Parliamentary inquiry into a better family law system to support and protect those affected by family violence

House of Representatives Standing Committee on Social Policy and Legal Affairs

22 May 2017
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About the Law Council of Australia

The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its Constituent Bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

The Law Council was established in 1933, and represents 16 Australian State and Territory law societies and bar associations and the Law Firms Australia, which are known collectively as the Council’s Constituent Bodies. The Law Council’s Constituent Bodies are:

- Australian Capital Territory Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Bar
- Law Firms Australia
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of more than 60,000 lawyers across Australia.

The Law Council is governed by a board of 23 Directors – one from each of the constituent bodies and six elected Executive members. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive members, led by the President who normally serves a 12 month term. The Council’s six Executive members are nominated and elected by the board of Directors.

Members of the 2017 Executive as at 1 January 2017 are:

- Ms Fiona McLeod SC, President
- Mr Morry Bailes, President-Elect
- Mr Arthur Moses SC, Treasurer
- Ms Pauline Wright, Executive Member
- Mr Konrad de Kerloy, Executive Member
- Mr Geoff Bowyer, Executive Member

The Secretariat serves the Law Council nationally and is based in Canberra.
Acknowledgement

The Law Council is grateful to its Family Law Section, Domestic and Family Violence Taskforce, Indigenous Legal Issues Committee, as well as the Law Society of South Australia and the Law Society of New South Wales, for their assistance with the preparation of this submission.
Executive summary

1. The Law Council welcomes the opportunity to make a submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs’ (the Committee) Inquiry into a better family law system to support and protect those affected by family violence (the Inquiry).

2. As part of the 2017-2018 Federal Budget, the Australian Government made a number of funding announcements affecting the family law system, including maintaining funding for community legal centres (CLCs) and Aboriginal and Torres Strait Islander legal services (ATSILS) and investing in the recruitment of more family consultants for the Family Court of Australia, the Family Court of Western Australia and the Federal Circuit Court of Australia (together, the family courts). While some of these commitments are welcome, they are sorely inadequate to address a family law system that has been in crisis for many years. As a bare minimum, the Law Council considers it essential that the Commonwealth commit to a substantial funding boost to the family courts in order to remedy the very significant delays being experienced by litigants (many of whom are unrepresented) and a substantial increase in legal aid funding to improve both justice outcomes for those facing family law problems and the efficiency of court proceedings.

3. The Law Council considers that the issues of cross-examination of vulnerable witnesses and the division of property under the Family Law Act 1975 (Cth) (Family Law Act) to be two of the more controversial current issues in family law.

4. An area in which the Law Council strongly supports reform is regarding the appointment of judges to family courts. As discussed below, the Law Council believes that the interests of the community are best served by the appointment of experienced family law practitioners to courts that exercise family law jurisdiction. To that end, it is important that persons with family law experience are wherever possible appointed to hear family law cases in the Federal Circuit Court, and that the Government commit to an independent process for the selection and identification of suitably qualified lawyers to be appointed as judges to the family courts.

5. The Law Council recognises that some of the initiatives proposed in this submission to better protect families from the risk of family violence in the family law system would, if implemented, require collaboration with the family courts and other professionals in the family law system. Many of these initiatives would require a substantial injection of funding to the family law system, and could not be implemented within the current funding provided, in particular, the family courts. With that in mind, the Law Council makes the following suggestions:

- improve existing legal mechanisms, including by:
  - expanding section 60I certificate content to include risk assessment, preparation of safety plans and referrals to legal and non-legal support services;
  - improving integration between specialist family courts, child welfare agencies and police;
  - undertaking preliminary risk assessments in each parenting matter;
  - make early or preliminary findings on family violence allegations as a discrete issue.
- providing more options to judges for responding to identification of risk;
- implementing and funding the Family Advocacy Support Service in all registries; and
- increasing awareness of the availability of safety plans by litigants and practitioners for court attendances;

• make access to courts safer for vulnerable people, including by ensuring that the physical set-up of courts does not expose those who are at risk of or have experienced family violence to further harm, and that access to courts is available during holiday periods, providing independent assessment and support to children where family violence is a concern, and addressing challenges faced by culturally and linguistically diverse families;

• address challenges facing Aboriginal and Torres Strait Islander families in accessing the family law system in situations of family violence, including by:
  - providing funding for legal assistance in civil matters which can be accessed by Aboriginal and Torres Strait Islander families;
  - funding culturally appropriate legal services in the critical areas in which family violence intersects with the legal system, including court outreach programs;
  - funding for the employment of Aboriginal and Torres Strait Islander family liaison officers within Aboriginal and Torres Strait Islander-specific legal and support organisations;

• extend the time limit of state and territory courts’ power to revive, vary or suspend a family law order when that court makes an interim family violence protection order from 21 days, to 60 days;

• ensure adequate funding to legal assistance services and the family courts to reduce the possibility that vulnerable litigants will agree to consent orders due to impecuniousness or delays, and to allow for a proper assessment of risk by judicial officers;

• as per Recommendation 11(1) of the Family Law Council Report on Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems, 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);

• in consultation with the legal profession, develop training for lawyers about family violence, and consider including this as a topic in the compulsory professional development that must be undertaken by all lawyers to maintain their practicing certificates;

• implement the recommendations of the Family Law Council in its Report on Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems, 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);
Protection Systems regarding the provision of culturally appropriate services to Aboriginal and Torres Strait Islander families accessing the family law system;

- consider including orders made under the Family Law Act in the information sharing platform being developed as part of the domestic violence order national recognition scheme; and

- consider amendments which would allow breaches of Family Law Act personal protection injunctions to be enforced as crimes under state and Territory legislation.

6. All references in this submission to section numbers are references to the Family Law Act unless otherwise mentioned. Sections of the submission which address specific terms of reference (TOR) for the inquiry are as marked.

Preliminary comments

7. The Family Law Act already provides for issues of risk to be identified and dealt with as expeditiously as possible. However, the lack of funding to the family law system directly contributes to exacerbating situations that may place people who are or might be affected by family violence at risk. For example, the Law Society of South Australia has noted that, in South Australia, some of the Children’s Contact Centres (which allow parents to have supervised contact visits with their children and changeovers) have waiting lists of around 3 months, and/or the times or locations available are not tenable. However, the wait times in many other states are as long as 9 months. Faced with such significant wait times, a victim of family violence may feel pressure to allow their allegedly violent ex-partner to have contact with the children on an unsupervised basis in order not to escalate the risk of further violence because contact would not otherwise occur.

8. Furthermore, the availability of crisis accommodation and urgent financial support is also critical to allow parties to leave violent situations before they are even able to or want to access legal services. Additional services may also be required, for example, many victims are reluctant to leave if there is an older family member living in the home that needs care, or because of fear of what might happen to a family pet.

9. Litigation is itself a family violence risk factor, with repeated court attendances, escalating costs, and emotions running high. Under-resourcing of the family courts can perpetuate abuse and prevent the family courts from adequately protecting those affected by family violence.

10. People affected by family violence are re-exposed to trauma in the course of litigation. The Law Society of New Wales has noted that the reality for litigants in the Sydney and Parramatta Registries of the family courts is that it may take up to three years from the time an Initiating Application is filed until the matter reaches a final hearing before a judge. As a result of the workload of the judiciary, parties may then wait a further lengthy period from the conclusion of the hearing until judgment is delivered and final orders are made.

11. The delay between an initiating application and final orders being made puts people who have experienced family violence, including children, at risk of further abuse, including

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1 *Family Law Act 1975 (Cth) s 67ZBB.*
where the financial relationship cannot be severed. It also increases the likelihood that a person who has experienced family violence may develop “litigation fatigue” and make poor decisions about their case as a result of an inability or unwillingness to continue with litigation to obtain more suitable orders. This includes agreeing to less than ideal parenting arrangements.

12. Given these significant concerns about the impact of the delays in the family courts on litigants and their families, the Law Council recommends that the Federal Government undertake an urgent review of resourcing of the family courts. Persistent underfunding over many years has strained the family law system to the point where it cannot meet current public expectations to provide safe, expeditious and effective outcomes. Funding the family courts to facilitate the earliest resolution of cases which often involve the most vulnerable families and children, should be central to any policy the government seeks to adopt regarding family violence.

13. The lack of funding to the family law system also impedes any future proposals for reforms that may seek to support those affected by family violence. For example, the Federal Government has recently announced that the Australian Law Reform Commission (ALRC) will be called upon to identify the reforms needed to ensure that the family law system meets the contemporary needs of families and effectively addresses family violence and child abuse, by the end of 2018.

14. While the Law Council looks forward to contributing to that review, it cautions that any recommendations for reform will not be able to be implemented without corresponding funding arrangements. There are already a range of initiatives, either in place or which could be implemented, and many of which are detailed in this submission, that have the capacity to improve safety for families accessing the family law system. However, these outcomes cannot be achieved with the current level of funding provided to the family courts, which is noted throughout the submission.

Quickly and effectively ensuring the safety of people who are or may be affected by family violence (TOR 1)

Improvements to existing legal mechanisms for the identification of and response to risk in family law matters before the courts

15. As noted above, the Law Council considers that there are a range of initiatives which have the capacity to improve safety for families accessing the family law system, subject to appropriate funding. The Law Council sets out below some examples of the types of initiatives which would improve the safety of families.

