Family law update

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New measures to combat forced marriages

As part of the Federal Government's efforts to address serious forms of exploitation, the Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2015 was introduced to Parliament on 19 March 2015. If passed, this legislative measure will expand the current definition of forced marriage contained in the *Commonwealth Criminal Code Act 1995* (Cth) to extend to marriages where a victim does not "freely or fully consent" because they are "incapable of understanding the nature and effect of a marriage ceremony", and it will increase the penalties applicable for forced marriage offences (Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2015, Explanatory Memorandum, p. 1).

The amendments are intended to make it unequivocal that the forced marriage offences apply in circumstances where a person, for reason of their age or mental capacity, is unable to give their free and full consent to marry, with section 270.71 of the *Criminal Code Act 1995* (Cth) to be expanded to indicate that "a person under 16 years of age is presumed, unless the contrary is proved, to be incapable of understanding the nature and effect of a marriage ceremony" (Schedule 4, s 3 Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2015).

In relation to the increases in penalties, the passage of the bill will result in the maximum penalty for the base offence of forced marriage to be increased from 4 years to 7 years imprisonment and the penalty for aggravated offences (e.g., where the victim is under 18 years of age or where the perpetrator engages in cruel or degrading treatment of the victim or reckless conduct) to increase from 7 years to 9 years imprisonment (Schedule 4, ss 4–7 Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2015). These penalty increases are aimed at "ensur(ing) the forced marriage offences align with the most serious slavery-related facilitation offence of deceptive recruiting for labour or services" and to reflect the "seriousness of forced marriage as a slavery-like practice, a form of gender-based violence and an abuse of fundamental human rights" (Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2015, Explanatory Memorandum, p. 5). On 26 March 2015, the bill was referred to the Senate Legal and Constitutional Affairs Legislation Committee, which is due to report on 15 June 2015.

In addition to these legislative measures, the Attorney-General's Department (2015) has released a forced marriage community pack that was developed together with the National Roundtable on Human Trafficking and Slavery's Communication and Awareness Working Group. The community pack provides access to relevant information and resources, including the *Forced Marriage: Safety Plan*. The safety plan provides guidelines to assist in the identification of free and full consent to a marriage and advice about how to communicate safely, and encourages the use of the safety plan to enable those at risk of a forced marriage or living in a forced marriage to protect themselves and to access help in a safe way. The *Forced Marriage: Safety Plan* template is available at: <www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Documents/ForcedMarriageSafetyPlan.pdf>.

Proposed revisions to s 121 of the *Family Law Act 1975*

Improvements to information-sharing between the child protection and family law systems will be facilitated if the Civil Law and Justice Legislation Amendment Bill 2014 is passed, according to the Attorney-General George Brandis, who introduced the bill to the Senate on 29 October 2014 (Civil Law and Justice Legislation Amendment Bill 2014, Explanatory Memorandum, p. 2). The proposed legislation seeks to include an additional exception to s 121 of the *Family Law Act 1975* (Cth) (*FLA*), which is the section that prohibits the publication or dissemination to the public (or to a section of the public) of any account of any proceedings (or any part of any proceedings) under the *FLA*. The proposed exception would permit the provision of certain information (defined as "any pleading, transcript of evidence or other document" by the proposed s 121(9)(aa)) to prescribed child welfare authorities by clarifying that the provision of such information is not "publication or dissemination" for the purposes of s 121 of the *FLA*. This proposed exception reflects the recommendation of former Family Court of Australia Judge, The Hon. Professor Richard Chisholm AM that the Commonwealth consider clarifying the wording of s 121 "to remove doubt" as to whether s 121 prohibited the provision of information to prescribed child welfare authorities (Chisholm, 2014, pp. 19–20). The Civil Law and Justice Legislation Amendment Bill 2014 is currently before the House of Representatives.

