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Australian Government
Family Law Council

18 August 2026

[REDACTED]
Attorney-General
Parliament House
CANBERRA ACT 2600

Dear Attorney-General

Second Action Plan under the *National Plan to End Violence against Women and Children*

On 19 June 2026, you kindly provided the Family Law Council (‘Council’) with its current terms of reference. Council is due to report on those terms by 17 February 2028.

In the meantime, Council observes Government is currently consulting on the development of the Second Action Plan under the *National Plan to End Violence against Women and Children 2022–2032* (‘*National Plan*’).¹ Council therefore takes this opportunity to provide advice to you, as s 115 of the *Family Law Act 1975* (Cth) (‘*Family Law Act*’) enables, as part of this important consultation process and even more important development of the Second Action Plan.

Council is mindful to address family violence throughout its body of work, given that family violence is an issue of profound significance in the Australian community at large, and one that colours so much of the family law system and the people who use it.

¹ Department of Social Services, *Consultation on the Second Action Plan (National Plan to End Violence against Women and Children 2022–2023)* (Web Page) <<https://engage.dss.gov.au/second-action-plan/>>. Separately, Council acknowledges that family violence is defined in broad terms in the *National Plan to End Violence against Women and Children 2022–2032*, but nevertheless uses the definition from the *Family Law Act 1975* (Cth) (‘*Family Law Act*’), given Council’s primary focus is on the family law context. Section 4AB(1) of the *Family Law Act* defines family violence’ as ‘violent, threatening or other behaviour by a person that coerces or controls a member of the person’s family (the family member), or causes the family member to be fearful.’

As you know, family violence is widespread. Analysis of data from the most recent Australian *Personal Safety Survey*² estimates that more than a quarter of adult women (27%), and 15% of adult men, have experienced intimate partner violence at some point since the age of 15 years.³

Substantial proportions of separated/separating families who engage with the legal and/or other professional parts of the family law system experience family violence.⁴ The Federal Circuit and Family Court of Australia (Division 1) and (Division 2) ('FCFCOA') reported that, in the 2024–2025 financial year, 86% of matters involved allegations of family violence.⁵ The Family Court of Western Australia reported that, of the matters that proceeded to trial in the 2024–2025 financial year, many involved markers of complexity, including family violence.⁶

Accordingly, Council has the prevalence and prevention of family violence – in its many nuanced forms – at the heart of our deliberations and advice to you.

Council's Chair thanks you for the opportunity to speak at a recent roundtable, and understands that, in developing the Second Action Plan, the Attorney-General is interested to understand:

1. How can we support separating families to settle their post-separation issues outside of the courts and what role can non-legal services (which Council refers to hereafter as 'other professional services') play?
2. How can we ensure the whole family law system is trauma-informed and accessible?

Council has already made many recommendations that address these questions in previous reports. Thematically, those existing recommendations cover: funding systemic initiatives; accommodating children and young people; building professional capabilities; and building the evidence base and conducting research for impact.

Accordingly, this letter of advice brings together the relevant recommendations made by the current iteration of Council in its 2026 reports, and those made by the previous iteration of Council in the 2024 reports. Some older recommendations are also referenced.

² Australian Bureau of Statistics, *Partner Violence* (Web Page, released 22 November 2023) <<https://www.abs.gov.au/statistics/people/crime-and-justice/partner-violence/latest-release#data-downloads>> citing Australian Bureau of Statistics, *Personal Safety, Australia, 2021–2022* (Catalogue No 4906.0, 2023).

³ Australian Institute of Health and Welfare, *Family, Domestic and Sexual Violence – Intimate Partner Violence* (Web Page, last updated 24 February 2026) <<https://www.aihw.gov.au/family-domestic-and-sexual-violence/types-of-violence/intimate-partner-violence>>.

⁴ Rae Kaspiew et al, *Evaluation of the 2012 Family Violence Amendments* (Report, October 2015) 12–8; Andrew Metcalfe AO, *Support for Separating Families: Review of the Family Relationships Services Program* (Report, June 2024) 106–111 ('Metcalfe Review Report').

⁵ Federal Circuit and Family Court of Australia, *Annual Reports 2024–25 FCFCOA (Division 1) FCFCOA (Division 2)* (Commonwealth of Australia, 2025) 38, 39 <https://www.fcfcga.gov.au/sites/default/files/2025-12/federal_circuit_and_family_court_of_australia_annual_reports_2024-25_v2_web.pdf> 38 ('Annual Reports 2024–25').