Appoint more judges, registrars and family consultants

16. The impact of the underfunding of the family courts leads to judges being under pressure to deal with cases quickly, particularly on the first hearing date, and therefore not having enough time to fully consider the safety issues in each case. The Law Council notes that it is not uncommon for there to be 30 or more cases before a judge on the first hearing date, which gives each case about 10 minutes.

17. The Law Council is concerned that judges in the family courts are under significant pressure due to increasing workloads and a failure to fill judicial vacancies. More judges and registrars would assist to reduce delay, and to improve identification of risk. The Law
Council acknowledges the Australian Government has recently committed over $10 million for family consultants in the 2017-2018 Federal Budget, which will allow the courts access to independent assessments of a family, including that family’s risk profile. A majority of those funds, however, will be directed to the Federal Circuit Court and not the Family Court where the need is also great.

**Expand section 60I certificate content to include risk assessment, preparation of safety plans and referrals to legal and non-legal support services**

18. Except in cases of emergency, parties in parenting matters first must attempt family dispute resolution. Once this has been completed or the case falls within certain defined exceptions, that party is given a section 60I certificate which then enables that party to initiate proceedings in the family courts. Introducing a requirement that the family dispute resolution practitioner who completes and signs the section 60I certificate also be required to complete and report on the outcome of a preliminary risk assessment would assist courts in identifying risk at the earliest opportunity.

**Better integration between specialist family courts with the child protection and family violence jurisdictions**

19. The Law Council considers that there is insufficient early information sharing between police, child protection agencies and the family courts. As it stands, all parties in child-related matters in the Federal Circuit Court are required to file a “Notice of Risk” (Notice) requiring them to set out whether or not there is actual (or risk of) abuse and family violence in their family. If such allegations are made, the Notice is sent to the relevant State or Territory child welfare agency, which considers the allegations and provides the Court with some basic information as to any child protection involvement with the family.

20. Some States have child protection staff on hand at the Court registry for more immediate assessment, which the Law Council considers to be optimal, as it reduces delays involved with awaiting review from the child welfare agency. In addition, the Law Council considers that protocols could be developed to allow the Notices to also be sent to police to obtain similar feedback and information about domestic violence interventions, and for document retrieval or storage on the new national domestic violence order register.

21. Currently, the practice on what happens once the information as to child protection has been procured differs between jurisdictions, depending on matters such as local resourcing, information sharing agreements, etc. Western Australia, within its State-based system, has a front-end approach to parenting matters, where information about a family’s involvement with child protection or police is provided to the judicial officer at the first court event. Melbourne has a co-located officer from the child protection agency who provides similar information. In other jurisdictions, such information is often not available to the court unless a party causes subpoenas to issue, or the court has requested a section 69ZW report from the child protection agency (which can often take weeks and sometimes months to be prepared and sent). The Law Council considers it

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2 See also Carolyn Adams and Krista Lee-Jones, A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts (May 2006) 72-73 <https://www.childabuseroyalcommission.gov.au/getattachment/d84cd7b5-47da-43dc-9457-270bc36e7a3f/Legislative-and-related-frameworks-for-information>. The authors note that “it would be worth considering working towards greater consistency to better facilitate and support appropriate information sharing, particularly where information must be shared across jurisdictions…”
preferable that the practice be standardised to require the provision of information about a family’s involvement with child protection at the first court event. Recommendations 5-9 of the Victorian Royal Commission into Family Violence also support these practices.3

Preliminary risk assessments in each parenting matter

22. Currently, there is no risk assessment undertaken prior to the first court event, which is generally a judicial duty list in the Federal Circuit Court or a conference with a registrar in the Family Court. Consideration could be given to, for example, having a family consultant meet with each party prior to the first court event. More family consultants could be employed to undertake mandatory section 11F child dispute conference risk assessments in every case prior to the first return date. Ideally that family consultant would have access to police and child protection agency records via an information sharing protocol. This would ensure that proper information is available to the court by the first court event.4

Early or preliminary findings on family violence allegations as a discrete issue

23. The Family Law Act already provides for issues of risk to be identified and dealt with as expeditiously as possible (section 67ZBB). The Act also makes provision for the making of findings of fact or determination of discrete issues in child-related matters, prior to the final hearing (section 69ZR). The family courts have limited capacity to do this under the current funding model, augmented by the fact that there is no risk assessment by a family consultant available at the first court date.

More options available to judges in response to the identification of risk

24. Even if risk can be identified at an early court date, for example by a family consultant in a section 11F memorandum, judges need options available to them so that they can make orders which respond to that risk. More contact centres, more availability of mental health plans for counselling for perpetrators, quicker information sharing with police and child protection agencies, more robust and quicker hearings of (and legal aid funding for) exclusive occupation order/spouse maintenance applications, may all be appropriate responses. However, at the moment, they are not realistically available options given the systemic underfunding of family courts and related services.5

Family Advocacy Support Service

25. The Law Council also notes some new initiatives could be further strengthened. The new Family Advocacy Support Service has begun operating in each State and Territory. This is a multi-disciplinary family courts-located service6 available to both family violence victims and perpetrators who require duty lawyer assistance, advice and referral to other

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4 This recommendation is consistent with the proposals contained in the Women’s Legal Services of Australia’s 5-step plan: see Women’s Legal Services of Australia, Safety First in family law (2016) <http://www.womenslegal.org.au/files/file/SAFETY%20FIRST%20POLICY%20PLATFORM.MAY%202016_FINAL.pdf>.
6 In the Northern Territory, the service is located in the Local Courts in Darwin and Katherine.

Increase awareness of the availability of safety plans by litigants and practitioners for Court attendance

26. The Law Council notes that family courts already have a system whereby safety plans are formulated by registry staff to manage the practical aspects of court attendances by vulnerable litigants. However, awareness of this amongst practitioners and litigants is not universal. Consideration could be given to requiring each party to file an additional document which is \textit{not} served on other party that flags personal safety concerns and triggers courts' response to safety plan creation and implementation.

Family law orders made in State and Territory Courts

27. There is currently a 21 day time limit\footnote{Family Law Act 1975 (Cth) s 68T. Amendments to section 68T were proposed in the Family Law Amendment (Family Violence and Other Measures) Bill 2017: Exposure draft provisions, released in December 2016. In response to the Exposure Draft Bill, the Law Council submission supported a variation to the present 21 day limit, but suggested there must be an appropriate temporal limit, recommending a period of no longer than 60 days to allow an application to be made and heard: see Law Council of Australia, Submission to Attorney-General’s Department on the Family Law Amendment (Family Violence and Other Measures) Bill 2016: Exposure draft provisions -- public consultation paper (17 February 2017) 10-11 <https://www.lawcouncil.asn.au/resources/submissions/family-law-amendment--family-violence-and-other-measures--bill-2017--exposure-draft-provisions---public-consultation-paper>.

8 Family Law Act 1975 (Cth) s 68R.} on a State or Territory courts’ power\footnote{Family Law Act 1975 (Cth) s 68R.} to revive, vary, or suspend a family law order, injunction or arrangement when making an interim family violence order (or interim variation), which affects arrangements for children. The intended purpose of this time limit is to provide for a swift review of parenting arrangements by the family courts after the State or Territory court’s revival, variation or suspension, which lapses within 21 days of the making of the interim family violence order (or stops being in force).

28. Critical resourcing issues to enable the review of parenting arrangements make it difficult for the family courts to meet this 21 day time limit before the order lapses. It can take four to six months before parenting arrangements can be reviewed at an interim hearing. Extending the time limit from 21 days, to 60 days, would allow sufficient time for a review of the family law order, injunction or arrangement by a family court when considering what is in the child/children’s best interests and having regard to the interim family violence order.
Suggested initiatives

- Appoint more judges, registrars and family consultants;
- Expand section 60I certificate content to include risk assessment, preparation of safety plans and referrals to legal and non-legal support services;
- Improve integration between specialist family courts, child protection agencies and police;
- Undertake preliminary risk assessments in each parenting matter;
- Early or preliminary findings on family violence as a discrete issue;
- Provide more options to judges for responding to identification of risk;
- Implement and fund the Family Advocacy Support Service in all registries;
- Increase awareness of the availability of safety plans by litigants and practitioners for Court attendances; and
- Extend the time limit on State and Territory courts power to vary family law orders when making family violence protection orders, from 21 days, to 60 days.

Make access to courts safer for vulnerable people

Physical access to courts

29. The design and layout of some court buildings, especially in regional centres, is inadequate for protecting people vulnerable to family violence. For example, in Launceston, there is only one lift in the building, which is utilised by lawyers, clients, and judicial officers. Litigants sit or stand together in crowded joint waiting areas, waiting for their case to be called. In Alice Springs, serious concerns have been raised about the lack of space and security, together with the lack of proper audio recording facilities, resulting in significant delays in obtaining transcripts. Further, the capacity to give evidence and attend court remotely is not always available.