National standards of practice for family assessments and reporting

New Australian standards of practice for conducting and reporting family assessments in family law matters

were released in February 2015. The standards were developed by the Family Court of Australia (FCoA), the Federal Circuit Court of Australia (FCCoA) and the Family Court of Western Australia (FCoWA), with a view to outlining "a minimum standard of practice" and to "provide information to the decision-makers, agencies and legal professionals ... as to what constitutes good practice in family assessments and preparing reports" (FCoA, FCCoA, & FCoWA, 2015, p. 1). The standards outline principles to be applied by family assessors. They cover practical considerations such as the arrangement of assessments (Standards 1–7), communications with parties and representatives (Standards 8–9), conducting and formulating assessments and reporting (Standards 10–33), undertaking home visits (Standard 37), making notifications (Standard 38) and recording and storing information (Standard 39–41), together with considerations relating to cultural issues (Standards 34–36) and to children in family assessments (Standards 16–22).

In relation to the preliminary issues and the arrangement of the family assessment, Standard 1 indicates that prior to the assessment, the role of the assessor and "the purpose and scope of the assessment must be clarified for the family assessor, the parties, the children and the legal representatives" (p. 3). This standard indicates that where the family assessment is ordered by the court, the court order, together with the court's policies and directions, can indicate the scope and purpose of the assessment, and that parties should be informed of who is to participate and receive guidance as to documents to be provided to the assessor in their case. Standard 3 outlines the relationships that may create or give rise to a perception of a conflict of interest, while Standard 2 specifies the qualifications required of family assessors. Guidance as to information-sharing is provided in Standard 5, which indicates that the consent of the parties is required to obtain information from third parties in the absence of the permission of the court, the independent children's lawyer (ICL), the legal representatives or that arising from an interagency protocol. Standard 6 outlines the steps that the family assessor should take to ensure that the family assessment process does not give rise to exposure to family violence. This guidance includes an obligation on family assessors to enquire about current or past family violence orders and any safety concerns prior to making arrangements for the assessment, and to facilitate arrangements (including the making of safety plans) to enable a party's safe attendance and participation in the family assessment process. Standards 8 and 9 provide direction in relation to communication between family assessors and other persons, with the communication between family assessors and ICLs required to be consistent with court orders, the Family Law Rules and the Guidelines for ICLs issued by the FCoA, the FCCoA and the FCoWA.

Standards 10 through to 15 provide extensive guidance for the conduct of "accurate, objective, fair and independent" information gathering for family assessments. Standard 11 stipulates that family assessors use multiple methods that are evidence based and professionally accepted for the collection of information that is accurate and objective, and Standard 13 precludes the provision of advice or therapeutic interventions by the family assessor to those involved in the family assessment. Guidance is provided with respect to the conduct of interviews and observations, with family assessors required to ensure that their arrangements for interviews do not "place any person at risk of family violence intimidation or harassment" and that they enable parties to respond to allegations that are relevant to the formulation of the family assessment (Standards 14 and 15).

The standards specify functions of family assessors relevant to facilitating the participation of children in family law proceedings that affect them and these include meeting with children and informing them of the purpose of interview and the processes to be followed in the assessment, together with the use that will be made of the information that the child provides to the family assessor (including that what the child tells the assessor is not confidential) (Standard 16 and Standard 17). Importantly, Standard 17 provides that "children must be informed that they do not have to provide information, answer questions or express views" about the parenting arrangements if they do not wish to do so. The standards provide that family assessors should be "trained and skilled in forensic interview strategies with children" and that they should ascertain children's views, "assess their maturity, understanding and ability to form and express their own views" and they should also assess their relationships with their parents and other relevant adults (Standard 19, 20 and 21).

Extensive guidance is provided in the standards with respect to the formulation of assessments, opinions and reporting practices. Of particular significance, Standard 27 requires family assessors to conduct an "expert family violence assessment as part of their report", making specific reference to the FCoA and FCCoA *Family Violence Best Practice Principles (3rd ed.)* (2012) and to FCoWA's Family Violence Policy in this context. Standard 27b also states that where family violence or abuse is established, the assessor should report on:

- "the impact of the family violence or abuse" on the child and parent/other adult;
- any protective action taken by a parent/other adult;
- whether the person acknowledges the family violence or abuse, "accepts some or all responsibility" for it and acknowledges that the behaviour was inappropriate;
- whether the person is taking steps (e.g., engaging in a program) to address the issues leading to the behaviour;
- whether the child or parent/other adult requires counselling or treatment;
- whether the person "expressed regret" and demonstrated "some understanding of the impact of their behaviour on the other parent"; and
- whether the person can "reliably sustain" a parenting arrangement with the child and how such an arrangement can proceed in a way that the child feels safe.