⁶ Family Court of Western Australia, *Family Court of Western Australia Annual Review 2024* (Report, 2024) <https://familycourt.wa.gov.au/_files/Publications_Reports/FCWA_Annual_Review_2024.pdf> 2.

Council does not evaluate or model the expenditure associated with its recommendations; that is not a function of Council. However, for the purposes of this letter, Council provides preliminary observations about whether recommendations are likely to involve modest costs or potentially more significant costs, and whether costs are likely to be incurred, or saved, in the long- or short-term.

Council would not want that to be misunderstood: Government well understands that the potential cost of implementing individual initiatives must be considered in a ‘whole of system’ context. That is, if the investment of an amount in one part of the system results in savings greater than that amount elsewhere or in the longer term, the overall impact is a net sum gain.

For example, investing in initiatives that support stable and safe post-separation arrangements can save individuals and the public the costs of protracted court proceedings and/or prolonged engagement with other family law system services.⁷ That in turn can reduce the demands on those systems, making them more accessible and responsive for other families and reducing delay.

Further, investing in the creation of stable and safe arrangements for separated/separating families may alleviate some of the significant economic burdens associated with family violence, which are borne by the Government, community, employers, perpetrators, friends and families of the people who experience family violence (‘victim-survivors’⁸), and, primarily, by the victim-survivors themselves.⁹

Ultimately, if initiatives under the Second Action Plan can go towards preventing family violence, then the savings are not counted in dollars, but counted in human lives.

1. Systems abuse, including manipulation of the s 102NA Scheme

Before turning to our thematic analysis of the two questions above, we highlight a fundamental issue that Council considers ought be at the forefront of planning to combat family violence in the context of the family law system: systems abuse. In particular, to restrain litigants from using the important s 102NA Scheme (set out below) as a further weapon of coercion and control by one party against the other.

⁷ Metcalfe, *Metcalfe Review Report* (n 4) 78, 162–5, 241, 244.

⁸ This hyphenated term is drawn from the *National Plan*. It is a term that describes people who have experienced or are experiencing any form of family violence (not just systems abuse). It is intended to acknowledge their strength and resilience: Department of Social Services, *National Plan to End Violence against Women and Children 2022–2032* (2022) 36, 134 (‘*National Plan*’).

⁹ Australian Institute of Health and Welfare, *Family, Domestic and Sexual Violence: Economic and Financial Impacts* (Web Page, 24 February 2026) <<https://www.aihw.gov.au/family-domestic-and-sexual-violence/responses-and-outcomes/economic-financial-impacts>>; Natasha Cortis and Jane Bullen, *Domestic Violence and Women’s Economic Security: Building Australia’s Capacity for Prevention and Redress* (Research Report, Australia’s National Research Organisation for Women’s Safety, Horizons Issue 05, October 2016); KPMG, *The Cost of Violence Against Women and Their Children in Australia* (Final Report, May 2016).

‘Systems abuse’ refers to the manipulation of legal and other systems by people who use family violence to exert control over, threaten and harass a current or former partner.¹⁰

Council discussed this issue in section 3 of its 2024 report, *Protecting Victims of Family Violence, Including Children, in the Family Law System: Disincentives to Disclosing Family Violence and Child Abuse, and Responding to Systems Abuse* (‘Systems Abuse Report’), and in section 6.1 of its 2026 report (forthcoming), *Asking Questions and Getting Answers: Fact Finding for Safety* (‘Cross-Examination Report’).

Systems abuse can emotionally and financially exhaust victim-survivors, and prevent them from receiving the benefits of systems and services designed to offer safety, access to dispute resolution be it via court or outside-court services, and therapeutic support. It can also consume family law system resources, reducing their timely availability to other families in an environment of high demand.

Across the two reports just mentioned, Council stressed how important it is for Government and service providers to establish mechanisms to ensure that systems and services are not misused and manipulated to themselves become instruments of family violence and abuse.

In the latter of those reports, Council flagged how systems abuse can manifest in the misuse of s 102NA of the *Family Law Act*.

As Council explained in the *Cross-Examination Report*, s 102NA creates legislated circumstances in which unrepresented litigants are prohibited from cross-examining each other at an interim or a final hearing if there are allegations of family violence and:

1. either party has been charged with or convicted of an offence involving violence or threat of violence involving the other party (s 102NA(1)(c)(i)); or
2. a final Family Violence Order applies to both parties (s 102NA(1)(c)(ii)); or
3. an injunction has been made under s 68B or s 114 of the *Family Law Act* for the personal protection of one party against another (s 102NA(1)(c)(iii)); or
4. the Court makes an order that personal cross-examination should not be permitted (s 102NA(1)(c)(iv)).