30. The Judicial Council on Cultural Diversity (JCCD) has previously recommended that priority be given to establishing separate waiting areas for women attending court for family violence matters, as well as permitting women to participate in hearings via video-link where available, or taking other measures to reduce women’s stress when giving evidence.\(^{10}\) Unfortunately, courts cannot improve these inadequacies with their current budgets.

31. The summer holiday period can be a particularly stressful and volatile time for families and therefore access to the family courts is particularly crucial during this time. Due to funding limitations the family courts are only able to provide a limited service during this time. Funding for more judges and court resources may allow the family courts to extend their listing availability in this time.

Respond to challenges faced by culturally and linguistically diverse families

32. The Law Council also notes that there are significant challenges facing newly arrived migrants to Australia and in particular, young women experiencing family violence. This includes a lack of awareness of available support services, cultural and language

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barriers, and actual or perceived risks to their immigration status, which may prevent them from seeking help. The Law Council therefore suggests that this group could benefit from adequately funded and culturally appropriate legal and support services, particularly at the intersection of family violence and migration law.

33. In addition, persons from cultural and linguistically diverse (CALD) communities face further issues when seeking to access family courts, including because of a lack of English language skills and lack of familiarity with the Australian legal system. Some women from CALD backgrounds participating in family violence proceedings have reported struggling with the process due to not being provided with an interpreter despite them speaking little to no English. Refugee women have reported finding the court process intimidating, and exacerbating of existing trauma caused by family violence and experiences in their home country.\textsuperscript{11} The issues faced by CALD persons in the family law system were investigated by the Family Law Council in its 2012 report on Improving the Family Law System for Clients from Culturally and Linguistically Diverse Backgrounds (FLC CALD report), which also provided a series of recommendations on how these issues could be addressed, including by building legal literacy and cultural competence, enhancing service integration, workforce development, engagement and consultation and enhancing the use of interpreters.\textsuperscript{12}

34. The Family Court of Australia and Federal Circuit Court’s national Multicultural Access and Equity Policy is an example of an initiative that captures the spirit of some of the recommendations of the FLC CALD report, as it seeks to improve community education and legal literacy, build cultural competence among court staff, enhance service integration and enhance interpreter use for court proceedings.

35. Due to the barriers they can face, it should also be borne in mind that persons from CALD backgrounds may rely more on cultural and community leaders or tribal elders, or providers of other social services, than the courts or legal centres. These persons or service providers may or may not have a good appreciation of family violence and its risks to women and children. Serious consideration should be given to providing better and more uniform training, or making lawyers or other resources accessible to community leaders, elders and service providers, who can be the first people women turn to for advice on leaving violent relationships. A key example of a successful initiative includes the outreach family law clinics which operated at ten separate Migrant Resource Centre locations and three suburban legal aid centres in New South Wales, pursuant to a partnership between Legal Aid NSW and Settlement Services International.

36. An independent evaluation of the NSW partnership found “compelling evidence of the [service being]... an effective pathway to clients from diverse cultural backgrounds”\textsuperscript{13} as the “beauty of this model of service is that it’s taking services into the locations where people with problems can go and obtain services from a trusted location”.\textsuperscript{14} For example,


\textsuperscript{12} Family Law Council, Improving the Family Law System for Clients from Culturally and Linguistically Diverse Backgrounds (2012).


a lawyer working with the partnership reported that she was able to assist a domestic violence victim from South East Asia who had previously been unable to get help because her husband controlled her movements, but he allowed her to attend the migrant resource centre.  

Another example is the provision of resources by legal aid commissions to migrant resource centres for recently arrived families, for example, the DVD produced in basic English for the Northern Territory entitled "What’s the Law – Australian law for new arrivals". These schemes underline the necessity of providing adequate funding for legal aid and courts so as to facilitate the provision of lawyers and resources which assist CALD applicants.

**Suggested initiatives**

- Ensure court buildings are set up in a manner that facilitates the safety of litigants that may be at risk of or have experienced family violence;
- Ensure access to courts during holiday periods; and
- Improve access to family courts for litigants with culturally and linguistic diverse backgrounds, including by delivering resources and training to community leaders and service providers.

**Ensuring the safety of Aboriginal and Torres Strait Islander families**

37. The various drivers of family violence in the context of Aboriginal and Torres Strait Islander communities are likely to be complex and intersectional, and gender inequalities may be only one of the issues that require attention. There may also be other relevant factors including intergenerational trauma; homelessness and inadequate housing leading to overcrowding; unemployment; mental illness and substance abuse that may play a role.

38. Australian Institute of Health and Welfare figures suggest that Aboriginal and Torres Strait Islander women are hospitalised at much higher rates than non-Indigenous women as a result of spouse/domestic partner inflicted assaults (38 times); and that Aboriginal and Torres Strait Islander men are also hospitalised at a much higher rate than non-Indigenous men as a consequence of spouse/domestic partner inflicted assaults (27 times). These figures are silent on the identity (Aboriginal and Torres Strait Islander status or gender) of the perpetrators.

39. The Law Council further notes a Parliament of Australia research publication on domestic violence in Australia states that:

> Aboriginal and Torres Strait Islander family violence may differ from the stereotypical image of a passive victim battered behind closed doors. It often takes place in public and can involve a number of people. Aboriginal and

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15 Ibid.
Torres Strait Islander women may be more likely to fight back when confronted with violence than non-Aboriginal and Torres Strait Islander women.¹⁹

40. The publication notes further:

There are significant deficiencies in the availability of statistics and research on the extent and nature of family violence in Aboriginal and Torres Strait Islander communities. What data exists suggests that Aboriginal and Torres Strait Islander people suffer violence, including family violence, at significantly higher rates than other Australians. In addition, a high proportion of violent victimisation is not disclosed to police and rates of non-disclosure are higher in Aboriginal and Torres Strait Islander than non-Aboriginal and Torres Strait Islander communities.

41. The Law Council notes also that in the National Aboriginal and Torres Strait Islander Survey in 2008, one in four people surveyed reported that family violence was a neighbourhood or community problem.²⁰ The Law Society of New South Wales has noted that, in their members’ experience, Aboriginal and Torres Strait Islander community members have expressed the view that not only do women and children require support services, but there should also be adequate and culturally competent support services for men. In addition, that Aboriginal and Torres Strait Islander victims of violence often seek holistic, family-focused solutions.

42. The Law Council notes that that the Victorian Royal Commission into Family Violence tabled its final report on 30 March 2016,²¹ and Recommendation 146 made specific mention of the priority that should be given to funding to Aboriginal and Torres Strait Islander community controlled organisations for services for Aboriginal and Torres Strait Islander women and children; family centred services and programs (and one-door integrated services where family members can obtain a range of supports), culturally appropriate legal services for victims and alleged perpetrators, suitable accommodation for victims and alleged perpetrators, and early intervention and prevention actions in Aboriginal and Torres Strait Islander communities, including whole-of-community activities and targeted programs.

43. Many of these recommendations were previously made by the Family Law Council in its 2012 report on Improving the Family Law System for Aboriginal and Torres Strait Islander Clients (the 2012 report).²² The 2012 report contained a number of recommendations regarding the need for community education, promoting cultural competency, building collaboration and enhancing service integration, early assistance and outreach, building an Aboriginal and Torres Strait Islander Workforce in the family law system, including family consultants and liaison officers, improving access to court, legal and family dispute resolution services and interpreter services.

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Legal assistance funding and cultural competence

44. The Law Council notes that the issue of adequate funding for legal assistance is a pressing and long-standing one, which has been raised earlier in this submission. In particular, the adequate funding of civil law legal assistance has been comprehensively considered by the Productivity Commission in its Inquiry Report on Access to Justice Arrangements. Recommendation 21.4 of that report notes that the Australian, State and Territory Governments should provide additional funding for civil legal assistance services, and the total annual cost of the requisite services will be around $200 million. The Productivity Commission also noted in this recommendation that “where funding is directed to civil legal assistance it should not be diverted to criminal legal assistance.”  

45. The Law Council welcomes the Federal Government’s recent budget commitment to restore $55.7 million in funding to CLCs over the next three years. The Federal Government’s allocation of $39 million to CLCs and $16.7 million to Aboriginal and Torres Strait Islander Legal Services adds to the NSW Government’s $6 million rescue package for CLCs and reverses the “funding cliff” facing the sector as a result of cuts due on 1 July 2017. The Law Council also acknowledges that the Queensland Government announced a $5.9 million funding boost for CLCs in the Cairns region and $51.3 million in State and Commonwealth funding for 36 community legal assistance services over the next three years, starting from 1 July 2017. However, in line with its previous advocacy, the Law Council encourages the Federal Government to guarantee annual funding to be provided to the legal assistance sector, in line with the Productivity Commission’s report.

46. The Law Council considers that there is a need for greater funding for civil legal assistance services for Aboriginal and Torres Strait Islander families accessing the family courts. It is particularly important for families with complex needs to have access to legal assistance, where there may be a range of other legal issues present, such as debt recovery, property matters and, of course, family violence.

47. The Law Council also notes with concern the over-representation of Aboriginal and Torres Strait Islander families in the child protection system. This was acknowledged by the Family Law Council in its Report on Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems (the FLC Report on Families with Complex Needs), which noted the comparable under-utilisation of federal family law services by Aboriginal and Torres Strait Islander clients and the continuing barriers affecting their access to the family courts.