The standards also provide guidance for family assessors about making recommendations and the presentation of their assessments both in oral evidence and in their written reports (Standards 28–33). Standard 38 also provides for family assessors to make notifications to the relevant child protection authority where they have "reasonable grounds for suspecting that a child has been, or is at risk of being, ill-treated, abused, seriously neglected or exposed to psychologically harmful behaviour". The Australian Standards of Practice for Family Assessments and Reporting are now available at <tinyurl.com/kdj6aph>.

Royal Commission into Family Violence established in Victoria

A Royal Commission into Family Violence is currently underway in Victoria. On 23 February 2015, the Premier of Victoria, the Hon. Daniel Andrews, together with Victoria's inaugural Minister for the Prevention of Family Violence Fiona Richardson, announced the formal establishment of the Victorian Royal Commission into Family Violence (Andrews & Richardson, 2015). The establishment of the Royal Commission reflects an election commitment made by Premier Andrews during the then-opposition leader's 2014 election campaign, with confirmation that this Commission would take place initially made by Premier Andrews and Minister Richardson on 23 December 2014 (Andrews & Richardson, 2014). Former judge of the Supreme Court of Victoria the Hon. Justice Marcia Neave AO was announced as commissioner and chair of the Royal Commission, which is tasked with "inquiring into and reporting on how Victoria's response to family violence can be improved by providing practical recommendations to stop family violence" (Victorian Government, 2015, p. 2).

More specifically, the terms of reference provide for the Royal Commission to "establish best practice" for the prevention, early intervention and support for victims of family violence together with "measures to address the impacts of family violence" and the accountability of perpetrators (Victorian Government, 2015, p. 2). The terms of reference also require the commission to investigate the means by which there can be "systemic responses to family violence" (in particular on the part of the legal system, police, corrections, child protection and support services) and how government and community organisations "can better integrate and coordinate their efforts" in this context (Victorian Government, 2015, p. 3). Recommendations are also sought on the best way to "evaluate and measure the success of strategies, frameworks, policies, programs and services put in place to stop family violence" (Victorian Government, 2015, p. 3). Submissions close on Friday 29 May 2015 with the commission's report and recommendations due to the government by 29 February 2016.

The establishment of this Victorian Royal Commission followed the appointment of a Special Taskforce on Domestic and Family Violence in Queensland on 10 September 2014. This taskforce made 140 recommendations that were intended to "inform a Queensland Domestic and Family Violence Prevention Strategy" (Special Taskforce, 2015, p. 18). The taskforce recommended the development of this Prevention Strategy through community consultation, with the strategy intended to provide "the foundations … for a Queensland that is free from violence and abuse" and which will include a "robust implementation plan", an "advocacy and audit oversight body" and "comprehensive evaluation framework" (Recommendations 1–5). In support of this prevention strategy, the taskforce recommended:

- the immediate development of a resourcing model for the Domestic and Family Violence Death Review Unit in the Coroner's office to facilitate policy-makers "to better understand and prevent domestic and family violence" (Recommendation 6); and
- the immediate establishment of an independent Domestic and Family Violence Review Board to "identify common systemic failures, gaps or issues and make recommendations to improve systems, practices and procedures" and to report these

findings and their recommendations to the oversight body (Recommendation 8).

The extensive recommendations also focus on the importance of supporting prevention programs and developing a "consistent and comprehensive communication strategy" (Recommendation 15-18), including the implementation of educative and awareness programs in primary and secondary schools, universities and workplaces, together with training and support measures to encourage workplaces that are supportive to victims of domestic and family violence (Recommendation 15–49 and 64–66). The taskforce recommended training and resources for the medical sector, including the refinement of the "White Book"—*Abuse and Violence: Working with our patients in general practice*—so that it would be "more prescriptive and provide more definitive advice and decision-making pathways for general practitioners", together with the facilitation of greater access to domestic and family violence support and referral services in the maternity and emergency medicine context (see Recommendations 50–63).

