrates

- Child Protection Matters
  - Emergency protection order by safe custody
  - Protection application by notice
  - Matter heard Children’s Court of Victoria (Resale submissions contest about the immediate housing placement of the children)
  - Matter listed for mention hearing (this step can occur multiple times)
  - Matter listed for directions hearing, if matter does not settle, matter adjourned
  - Matter listed for contested hearing
  - Matter listed for contested hearing, matter finalised upon magistrates’ decision

- Family violence intervention order
  - Application for interim intervention order made

- Criminal charges
  - Police initiated
  - Private initiated
  - Accused on Bail
  - Summons
  - Interim application for assistance

- Victims of Crime Assistance Tribunal (VOCAT) Application
  - VO CAT Application

- Family Law
  - Interim application for assistance
  - VO CAT Application
  - Recovery Order
  - Parenting Orders

- Coronial Investigation
  - Death is reported to the Coroner’s Court
  - Coroner determines, whether death is reportable under section 4 of Coroners Act
  - Medical examination performed by the Victorian Institute of Forensic Medicine (VIFM): Medical Examination Report (MER) prepared by the Coroner
  - Coroner directs coroner’s investigator to investigate the circumstances of the death
  - Coroner’s investigator provides the Coroner with coronial brief

- Indictable offences may proceed in either the summary or committal stream and can be transferred to either of the streams throughout the process. If the accused is on bail, the charges can proceed in either the summary or committal stream

**The State Coroner investigates all family violence related deaths in the context of the Victorian Systemic Review of Family Violence Deaths.**

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Appendix E - Function and membership of the Family Law Council

The Family Law Council is a statutory authority that was established by section 115 of the Family Law Act 1975. The functions of Council are set out in sub-section 115(3) of the Family Law Act 1975, which states:

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.

Members of the Family Law Council (as at 30 June 2016):

Professor Helen Rhoades (Chairperson)  Ms Jennie Hannan AM
Ms Kylie Beckhouse  Dr Rae Kaspiew
Justice Robert Benjamin AM  Judge Kevin Lapthorn
Mr Jeremy Culshaw  Ms Colleen Wall

Observers to the Family Law Council (as at 30 June 2016):

The following agencies and organisations have observer status on the Council (with names of attendees):
Australian Institute of Family Studies – Dr Rachel Carson
Australian Law Reform Commission –Dr Julie MacKenzie
Department for Education and Child Development – Families SA – Ms Pam Hemphill
Department of Human Services – Ms Sheree Tierney
Family & Relationships Services Australia – Ms Jackie Brady
Family Court of Australia – Principal Registrar Angela Filippello
Family Court of Western Australia – Magistrate & Principal Registrar David Monaghan
Family Law Section of the Law Council of Australia – Mr Geoff Sinclair
Federal Circuit Court – Ms Adele Byrne

Research Assistants:

Ms Nareeda Lewers – Research Fellow (Melbourne Law School)
Ms Jo O’Donohue – Research Fellow (Melbourne Law School)
Mr David Benady – Research Assistant (Melbourne Law School)
Ms Charlotte Frew – Research Assistant (Melbourne Law School)

Secretariat:

Mrs Kim Howatson (Attorney-General's Department)