48. Submissions to the FLC Report on Families with Complex Needs noted that Aboriginal and Torres Strait Islander family law clients are more likely than non-Aboriginal and Torres Strait Islander clients to have complex needs, including family violence and child safety related needs exacerbated by the experience of inter-generational trauma. As such, the lack of access to affordable or legally aided legal assistance services can place a particular burden on clients with complex needs, and place parties at greater risk of family violence.

49. The Law Council considers that successful legal assistance requires lawyers to understand the unique practices, social and cultural needs of their Aboriginal and Torres Strait Islander clients, and to engage with the local Aboriginal and Torres Strait Islander community. The recent report by the JCCD, The Path of Justice: Aboriginal and Torres Strait Islander Women’s Experience of the Courts, found that Aboriginal and Torres Strait Islander people are very likely to be unfamiliar with family law and its processes.²⁵ It is the experience of Family Law Section members that the reluctance to engage may also be because courts and the legal processes have been associated with the removal of children or entry into the criminal justice system. It is also at odds from a cultural perspective, because Aboriginal and Torres Strait Islander people traditionally resolve private family disputes within the family or community with input from elders. While there have been relatively few large-scale surveys focusing specifically on the legal needs of Aboriginal and Torres Strait Islander people,²⁶ the 2012 report of the Family Law Council “Improving the family law system for Aboriginal and Torres Strait Islander clients”, sought to garner information from as many sources as possible – this included submissions from Aboriginal and Torres Strait Islander-specific organisations and services, consultations within the family law system, an examination of the existing literature and an analysis of published judgments involving Aboriginal and Torres Strait Islander parties. This 2012 report was also referred to and referenced in the Family Law Council’s 2016 reports – both interim and final – on families with complex needs and the intersection of family law and child protection systems. The Law Council notes that a 2007 review of the family and civil law needs of Aboriginal and Torres Strait Islander people in NSW found that, of the applications for grants of family aid from Legal Aid NSW made by Aboriginal and Torres Strait Islander people, 41% of the applications related to care and protection matters, and only 3.6% of the applications related to family law.²⁷

50. It is the experience of members of the New South Wales Law Society, that better outcomes can be achieved for Aboriginal and Torres Strait Islander families if matters that are likely to otherwise turn into care and protection matters (or criminal law matters, or both) are addressed at an early stage and, if appropriate, diverted to the family law jurisdiction. One of the barriers that members of the New South Wales Law Society have identified is that Aboriginal and Torres Strait Islander people may be unlikely to use mainstream services, including mediation services, noting that mediation services are the usual pathway into the family law system. The Law Council advocates for more culturally appropriate mediation. For example, the Family Relationship Centre in the Northern Territory have indigenous liaison officers and education programs²⁸ that can be taken to communities to help deal with family breakdown. Further consideration might

also be given to extending the use of the Model of Practice for Mediation with Aboriginal Families in Central Australia developed by Relationship Australia.29

51. The Law Council considers that building strong relationships between courts and local Aboriginal and Torres Strait Islander culturally appropriate legal and therapeutic services, will assist with the development of better access to justice strategies at a local level. In this regard, it may be useful to establish court and community Aboriginal and Torres Strait Islander Access Committees at a State and Territory level. The Law Council draws the Committee's attention to Recommendation 1 of the 2012 Family Law Council Report in relation to community education. Work has also been carried out by the Aboriginal Family Law Pathways Network to provide education sessions to Aboriginal and Torres Strait Islander communities about family law options at an early intervention stage. For example, judicial officers from the Federal Circuit Court have worked with solicitors and community service providers to deliver these education sessions to Aboriginal communities. The Law Council advocates for funding to be provided for an Aboriginal Family Law Pathways Network in each jurisdiction. The Law Council also acknowledges the work of the family courts in building strong relationships through the Reconciliation Action Plan.

52. Community legal education, delivered in partnership with courts, legal services and Aboriginal and Torres Strait Islander controlled and community embedded organisations is also crucial in supporting families accessing the family law system. Appropriately targeted and delivered community legal education sessions on family law legislation and processes can deliver a number of benefits to local communities, including improving safety and access to the courts, improved understanding of the family law system, as well as the opportunity to provide specific legal advice and referral to legal services. Community legal education sessions also have the potential to develop crucial regional service partnerships, particularly through specific Aboriginal and Torres Strait Islander-led therapeutic services in those communities.

53. In general, the Law Council considers that there is great need for adequately funded and culturally appropriate legal services in those critical areas in which family violence intersects with the legal system. This is especially pertinent in care and protection, family law and apprehended domestic violence order proceedings. These services are most effective when funded to provide a holistic service incorporating legal advice and therapeutic support within an early intervention context, and when accompanied by appropriate community legal education initiatives.

54. It should be noted that in terms of managing conflict, there needs to be a number of different legal assistance providers available in order to deal with both legal and community conflicts of interest. In practice, parties in (violent) conflict with each other cannot be properly served by one organisation, particularly if the various services are located in the same building. There needs to be a number of culturally appropriate litigation services in addition to advice services. In the Law Council’s view, this is both an ethical issue and a safety issue.

55. From the perspective of effective service delivery to Aboriginal and Torres Strait Islander families in the context of family violence, legal assistance service providers require the support of Aboriginal and Torres Strait Islander community controlled therapeutic

services. Aboriginal and Torres Strait Islander community controlled services provide legal assistance providers the same sort of "cultural brokerage" as Aboriginal and Torres Strait Islander court liaison officers\(^{30}\). In the Law Council’s view, it is difficult to deliver these services effectively without this support. The support of Aboriginal and Torres Strait Islander community controlled service providers is also invaluable in respect of ensuring the well-being of legal practitioners.

**Employment of Aboriginal and Torres Strait Islander Liaison Officers in family courts**

56. The Law Council supports the recommendations of the Family Law Council’s Interim Report on Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems (the Family Law Council Interim Report). Specifically, regarding the need for Federal Government funding for the employment of Aboriginal and Torres Strait Islander family liaison officers within Aboriginal and Torres Strait Islander-specific legal and support organisations. This is aimed at enhancing access to the family courts for Aboriginal and Torres Strait Islander families who need family law orders.\(^{31}\)

57. The Family Law Council Interim Report highlighted the importance of locating these support positions within Aboriginal and Torres Strait Islander specific organisations. This will enhance the opportunities for retaining Aboriginal and Torres Strait Islander staff within the family law system. It also recognises that people working in these organisations are likely to have connections with relevant local communities.\(^{32}\)

<table>
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<tr>
<th>Suggested initiatives</th>
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<tr>
<td>• Provide funding for legal assistance in civil matters which can be accessed by Aboriginal and Torres Strait Islander families;</td>
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<tr>
<td>• Fund culturally appropriate legal services in the critical areas in which family violence intersects with the legal system, including court outreach programs; and</td>
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<tr>
<td>• Provide funding for the employment of Aboriginal and Torres Strait Islander family liaison officers within Aboriginal and Torres Strait Islander-specific legal and support organisations.</td>
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**Improving the framework for consent orders and other related measures (TOR 2)**

58. Consent orders are made in two ways: either by a judicial officer during court proceedings, or by a registrar in chambers in the Family Court of Australia or Family Court of Western Australia when an Application for Consent Orders is filed. Whether consent parenting orders are being made in open court by a judge, or in chambers by a registrar, parties are already each required to file a document summarising the risk of

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\(^{32}\) Ibid.
abuse or family violence each party alleges, and indicating how any proposed orders address that risk.

59. When making consent orders in chambers, judges and registrars often rely on self-reporting by unrepresented parties, who may have various pressures influencing their decision to seek those consent orders. Parties may be under pressure to agree to certain parenting agreements, for example due to fear of violence, or of having to be cross-examined by a violent ex-partner (discussed below). The Law Council considers that there needs to be greater awareness and education about the impact of family violence on a victim’s freedom to agree to consent orders.

60. Providing adequate funding for legal aid is essential to ensuring that unrepresented parties in situations of family violence are not forced to agree to consent orders that may place themselves and/or their children at risk, by reason of impecuniousness.

61. Further, increasing funding of the family courts could make it possible for the implementation of the following options to facilitate greater scrutiny of consent orders:

- registrars may, for example, have more time to consider any litigation history; request information from a child welfare agency/police and have the power to more routinely requisition consent order applications;
- registrars could only hear and determine consent orders applications in open court in the presence of the parties. This may be counter-productive in that it may be an inhibiting factor for litigants subjected to family violence;
- a family consultant could screen all consent order applications and meet with parties in order to provide a proper risk assessment, which unrepresented parties are not-equipped to do. This would entail a significant increase in the number of family consultants in each registry;
- more legal aid duty lawyers to be on hand located in family courts, or limited grants of legal aid available for an hour or two, for discrete task assistance to provide advice to parties filing consent parenting order applications (subject to priority for legal assistance guidelines);
- subsection 64D(2) could be amended so that the court has the option of preventing parties from varying court orders either by a parenting plan (which it can at the moment) but also by way of consent parenting orders if family violence factors are evident on the face of the application. This may inhibit the capacity for a party to pressure or coerce the other party to change arrangements once orders are made by a judge; and
- consideration could be given to the statutory codification of the principle in the case of T & N\(^3\) to ensure that consent parenting orders do not displace the obligation of the court to make orders judged to be in the best interests of children particularly in cases involving family violence.