The taskforce also made recommendations to support an integrated service response that included "an audit of services to ensure adequate resources are available to meet the demand for specialist domestic and family violence services" with a view to establishing a funding and investment model for the long term that will facilitate "collaboration and coordination" and "innovation in service delivery" beginning with:

- the immediate initiation of pilots for an "integrated response model";
- a common risk assessment framework in line with best practice; and
- legislative and non-legislative steps to promote the sharing of information between agencies (Recommendations 71–79 and 83).

Initiatives to support therapeutic intervention for perpetrators and greater access to services for victims were also nominated (Recommendations 80–89). Recommendations 90–140 relate to proposed amendments to the legal and justice systems including the continued pursuit of the National Domestic Violence Order Scheme (Recommendations 90 and 112), a review of the Victims of Crime Assistance Act with respect to the compensation of victims of domestic and family violence (Recommendation 95) and the establishment of specialist domestic and family violence courts (Recommendation 96). The taskforce also recommend that the government consider making provision for "related family law children's matters (by consent) and child protection proceedings to be dealt with by the same court" (Recommendation 98). The provision of training, professional development and/or guidance resources for the judiciary, registry staff, lawyers and police personnel was also recommended, together with the revision of court procedures, the establishment of state-wide duty lawyer services and the development of strategies to increase criminal prosecutions of perpetrators of domestic and family violence (Recommendations 101–114, 124–140).

More specifically, the taskforce recommended the introduction of legislative amendments, including the introduction of strangulation as a specific offence, and that the government "consider the sufficiency of penalties for repeat contraventions of Domestic Violence Orders" and conduct a review of the *Domestic and Family Violence Protection Act* by 31 December 2015 (Recommendations 115–122 and 140). The taskforce's full report is available at <www.qld.gov.au/community/getting-support-health-social-issue/dfv-read-report-recommendation/index.html>.

Family law court filings decrease by 14% between 2004–05 and 2012–13

An AIFS research report, released in February 2015, provides a nine-year perspective on family law court caseloads, and shows an overall decline of 14% in first instance matters.

The AIFS Research Report No. 30, *Family Law Court Filings 2004–05 to 2012–13*, analyses trends in family law court filings between 2004–05 and 2012–13. It provides insight in to the effect on court filings of the 2006 reforms, which encouraged greater use of non-court based mechanisms for resolving parenting disputes, and the 2009 reforms, which brought post-separation property division laws and processes for de facto couples in line with those for married couples.

This research report is based on data provided by the Family Court of Australia (FCoA), the Federal Magistrates Court of Australia (now Federal Circuit Court of Australia) (FCCoA) and the Family Court of Western Australia (FCoWA). In the report, AIFS has analysed the patterns in filings across the three family law courts in Australia. This research builds on findings from a component of AIFS' evaluation of the 2006 family law reforms (Kaspiew et al., 2009), which examined administrative data on court filings in the three courts between 2004–05 and 2008–09. This report extends the period of examination to the end of the 2012–13 financial year and includes an examination of filings in property matters for this time.

The administrative data was extracted from each court's CaseTrack system, covering the number of applications for final orders (categorised as being either children-only, children plus property or property-only cases). The report also examined the number of consent order applications (reg. 10.15 occurring in either the FCoA or FCoWA), the orders for Independent Children's Lawyers (ICLs), and cases involving self-represented litigants (i.e., where one or both parties had no legal representative in the month following the lodgement of the application). It did not include information on appeals or enforcement and contravention applications.

The AIFS report shows an overall decrease in caseload as reflected in applications for final orders across the three courts of 14% in the period examined: an overall decrease in filings in children's matters was offset by an increase in property-related applications. There was also a marked shift in filings during this period from the FCoA to the FCCoA (a 77% decrease in filings in the FCoA and a 52% increase in filings in the FCCoA). By 2012–13, the distribution of filings between the two federal courts stood at 86% in the FCCoA and 14% in the FCoA. This finding supports an observation from Chief Justice The Hon. Diana Bryant that the shift in caseload from the FCoA to the FCCoA, "has resulted in the Family Court of Australia becoming a smaller court, which manages all appeals and deals with the most complex family law matters" (Family Court of Australia, 2013, p. 3).