62. The Law Council also notes its recent submission to the Attorney-General’s Department regarding proposed amendments to the Family Law Act to respond to family violence, which may be of assistance to the Committee on this issue.\(^4\)

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\(^3\) [2003] FamCA 1129 (4 November 2003).

Suggested initiatives

- Improve education about the impact of family violence on a person’s freedom to enter parenting consent orders and
- Ensure adequate funding of legal assistance and the family courts, to reduce the possibility that vulnerable litigants will agree to consent orders due to impecuniousness or delays, and so judicial officers can properly assess any risk of family violence.

Supporting self-represented litigants where there are allegations or findings of family violence (TOR 3)

63. In other parts of this submission the Law Council outlines a range of options available to Government which would better support self-represented litigants. In responding to this question, the Law Council therefore limits its submission to the vexed issue of direct cross-examination of victims of family violence by their alleged perpetrators.

Overview of the issue of cross-examination by alleged perpetrators of family violence and summary of the Law Council’s position

64. The Attorney-General’s Department and other interested organisations have identified an issue concerning the direct cross-examination of victims of family violence (including alleged victims) by alleged perpetrators. Some organisations have called for a complete ban on direct cross-examination, with various proposals put forward about alternatives to direct cross-examination.

65. The Law Council acknowledges that, for survivors of domestic and/or family violence, the prospect of being cross-examined by a violent ex-partner can cause significant emotional distress and trauma, and discourage them from continuing litigation. The Law Council therefore supports consideration being given to alternatives to direct cross-examination wherever possible.

66. The Law Council encourages the Committee to consider whether, for example, the Commonwealth should adopt the policy that already exists in some States’ legislation that would, after all other options for a form of cross-examination that protects a victim of family violence from trauma have been considered and excluded, allow a judge to request a legal aid commission to represent any unrepresented, alleged perpetrator (and the victim if they are unrepresented), and that the alleged perpetrator be otherwise banned from direct cross-examination. If legal aid commissions effectively become a measure of last resort in this context, they should be provided with additional Commonwealth funding to effectively perform the role.

67. The Law Council is concerned that proposals that preclude or constrain cross-examination are inimical to each of:

- the interests and rights of litigants, whether victim or perpetrator;
- the ability of the court to properly determine issues, including to properly identify and address issues of and arising from family violence;
- the efficient delivery of access to justice;
- the cost-effective and timely delivery of justice in cases involving family violence; and
fundamentally misunderstand the nature and role of cross-examination.

68. To that end, the Law Council considers that:

- the existing legislative structure provides sufficient power to the courts to properly protect the rights and interests of both victims and perpetrators;
- the Family Court of Australia and Federal Circuit of Australia have published the "Family Violence Best Practice Principles" which set out how the existing legislative structure will be used by the courts, in particular, in relation to vulnerable witnesses;
- legislative amendment to Division 12A of the Family Law Act could ensure the availability of those powers in all proceedings (rather than just parenting proceedings) where determined to be necessary and appropriate;
- further, and targeted, education of judicial officers and the legal profession will serve to ensure appropriate levels of awareness of the powers and practices available to appropriately protect the interests of litigants; and
- alternatives exist in other jurisdictions which enable a court, where no reasonable alternative can be found, to order a legal aid body to represent the alleged perpetrator.

69. The reasons underpinning this position and the views summarised above are elaborated upon below.

The nature of family law proceedings and the existing tools available to manage proceedings involving allegations of family violence

70. Proceedings involving direct interaction between an alleged perpetrator and victim are, whilst raising significant concerns, of limited number in the family law system.

71. Where such issues do arise, there are significant tools available to trial judges in the Evidence Act 1995 (Cth) to properly protect victims from improper and unnecessary exposure to perpetrators, and are common to many courts. Further, Division 12A of the Family Law Act provides explicit powers to a trial judge in parenting proceedings to directly control the issues permitted to be pursued in proceedings and the mode by which this is to occur, including in respect of cross-examination. Division 12A also permits a court to make any necessary preliminary determination, including as to whether there has in fact been family violence between an alleged perpetrator and victim and the consequences of the same, including in terms of the proper conduct of the proceedings subsequently.

72. The last point is important as, in affording appropriate recognition and necessary protection to victims of family violence, it is important to be cognisant of the fact that in many (if not most) instances the occurrence of family violence (or not) will itself be a fact in issue but not always an issue relevant to the proceedings. It is not in the interests of litigants nor the court system that resources be committed to determining issues which are either irrelevant to those before the court or involve separate (and potentially extensive) preliminary proceedings.

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36 Evidence Act 1995 (Cth) ss 26 (Court’s control over questioning of witnesses) and 41 (improper questions).
73. The central issues to be determined in most cases in the family courts are what parenting arrangements are in the best interests of children, or what division of property is just and equitable. Whilst a litigant may be a victim of family violence, the violence itself may not be a significant focus of the case. A complete ban on cross-examination would mean that whilst a victim is not cross-examined about the violence, they are also not cross-examined about a range of other facts that are likely to be significant issues for determination by the judge.

74. It is also important to recognise that determinations under the Family Law Act are essentially adversarial in nature. While Division 12A provides for greater powers, some of an inquisitorial nature, in parenting proceedings, such proceedings along with financial proceedings remain fundamentally adversarial in nature. Fundamental to any adversarial system of justice and the right of a party to a fair trial is the right to cross-examine the other party and the witnesses she or he may rely upon.

Balancing the importance of cross-examination with the needs of those who may have experienced family violence

75. The role of cross-examination is two-fold. It is to test and challenge the evidence of the other party and his/her witnesses. It is also to put the case they are facing to them in order to obtain their response. The significant aspects of a party’s case to a witness must be put to satisfy the rule in Browne v Dunn.37 It is through cross-examination that the truth or otherwise of an allegation is established, by the testing of the credibility and the veracity of the witness. Effective cross-examination requires the cross-examiner to be present throughout the giving of the other party’s evidence and the evidence of his/her witnesses.

76. The reason the cross-examiner needs to be aware of all the previous evidence given in the court is expressed by Hunt J in Allied Pastoral Holdings v FCT:

   It has been in my experience always been a rule of professional practice that unless notice has already clearly been given of the cross-examiner’s intention to rely upon matters, it is necessary to put to an opponent’s witness cross-examination on the nature of the case upon which it is proposed to rely in contradiction of his evidence, particularly where that case relies upon inferences to be drawn from other evidence in the proceedings. Such a rule of practice is necessary both to give the witness the opportunity to deal with that other evidence, or the inference to be drawn from it, and to allow the other party the opportunity to call evidence either to corroborate that explanation or to contradict the inference sought to be drawn.38

77. Cross-examination is not merely asking a set of prepared questions. It requires also listening to the answers and then asking further questions to challenge or test these. As such the cross-examiner needs to be able to take detailed instructions from the party s/he represents. Failure to allow a party to properly cross-examine renders the judgment ultimately made unreliable and subject to appeal. This is because the right to cross-examine is central to the adversarial trial process. It is only through cross-examination and the testing of evidence that findings may be made as to such matters as the best interests of the child, factual issues relevant to the assessment of each party’s

38 (1983) 1 NSWLR 1, 16.
contributions or future needs to determine a just and equitable property division, or the truth of allegations of family violence.

78. The importance and role of cross-examination was considered *inter alia* by the ALRC in February 2006 and the subject of the report *Uniform Evidence Law* (ALRC Report 102). Without repeating the detailed content of that report, from paragraph 5.70 the ALRC considered "Constraints in the cross-examination of vulnerable witnesses" and reviewed the then existing legislative provisions on both a Commonwealth and State basis. The work done by the ALRC (in conjunction with the NSW Law Reform Commission and the Victorian Law Reform Commission) provides a valuable basis for further consideration of any proposals and, importantly, a benchmark from which the reforms thereafter implemented can be assessed.

79. The Law Council recommends a review by the ALRC, as part of its forthcoming review of the family law system, of the subsequent amendments and reforms before a further legislative response to the current issues is formulated and implemented. The Law Council is particularly concerned with the adoption of any proposal which would either:

- preclude entirely the right of a party to ask questions of relevant witnesses, including a victim of family violence, without that person being offered the assistance of a legally aided lawyer; or
- seek to impose an uninstructed intermediary to undertake such role. Examples of such an "uninstructed intermediary" might be a lawyer appointed to "assist the court" (but not to act on behalf of the alleged perpetrator) or a person who is not a lawyer (and who is not bound by the ethical duties that a lawyer has to the court).

80. The above is not to prevent a judge, in an appropriate circumstance, from filtering and posing questions on behalf of a vulnerable witness. As to the first matter, for the reasons outlined, it is considered inconsistent with the existing system of justice to prevent cross-examination. As to the second matter, an intermediary who is not retained and instructed by the party, is unable to properly discharge their duty both to the court and to the party that are appearing on behalf of. Denied a source of instruction, and a role as a representative, there is no proper basis for such an intermediary to effectively advance the case in relation to relevant issues, including in challenging evidence where necessary and appropriate.

81. The Law Council considers that the identified issues can be properly and appropriately addressed by the use of existing powers, complemented by:

- the provision of further information as to the availability of such provisions, directions and arrangements;
- the formulation of standard practice directions and complementary Rules directed to determining at an appropriate stage whether vulnerable witness issues arise and how they are to be addressed;
- associated further education of judicial officers, legal practitioners and support services; and
- in cases where a judicial officer makes a finding that no reasonable alternative is appropriate, legislative amendment be made to enable that judicial officer to request a legal aid body to offer the alleged perpetrator representation. A model for this amendment can be found, by way of example, in sections 70 and 71 of the *Family Violence Protection Act 2008* (Vic). In the event that a litigant
refuses such an offer of aid, they would be banned from directly cross-examining their former partner. The Law Council notes that agreement would need to be reached with National Legal Aid for such an arrangement, with appropriate funding being offered by the Commonwealth.
Assistance with financial recovery and property division orders (TOR 4)

82. The Law Council notes that the question of how to better support people who have been subject to family violence recover financially raises a broad range of issues, and that comment has been invited only in the context of property division orders, and not for example in respect of spouse maintenance or child support claims to which similar consideration may also need to be given. Without seeing the terms of any proposed amendment to the Family Law Act, the Law Council considers that there are inherent dangers in simply supporting change, if the specific terms of any proposed amendment are not available for comment. To that end, below the Law Council simply notes the substantive arguments, both for and against legislative change, which can be made.

The case for amendment of the Family Law Act to account for family violence in property division orders

83. The case for amendment is not new. It has been canvassed, more than once by the ALRC. It was also made almost a decade and a half ago by the Family Law Council (FLC), a body\(^{39}\) that now lies dormant, given the unexplained failure of the Government to appoint constituent members to it since early July 2016.

84. Going back to 1994, the ALRC made recommended legislative reforms to respond to the prevalence of violence against women in Australia.\(^{40}\) They included recommendations to direct the Family Court to take into account family violence in property and spousal maintenance proceedings. It should be noted that those 1994 recommendations predated the decision of the Full Court of the Family Court, In the Marriage of Kennon\(^{41}\) (Kennon).

85. In the ALRC’s 1994 report, it was stated that the courts generally had regarded family violence as “irrelevant”\(^{42}\) except where it had a direct financial consequence. It was considered however by the ALRC that violence against a woman by her partner was relevant both to her ability to contribute to the marriage and to her future needs. The ALRC suggested that violence was often “overlooked” as a relevant factor in proceedings before the Court, despite the provisions of the Family Law Act making it possible for the Court to consider that violence.

86. The ALRC recommended that “violence should be taken into account in determining the extent to which it diminishes the ability of a woman to make financial and non-financial contributions to the marriage.”\(^{43}\) There is some discussion in that report as to whether the violent conduct might be better considered as a negative contribution to the welfare of the family (but that approach had been resisted by the courts as implying fault). The ALRC also recommended that violence be taken into account in the future needs assessment in s75(2) of the Family Law Act (which is already available to the court when

\(^{39}\) The Family Law Council is established under section 115 of the Family Law Act 1975 (Cth) to advise and make recommendations to the Attorney-General on matters relating to family law.


\(^{41}\) (1997) 22 Fam LR 1.


\(^{43}\) Ibid 9.49.
considering, for example, the health of a party, the earning capacity of each, and the “any other fact or circumstance” which justice requires be considered).

87. The ALRC returned to this issue in a post-Kennon context in 2010. Following Kennon, it is well established that the court may take family violence into account in proceedings for the adjustment of property between parties to a marriage (or de facto relationship):

- where a party is able to establish that there has been a violent course of conduct during the marriage/relationship, which had a “significant adverse impact” upon that party’s contributions; or
- which conduct made those contributions “significantly more arduous”.

88. In its 2010 report, the ALRC again recommended that the provisions of the Family Law Act relating to property adjustment, be amended to refer expressly to the impact of violence on past contributions and on future needs.\(^4\)

89. A detailed analysis of the case for law reform in this area, and the uncertainties arising from the application of Kennon in daily practice, were also expressed in a letter of advice from the Family Law Council to the Attorney General in 2001.\(^5\) They do not need to be repeated here, it being noted that the recommendations of the Family Law Council for change to section 79 of the Family Law Act were set out in paragraph 28 of the letter, and as to subsection 75(2) in paragraph 29 of the letter.

90. Amendments to the financial provisions of the Family Law Act, to incorporate family violence in the manner proposed by the Family Law Council, would convey a powerful social and community message. An amendment to the contributions provisions of subsection 79(4) of the Family Law Act (and its de facto relationship equivalent) might take the following form:

\[
\text{...whether there has been a course, or significant episode, of family violence by one party to the other party to the marriage which has had a significant adverse impact upon the contributions made by the other party or which made those contributions significantly more arduous.}
\]

91. An amendment to subsection 75(2) of the Family Law Act (and its de facto relationship equivalent), to include a new matter to be considered could take the form proposed by the Family Law Council in 2001:

\[
\text{...the extent to which the financial circumstances of either party have been affected by family violence perpetrated by a party to the marriage.}
\]

92. It is to be anticipated that if the Family Law Act is amended in this manner, there will be a significant increase in the number of cases before the courts in which an adjustment in financial cases for family violence is sought. This will result in an increased demand upon the courts’ resources given the expansion of evidence about these matters - which are likely to be highly disputed inter partes - and an increase to the number of cases that require judicial determination.


A better family law system to support and protect those affected by family violence  
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93. Further resourcing will be required for the courts and their Child Dispute Services sections, and to legal aid and CLCs, coupled with a program of legal education, to support the implementation of any such change and to deal with the added workload the changes will bring.

The case against amendment of the Family Law Act to account for family violence in property division orders

94. The rationale for opposing legislative change in this area, derives from several main factors.

95. The *Kennon* decision is oft spoken of as being based on family violence issues, but in fact the Full Court decision was not limited to that area alone. It also looked at circumstances where contributions by a party were made arduous where for example the abuse of alcohol was a factor. Endeavours to codify *Kennon* into statute may unintentionally restrict the law that has developed, if an amendment to the Family Law Act speaks only to circumstances of family violence.

96. The Family Court has already *by Kennon* (and leaving to one side arguments about whether what the Full Court said was *ratio* or *obiter*) provided for recognition of family violence and other matters within the existing statutory framework. The court should be permitted to continue, on a case by case basis, to develop the application of and availability of *Kennon* style claims.

97. If the motivation for codification is to address the limited reported use of *Kennon* claims, then it needs to be understood that codification will not circumvent the need for evidence that is particularised and relevant. Many *Kennon* style claims currently fail not because clients and lawyers are not cognisant of the relevance of family violence, but rather for reason of lack of admissible evidence and the inability to adduce evidence that establishes that there is a causal link between the acts of family violence and the nature and extent of and circumstances in which a party has made their contributions. The mere amendment of subsections 79(4) and/or 75(2) (and their de facto relationship equivalents) in the Family Law Act will not address that problem, so the risk then becomes that any amendments to the Family Law Act do not resolve the Evidence Act issues.

98. The Family Law Act and *Kennon* claims do not “cover the field” in this area, such that litigants can still bring personal injury damages claims in the courts of the states and the territories in addition to claims for property alteration, or can ask that any such tortious claim be dealt with in the family courts together with the Family Law Act property claim under the accrued or associated jurisdiction of the courts.

99. If the Family Law Act were to be amended to make family violence a factor required by statute to be considered in property claims, the existence of that additional consideration will likely have the effect of making settlement of cases more difficult and hence increase the number of cases being both filed in the family courts, and which go to final trial and determination in the family courts. This may have a very significant financial impact on both the courts and the legal aid services and cause major revenue implications for the Federal Government.
Other matters

100. The Law Council raises several other matters for general consideration in the context of any proposed amendment to the Family Law Act to address family violence in property division, without expressing any concluded view on those as set out below:

- Whether there any doubt regarding the constitutional power of the Commonwealth under the marriage or divorce heads of power, to make laws that insert “family violence” as a factor for consideration in the alteration of property interests either under subsections 79(4) or 75(2) and or under the referral of powers in respect of de facto matters.
- If the Family Law Act was amended to include family violence as a factor in proceedings for the alteration of property interests, and in circumstances where matrimonial torts have been abolished, it would be necessary to consider whether the Family Law Act as a Commonwealth law then “covers the field”, so that litigants can no longer bring damages claims whether in a state court for damages, or using those state based laws under the accrued or associated jurisdiction of the family courts.
- Whether Kennon should be codified in subsection 75(2) rather than subsection 79(4) of the Family Law Act (and the de facto relationship equivalents) so as to also apply to spouse maintenance claims. If not, the basis for saying it is a factor important and relevant to property division, but not spouse maintenance, needs clarification.
- Whether Kennon should be codified in section 117 of the Child Support (Assessment) Act 1989 (Cth) as a ground for a departure application for child support. If not, the basis for saying it is a factor important and relevant to property division, but not the support of children living with a parent who has been the victim of family violence, needs clarification.
- Whether Kennon should be codified in Part VII of the Family Law Act as a factor for consideration when making orders for child maintenance for children over the age of 18 years.
- The appropriate definition of "family violence" to be applied to any amendment, including whether the broad definition of family violence in the Family Law Act which was developed in the context of parenting cases would be adopted.