The report identifies that the proportion of child-related filings (matters involving either children-only or children plus property) decreased overall by 25% across all courts between 2004–05 and 2012–13. With much of this decline occurring in the period immediately following the 2006 family law reforms (from 18,880 child-related cases in 2006–07 to 13,927 in 2007–08), the authors attribute much of this shift to "the introduction of stronger legislative support and greater resourcing in the community sector for family dispute resolution" (Kaspiew et al., 2015, p. 24).

In relation to property matters, the report also highlights the effect of both the *Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008* (Cth)—which removed the legal distinctions between formally married and de facto couples with regard to property division post-separation—and the 2006 repeal of the monetary cap on the FCCoA's jurisdiction in property-related matters. The findings revealed a 17% increase across all family law courts in the number of applications for final orders related to property-only matters between 2004–05 and 2012–13, with almost all of this increase occurring in the FCCoA and in the period between 2008–09 and 2010–11. While the FCoWA experienced a small increase (9%) in the number of property-only applications over the full period under examination, the federal courts show much greater variance, with a 135% *increase* in the number of property-only applications in the FCCoA, compared with a 60% *decrease* in these applications in the FCoA.

The findings in relation to consent order applications show that despite some fluctuation over the period under investigation, the numbers in the FCoA in 2012–13 were not dissimilar to the numbers recorded in 2004–05 (11,316 and 11,617, respectively). Similarly, the number of consent order applications in the FCoWA remained relatively steady (2,464 in 2006–07 and 2,398 in 2012–13).[1]

When examined by whether the cases related to children or property, the report indicates that the overall pattern of consent order applications in both courts were comparable. Between 2004–05 and 2012–13, the FCoA experienced a 24% decrease in the number of children-only consent orders and a 16% increase in property-only consent orders. Similarly, between 2006–07 and 2012–13, there was a 53% decrease in children-only consent order applications and a 12% increase in property-only cases in the FCoWA. Regarding children plus property consent orders, both courts experienced a notable decrease during the period under examination (37% in the FCoA and 31% in the FCoWA).

Though analysis of the number of orders for ICLs made in cases involving children's matters showed overall increases across all three courts across the period under investigation, the report shows there was much fluctuation throughout this time. Between 2004–05 and 2008–09, the number of orders for ICLs more than doubled in the FCCoA (from 1,713 to a high of 3,856 in 2007–08), followed by a sharp decline to 2,701 in 2009–10 where it remained fairly constant to 2012–13. The FCoA, however, experienced a steady decline throughout the period under investigation, from 1,623 in 2004–05 to 339 in 2012–13. Conversely, the number of orders for ICLs in the FCoWA steadily increased to 398 in 2012–13, up 55% from 257 in 2008–09 (note: data for FCoWA were only available from 2009–10). Overall, the report showed in 2012–13, orders for an ICL to be appointed were made in around one in four child-related cases across the three family law courts.

The report shows that family law filings involving self-represented litigants declined for the most part between 2004–05 and 2012–13, though the patterns within each court were quite different. The number of self-represented litigants in the FCCoA remained relatively constant during the period under examination, with the largest change occurring between 2007–08 and 2008–09

(down 9% from 6,405 to 5,807) and the total number in 2012–13 at 5,739. In the FCoA, however, there was a 76% decline in the number of self-represented litigants during the first half of the period under investigation (from 5,530 in 2004–05 to 1,307 in 2008–09) followed by a 28% decrease in the years that followed to 943 in 2012–13. Analysis of the data from the FCoWA showed a decrease in the number of self-represented litigants between 2004–05 and 2007–08 (from 947 to 550); however, the subsequent years of data showed a steady increase, bringing the number of self-represented litigants in 2012–13 to 1,034. Overall, the number of self-represented litigants in the federal family law courts as a proportion of all applications for final orders decreased from 46% in the FCoA and 53% in the FCCoA in 2004–05, to 34% in both courts in 2012–13. The FCoWA showed a slightly different pattern over the period of examination, from 36% of all final order applications in 2004–05 involving self-represented litigants, to around one in four between 2005–06 and 2008–09, before increasing again to 35% in 2012–13.