101. In terms of giving notice of family violence as a factor in financial cases:

- Whether the Notice of Risk form should become mandatory in all cases – both financial and non-financial – so that particulars of that issue are given at the outset of each case.
- Whether the Initiating Application in family law cases requires an amendment, so that litigants in financial cases must inform the court of the presence of family violence factors even if not particularised at that stage.
- There are no pleadings in family law cases under Part VIII of the Family Law Act. This gives rise to a question as to whether the Rules of the Family Court and the Federal Circuit Court respectively should be amended to require that any financial claim is pleaded at the outset as to the material facts relied upon (which would include family violence particulars).
- In circumstances where there was family violence during a relationship, but a litigant who was the victim of family violence did not want to raise it as a factor
in a financial case, an issue arises as to whether they should be compelled to raise that matter under the Rules / Act regardless of their wishes.

- Whether family violence needs to be a factor set out in the Application for Consent Orders form when applying for financial orders by consent, and the particulars which would need to be given to the court both of the presence of family violence and the respondent’s position on that assertion.

- Parties can enter into financial agreement pursuant to sections 90C, 90D and 90UD post separation which makes provision for alteration of property interests and or spouse maintenance. In doing so, they essentially “contract out” of the Family Law Act. This raises the issue of whether an amendment to the Family Law Act is needed which requires that parties to a Financial Agreement take into account family violence before they make the agreement, so as to prevent parties contracting out of the relevance of family violence as a factor in the financial settlement.

Strengthening the capacity of family law professionals (TOR 5)

102. The Law Council notes that the National Plan to Reduce Violence Against Women and their Children 2010-2022 (the National Plan) is now in the Third Action Plan (2016-2019) – Promising Results phase. “National Outcome 5 - Justice Responses are effective” in the National Plan is of particular relevance to the legal profession. The Law Council supports the strategies and key actions as set out in National Outcome 5.

103. The Law Council notes that Strategy 5.2 includes an initiative to implement multi-disciplinary training packages for police, lawyers, judicial officers, counsellors and other professionals working in the family law system. The Law Council supports this initiative.

104. The Law Council is committed to promoting the highest technical standards and awareness among the national family law profession. Family law is a dynamic and constantly changing area of law that continuing professional development is an essential part of family law practice. As one of the leading providers of professional development for family lawyers, the Family Law Section of the Law Council has a strong focus on educating the profession and continually explores innovative and practical ways of raising awareness about family violence. A summary of the professional activities undertaken by the Family Law Section in the last four years that include a focus on family violence is provided at Appendix A.

Proposals to strengthen the capacity of lawyers

105. The Family Law Council in its 2016 report recommended, in relation to enhancing the knowledge of family lawyers about the complex issues surrounding family violence:

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

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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.\(^7\)

106. The Law Council supports paragraph (1) and (3) of the FLC recommendation above, but cautions that any such training package should be developed in close consultation with the legal profession. The Law Council notes that a family violence training package developed for family dispute resolution practitioners or family report writers is unlikely to be entirely appropriate for family lawyers. The former perform roles in the family law system "independent" of each party, whereas lawyers are engaged to advocate for the interests of one party.

107. In relation to paragraph (2) of the FLC recommendation set out above, the Law Council has a representative on the National Family Law Specialist Accreditation Steering Committee. That body develops the family law examinations for the specialist accreditation scheme that operates in Victoria, New South Wales, Queensland and Western Australia. The family law accreditation examinations comprise three parts, being:

- preparation of a suite of documents in response to a detailed fact scenario, which typically requires the candidate to prepare a detailed letter of advice and documents to issue court proceedings;
- a 3 hour written, supervised exam on technical aspects of the law – not just family law, but a variety of other laws that often intersect with family law cases; and
- a simulated, recorded interview with a ‘family law client’, with the part of the client being played by an actor.

A detailed set of areas of possible examination are distributed to candidates. Those areas include various laws relevant to family violence and abuse.

108. The Law Council, based on its experience on the National Steering Committee, confidently asserts that the specialist accreditation scheme already fulfils the recommendation at paragraph 2 (above) of the FLC report. It reports that aspects of family violence and abuse have formed part of the actual examinations in all of the recent examinations.

\(^7\) Ibid, recommendation 11.
109. In addition, lawyers who regularly undertake family law work, or who specialise in it, have a thorough understanding of the dynamics of family violence, and regularly undertake professional development to keep their skills up to date. However, family law is also practised by lawyers in general practice, who perhaps only occasionally undertake work on a family law case. In addition, victims (or perpetrators) of family violence may see a lawyer for a range of other advice, including in the areas of crime, property law, bankruptcy and business advice.

110. The Law Council suggests that consideration be given to negotiating with the bodies that regulate legal practice in each state and territory for family violence to be included as a topic in the compulsory professional development that must be undertaken by all lawyers to maintain their practicing certificates.

**Suggested initiatives**

- As per Recommendation 11(1) of the Family Law Council Report on Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems, 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); and

- Consideration be given to negotiating with the bodies that regulate legal practice in each state and territory for family violence to be included as a topic in the compulsory professional development that must be undertaken by all lawyers to maintain their practicing certificates.

**Proposals to strengthen the capacity of judicial officers**

**Selection and appointment of judges**

111. The Law Council supports the enhancement of training and professional opportunities for judicial officers about family violence. However, significant improvement can be made to the process of selecting judges to serve on courts which exercise family law jurisdiction. Subsection 22(2) of the Family Law Act provides that a person shall not be appointed a Judge of the Family Court of Australia unless:

(a) The person is or has been a Judge of another court created by the Parliament or of a court of a State or has been enrolled as a legal practitioner of the High Court or of the Supreme Court of a State or Territory for not less than 5 years; and

(b) By reason of training, experience and personality, the person is a suitable person to deal with matters of family law.

112. Paragraph 22(2)(b) is replicated in the Family Court Act 1997 of Western Australia in relation to the appointment of judges to the Family Court of Western Australia (see paragraph 11(3)(b)).

113. There is no equivalent provision to subsection 22(2)(b) of the Family Law Act or paragraph 11(3)(b) of the Family Court Act in the Federal Circuit Court of Australia Act 1999 (Cth), even though the Federal Circuit Court also hears family law matters. It is not uncommon for judges to be appointed to the Federal Circuit Court who have had
very little or no previous experience practicing family law. Many of them go on to hear and determine a significant caseload of family law work.

114. The Law Council strongly believes that the interests of the community are best served by the appointment of experienced family law practitioners to Courts that exercise family law jurisdiction. The practice of family law requires not only a detailed understanding of the application of the law. It also requires a detailed understanding of social science, of human behaviour, and a nuanced understanding of the dynamics of family relationships. Judges would typically be appointed to any court after several decades of legal practice. Decades of practice in family law gives a judge a level of expertise in dealing with the complexity of family law cases that is impossible for a non-family lawyer to replicate. Critically, this includes decades of experience in dealing with victims and perpetrators of family violence first hand.

**Suggested initiatives**

- A section similar to section 22(2)(b) of the Family Law Act and paragraph 11(3)(b) of the Family Court Act (WA) to be inserted into the Federal Circuit Court of Australia Act;
- A process be developed, whether by agreement of the Chief Judge or by legislative amendment, for Judges who meet the criteria of the replicated paragraph 22(2)(b) to hear cases within the Federal Circuit Court’s family law jurisdiction; and
- The Government commit to an independent process for the selection and identification of suitably qualified lawyers to be appointed as Judges to the Family Court of Australia and to the family law jurisdiction of the Federal Circuit Court, including an interview panel to consider the family law expertise of candidates.

**Proposals to strengthen the capacity of family law professionals working with Aboriginal and Torres Strait Islander families**

115. The Law Council considers that there is a strong need for cultural awareness and understanding of the unique practices, social and cultural needs of Aboriginal and Torres Strait Islander clients coming into contact with the family law system, from all legal professionals in the section.

116. These issues were also acknowledged in the Family Law Council Report, which noted 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. In particular, the Family Law Council received a number of proposed recommendations from stakeholders, to provide culturally appropriate services for Aboriginal and Torres Strait Islander families accessing the family law system, including:

- embedding workers from Aboriginal and Torres Strait Islander services in the family law courts and Family Relationship Centres as family liaison officers to support Aboriginal and Torres Strait Islander 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.

117. The Law Council supports the above recommendations, to improve relationships and pathways between the family law system and Aboriginal and Torres Strait Islander led and controlled services and communities. The Law Council also supports Recommendation 16(2) of the Family Law Council’s Report, to amend Part VII 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.

118. The Family Law Council Report acknowledges the lack of any legislative requirement to prepare a cultural plan for an Aboriginal and 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. The Family Law Council Report notes the range of submissions received from stakeholders, recommending the preparation of culturally secure family assessment reports to assist the courts in decision-making in children’s matters. These reports should address issues such as the obligations of family members in growing up children associated with totemic and country connection. Other submissions to the consultation 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 and Torres Strait Islander child.