The report provides a descriptive analysis of the national data on family law court filings and emerging trends over the period from 2004–05—just prior to the introduction of the 2006 family law reforms—to 2012–13, the 12 months following the implementation of the *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* ("the 2012 amendments") on 7 June 2012. Further examination of the family law courts data and the effects of the broader social policy and legislative context is currently underway as part of the Evaluation of the 2012 Family Violence Amendments, funded by the Australian Attorney-General's Department.[2] The court filings administrative data analysis component of this forthcoming research will include analysis of other key court filings, likely to be affected by the 2012 amendments, such as the issuing of notices of risk, section 60I certificates (relating to family dispute resolution) and other orders related to family violence and child safety concerns, including data from the courts for the 2013–14 financial year. This current research report will provide a strong baseline with which to measure the effects of the 2012 amendments on the family law courts in Australia and those who use the family law system.

AIFS Research Report No. 30 is available via the AIFS website at <aifs.gov.au/publications/family-law-court-filings-2004-05-2012-13>.

New Notice of Risk for family law matters in the Federal Circuit Court of Australia

A new Notice of Risk form has been introduced by the Federal Circuit Court of Australia (FCCoA) that applies on a national basis to all Applications and Responses seeking parenting orders filed in that court. This follows a pilot conducted in the Adelaide Registry of the FCCoA that required a new Notice of Risk form to be filed in all parenting proceedings in the Adelaide Registry from 4 February 2013. The aim of the pilot was to compare the operation of the Notice of Risk form to that of the Form 4 Notice to identify whether it was a better means of "facilitat(ing) the early identification of a range of risks in parenting matters … and to improve compliance with the legislative requirements" (FCCoA, 2014, p. 2; FCCoA, 2012). The Notice of Risk is intended to operate as a "broad based initial risk screening device to assist the court to identify at the earliest opportunity those matters in which allegations of risk are made so that the alleged risks can be addressed in a timely fashion" (FCCoA, 2014, p. 2). In addition to the requirement that the piloted Notice of Risk form be filed in *all* matters [so as to better address the risks covered by the *Family Law Act 1975* (Cth) s 67Z (allegations of child abuse) and s 67ZBA (allegations of family violence) and to better ensure the court's compliance with s 69ZQ(1)(aa) (the duty of the court to enquire about past or present abuse, neglect or family violence)], the other significant change was that the Notice of Risk in the pilot was a shorter form that included questions of a more specific nature, that were linked more directly to these legislative provisions.

The evaluation of this pilot concluded that "concerns about lack of compliance with legislative requirements for reporting of risk appear to be justified given the increased level of reporting and the absence of any evidence to suggest that the identified risk is unsupported by the facts" (FCCoA, 2014, p. 9). While the evaluation acknowledged the concerns of lawyers with respect to the imposition on their time when required to complete the form in cases where there were no allegations, it reported that "the majority of legal practitioners found the form easy to navigate and ticking the boxes marked 'no' should not be too time consuming" (p. 10). The compulsory Notice of Risk was identified as enhancing compliance and addressing the issue of under-reporting. The evaluation concluded that there were advantages to implementing this Notice of Risk form on a national basis (FCCoA, 2014). Following the evaluation, the Federal Circuit Court Rules were amended to provide for the new Notice of Risk form to replace the previous

Form 4 Notice in all Federal Circuit Court registries from 12 January 2015 (Federal Circuit Court Amendment (2014 Measures No. 1) Rules 2014 (registered 22 October 2014).

The new Notice of Risk is available at <www.federalcircuitcourt.gov.au/forms/html/notice_risk.html>.