119. The Law Society of New South Wales has observed that the Sydney Registry of the Federal Circuit Court is currently trialling specialised lists for family law matters involving one or more Aboriginal and Torres Strait Islander parties. The trial is being supported by legal assistance and other support services, to assist clients in accessing the Court. The Law Council supports the aim and purpose of this initiative, to reduce the number of matters in the Children’s Court and to reduce the number of Aboriginal and Torres Strait Islander children being placed in out of home care by encouraging families to use the Federal Circuit Court, to make applications to keep children with other family members.

Suggested initiatives

• Implement the recommendations of the Family Law Council in its Report on Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems regarding the provision of culturally appropriate services to Aboriginal and Torres Strait Islander families accessing the family law system.

Potential for a national approach to intervention orders
(TOR 6)

120. The Law Society of South Australia has noted that the current interrelationship between state based intervention orders and family law orders is confusing, contradictory and ineffective. The Law Council considers that State and Territory courts should remain the primary jurisdiction for obtaining family violence orders. State and Territory family violence legislation protects a wider range of persons and State and Territory police play a significant role in obtaining and enforcing the orders. In most cases where there has been family violence, the State and Territory courts are the first
courts to be involved with a family. That said, consideration could be given to the registration and enforcement of Family Law Act personal protection injunctions under state and territory family legislation.⁴⁸

121. In December 2015, the Council of Australian Governments (COAG) agreed that each State and Territory would introduce model laws to automatically recognise and enforce Domestic Violence Orders (DVO) across Australia, including New Zealand orders registered in Australia. The national recognition scheme will improve information sharing between the States and Territories, and better protect the safety of victims if they choose to move interstate. At its April 2015 meeting, COAG agreed that by the end of that year:⁴⁹

- a national family violence order scheme will be agreed whereby family violence orders will be automatically recognised and enforceable in any state or territory of Australia;
- progress will be reported on a national information system that will enable courts and police in different states and territories to share information on active family violence orders, with NSW, Queensland and Tasmania to trial the system;
- COAG will consider national standards to ensure perpetrators of violence against women are held to account at the same standard across Australia, for implementation in 2016; and
- COAG will consider strategies to tackle the increased use of technology to facilitate abuse against women, and to ensure women have adequate legal protections against this form of abuse.

122. In May 2015, Minister for Women Michaelia Cash stated that while the legal framework was on track to be agreed to nationally by December 2015, the system to share information on active family violence orders between jurisdictions would take significantly longer to implement.⁵⁰ All states and territories committed to introducing similar legislation by July 2017. NSW was the first state to introduce the legislation in March 2016.⁵¹ Each state and territory other than Western Australia has now introduced corresponding legislation.⁵² The Law Institute of Victoria has reported that the actual development of a national database is likely to take many more years to develop, noting that each state and territory will require significant resourcing to update their own

systems and process the backlog of information on to those updated systems and then integrate those systems with a consistent national platform that is yet to be developed.\(^\text{53}\)

123. The Law Council recommends that, as part of the development of the national database, consideration should be given to including orders made under the Family Law Act in this information sharing platform. In particular, consideration could be given to amendments which would allow breaches of Family Law Act personal protection injunctions to be enforced as crimes under state and Territory legislation.\(^\text{54}\) The Law Council notes that both the Family Violence – A National Legal Response – Final Report (\textit{ALRC Report}) and the Royal Commission into Family Violence (Victoria) Reports recorded the difficulties faced by victims in enforcing injunctions for personal protection made under the Family Law Act, as well as the reluctance of State and Territory police to exercise their powers of arrest pursuant to subsections 68C and 114AA.

124. While implementing this proposal would require negotiation with states and territories, the advantage of a such a proposal is that state and territory courts are already equipped to handle criminal prosecutions, and that to the extent that the workload in those courts might be increased in relation to prosecutions, the workload of those courts in hearing and determining applications for personal protection injunctions where there are related family law matters would reduce if victims could access an equally enforceable order in the federal courts.

125. Giving the family courts access to current family violence orders, and State and Territory courts access to information on the existence of orders made under the Family Law Act would significantly improve information sharing and reduce burden on parties navigating the two legal systems. This recommendation is also supported by the Family Law Council, which 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.\(^\text{55}\)

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<td>- Consideration should be given to including orders made under the Family Law Act in the information sharing platform being developed as part of the DVO national recognition scheme; and</td>
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126. The Law Council would welcome the opportunity to further discuss the comments provided and proposals recommended in this submission.

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\(^{53}\) Ibid.


A better family law system to support and protect those affected by family violence

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Appendix A: Professional activities undertaken by the Family Law Section focusing on family violence

Independent Children’s Lawyer Training Program (from 2016 managed by National Legal Aid)

The Independent Children’s Lawyer Training Program is an intensive two and a half day program which, until April 2016, was presented by the Family Law Section in conjunction with the Family Court of Australia, the Family Court of Western Australia, the Federal Circuit Court of Australia, and National Legal Aid. It is a comprehensive program aimed at practitioners who wish to become an Independent Children’s Lawyer, and covers all aspects of child representation including evidence gathering, procedural matters and decision making; urgent, interlocutory and interim matters; preparation for trial; and post-hearing and appellate matters. The program includes presentations by very experienced ICLs, judicial officers from the Family Court and Federal Circuit Court, and social scientists; and six workshops based on a fictitious family – family violence forms part of the family scenario and is discussed throughout the program.

Biennial National Family Law Conferences

The National Family Law Conference is the biennial conference of the Family Law Section of the Law Council. It brings together many stakeholders including representatives from government, the judiciary, academia, non-government organisations, the practicing profession and many associated disciplines from all parts of Australia. The conference is the largest regular event in the Australian legal calendar. In 2016 the National Conference attracted 1100 delegates. Recent conferences have included the following sessions which included family violence issues:

- 2016: The Peter Nygh Memorial lecture, delivered by the Hon Marcia Neave AO, Chair of the Royal Commission into Family Violence Victoria
- 2016 - When is enough, enough? Drugs and alcohol in parenting matters
- 2016 - Allegations of child sexual abuse: navigating the jurisdictional maze
- 2016 - Revisiting *Kennon*: financial remedies for family violence
- 2014 - Family Violence: Working with Families in Crisis
- 2014 - Mental Health Issues: DSM V - what all family lawyers must know.

National Family Law Intensives

The Family Law Intensives are developed and presented by the Family Law Section each year in Sydney, Melbourne and Perth, and every second year in Adelaide. The program was presented in Brisbane for the first time in 2017. They serve a national market with a significant number of registrants coming from outside the state of the venue. The focus of the program is to equip practitioners with up-to-date information which will enhance their skills and knowledge, and to provide practical solutions for problems encountered in everyday practice.

At each program there is a session which provides an overview and analysis of significant decisions by the Family Court of Australia, including the Full Court, and the Federal Circuit Court of Australia during the preceding year, including cases involving family violence.
The 2017 program included a session "Family violence from the "other side" – acting for the perpetrator”. This session, presented by a forensic psychologist and family lawyer, discussed the benefits and limitations of intervention, education, diversion and rehabilitation and how to best encourage attitudinal change for parties, taking into account the tensions between the family law and criminal law systems. It also looked at how to balance protection and support for parties, while working towards an outcome in the best interests of the child.

**Detection of Overall Risk Screen (DOORS)**

The Family Law Section was invited and funded by the Attorney-General’s Department to deliver a national program, specifically targeting family law practitioners, about the DOORS Framework.

DOORS is an evidence based framework that helps professionals detect risks to the safety and wellbeing of their clients. It is particularly geared to “risks” for those families exposed to family violence and child abuse.

The screening tool is designed to help professionals develop client safety plans and refer clients to other appropriate services. In 2013/2014, twenty individual events were presented by the Family Law Section as part of a national program, which was delivered in two parts:

- **Part 1** – a national series of introductory seminars; attended by almost 1,000 practitioners. The purpose of these seminars was to raise awareness and provide family law practitioners with general information about the DOORS Framework. These introductory seminars ran for approximately 1 – 1 ¾ hours; and
- **Part 2** – a series of webinars/web based forums, attended by almost 300 practitioners. The webinars built on the introductory Part 1 sessions, and were presented by Dr Claire Ralfs, who is the co-author of the Family Law DOORS.

**Publications**

The Family Law Section prepares and disseminates information to those working in the family law arena. The Section’s flagship publication, *Australian Family Lawyer*, includes articles on the practical aspects of family law, family relationships and associated areas, as well as those with a broader academic, theoretical or philosophical nature. Articles about family violence have featured in several editions of the journal.

In 2004, the Family Law Section, in conjunction with the Family Law Council, published the *Best Practice Guidelines for Lawyers Doing Family Law Work*. The third edition will shortly be released. The aim of this publication, which is again currently under review, is to encourage best practice in family law. Part 9 of the Guidelines focuses on family violence.

The Family Law Section provides regular case updates about important cases for publication on the national website for Independent Children’s Lawyers, and has also recently contributed to the development of the National Family Violence Benchbook.