Access to Justice Arrangements Productivity Commission Inquiry Report

The Productivity Commission has recommended a review of law and processes for post-separation property division in its report on access to justice arrangements and highlighted a need for better support in family law cases involving family violence. The Productivity Commission's report, which was released on 3 December 2014, examines "the current costs of accessing justice services and securing legal representation, and the impact of these costs on access to, and quality of justice" (Productivity Commission, 2014 p. iv). The terms of reference issued by the government sought recommendations on "the best way to improve access to the justice system and equity of representation including, but not limited to, the funding of legal assistance services" (Productivity Commission, 2014, p. iv). The commission made five recommendations of specific relevance in the family law context. In relation to the Family Dispute Resolution (FDR), the commission called for improvement in service delivery and "alternative pathways" to accommodate family law matters where there is violence (Productivity Commission, 2014, p. 859). More specifically, the commission recommended that the government conduct a review of current FDR services provision by a range of FDR providers, and of the support that is provided to those families for whom FDR is not appropriate (Recommendation 24.1) and that the review be completed and published by 31 December 2015. The commission further recommended that the review consider:

- the cost of service provision;
- "long-term outcomes, including impacts for parents, children and the future need for formal services";
- "timeliness of resolution";
- best practices approaches for FDR (including legally assisted FDR);
- the AIFS Evaluation of the Coordinated Family Dispute Resolution (CFDR) Pilot; and
- appropriate funding for case managers to be appointed at FRCs to coordinate with other relevant bodies including the courts, the police and child protection authorities (Recommendation 24.1, Productivity Commission, 2014, p. 861).

Lack of access to legal representation in family law matters was identified by the commission as having the potential to give rise to negative outcomes particularly in cases involving family violence, with the commission recommending the legislative restriction of cross-examination of victims of family violence by alleged perpetrators (Recommendation 24.2, Productivity Commission, p. 865). The fragmented nature of the systems engaged in the resolution of disputes relating to family law, family violence and child safety was a further issue raised by the commission, with Recommendation 24.3 calling for the consideration of potential measures to ameliorate this fragmentation.

The commission also considered concerns expressed about a lack of access to advice and dispute resolution options for lower value property disputes in family law matters. The commission recommended the government review the property provisions in the *Family Law Act 1975* (Cth) "with a view to clarifying how property will be distributed on separation", including the consideration of introducing presumptions about splitting property that may "make it easier and cheaper for people to work out their entitlements and come to fair agreements about their division of property" (Recommendation 24.4, Productivity Commission, 2014, p. 874 and discussion at Productivity Commission, 2014, p. 874). The commission also recommended that the government consider extending compulsory pre-filing FDR in property matters (Recommendation 24.5, Productivity Commission, 2014, p. 877).

Both volumes of the report, together with an overview, are available at <www.pc.gov.au/inquiries/completed/access-justice/report>.

Family Law Council reference on supporting families interacting with the child protection and family law systems

The Federal Attorney-General, Senator George Brandis, issued terms of reference to the Family Law Council in October 2014 requesting advice on whether assistance may be provided by relationship support services and court processes that intersect the child protection and family law systems for families involved in parenting disputes experiencing complex needs including family violence and abuse, neglect, mental health issues and substance abuse.

Matters to be considered by the Family Law Council for this reference are specified on the council's webpage as follows:

1. "The possibilities for transferring proceedings between the family law and state/territory courts exercising child protection jurisdiction" at present.
2. "The possible benefits of … family courts exercising the powers of relevant state/territory courts and vice versa" and any changes necessary to enable the exercise of these powers by the courts.
3. "The opportunities for enhancing collaboration and information-sharing *within* the family law system" (emphasis added) (e.g., between family law courts and family relationship services).
4. "The opportunities for enhancing collaboration and information-sharing between the family law system and other relevant support services such as child protection, mental health, family violence, drug and alcohol, Aboriginal and Torres Strait Islander and migrant settlement services".
5. "Any limitations in the data that is currently available to inform these terms of reference".

The Family Law Council is due to report to the Attorney-General on this reference by December 2015.

Endnotes

1 Data for consent orders in the FCoWA were not available for 2004–05 or 2005–06.

2 For more information, see the description for the Evaluation of the 2012 Family Violence Amendments project <www.aifs.gov.au/efva>, which involves a more detailed examination of court filings.

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Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2015

Explanatory Memorandum, Civil Law and Justice Legislation Amendment Bill 2014

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