The prohibition on personal cross-examination may be mandatory, upon satisfaction of the criteria at s 102NA(1)(c)(i)–(iii) (‘mandatory ban’). Alternatively, a court exercising jurisdiction under the *Family Law Act* (‘Family Law Act Court’) may exercise its discretion under s 102NA(1)(c)(iv) to order that the prohibition should apply (‘discretionary ban’).

Where the prohibition on personal cross-examination is in place, both litigants are eligible for assistance under the Commonwealth Family Violence and Cross Examination of

¹⁰ Department of Social Services, *National Plan* (n 8) 133.

Parties Scheme ('the s 102NA Scheme'). The purpose of the s 102NA Scheme is to provide representation for both parties at trial, so that cross-examination can occur via solicitors or counsel.

Section 102NA and the Scheme were introduced via the *Family Law Amendment (Family Violence and Cross-Examination of Parties) Bill 2018* (Cth). There were wide-ranging calls,¹¹ and evidence of the need,¹² for that significant reform, and it has been widely supported since its introduction.¹³ However, it has not come without its challenges; those challenges are not limited to those created by the unarguably inadequate funding provided.

Systems abuse is a key example. Professionals with whom Council consulted in relation to the s 102NA Scheme shared examples of situations in which a party terminated the engagement of their s 102NA lawyers on the eve or morning of trial, and then sought an adjournment on the basis of being unrepresented and s 102NA applying. As a result, trials are adjourned while the relevant Legal Aid Commission ('LAC') appointed new s 102NA lawyers. In circumstances where this pattern repeats (as we were advised in many rounds of consultation), the resolution of the matter is continually delayed, and the party misusing the Scheme in this way can continue to assert their control over the victim-survivor.¹⁴

Family Law Act Courts currently have limited power to prevent this pattern, as there is no clear trigger in the *Family Law Act* leading to the forfeiture of access to the s 102NA Scheme.

Rather, and without direct legislative guidance, judges are required to consider whether a trial in the individual case can be procedurally fair where one or both parties are unable to be cross-examined. Given the centrality of cross-examination to the trial process, and the inevitability that the parties themselves are the "key witnesses" in the litigation, that is inherently problematic even in circumstances where it appears that one party is manipulating the system.

Hence, Council made the following recommendation in its *Cross-Examination Report*:

¹¹ See, eg, Australian Law Reform Commission, *Family Violence and Commonwealth Laws—Improving Legal Frameworks* (ALRC Report No 117, November 2011); Productivity Commission, *Access to Justice Arrangements* (Inquiry Report No 72, 2014) 69; Council of Australian Governments Advisory Panel on Reducing Violence against Women and their Children, *Final Report* (Report, 2016) 51–2; House of Representatives Standing Committee on Social Policy and Legal Affairs, *A Better Family Law System to Support and Protect Those Affected by Family Violence* (Commonwealth of Australia Report, 2017) 158; The Senate Legal and Constitutional Affairs Legislation Committee, *Family Law Amendment (Family Violence and Cross-Examination of Parties) Bill 2018 [Provisions]* (Report, August 2018) 19–20; Women's Legal Services Australia et al, *Open Letter: Call to Protect Victims of Domestic Violence in Family Courts* (Open Letter, 26 October 2015) <https://wlsa.org.au/wp-content/uploads/2022/03/AG_LETTER_FOR_CIRCULATION_25_Oct_16.pdf>.

¹² Rachel Carson et al, *Direct Cross-Examination in Family Law Matters: Incidence and Context of Direct Cross-Examination Involving Self-Represented Litigants* (Report, June 2018).

¹³ Robert Cornall and Kerrie-Anne Luscombe, *Review of the Ban on Direct Cross-Examination under the Family Law Act 1975* (Report to the Attorney-General, August 2021) 98 ('Cornall and Luscombe Review').

¹⁴ Jane Wangmann, Tracey Booth and Miranda Kaye, 'Addressing the Problem of Direct Cross-Examination in Australian Family Law Proceedings' (2022) 45(4) *University of New South Wales Law Journal* 1415, 1440–4.

That s 102NA of the *Family Law Act 1975* (Cth) be amended by adding ss (4) and the two Notes as follows:

Mandatory protections for parties in certain cases

- (4) Where a party has twice had s 102NA representation funded through a Legal Aid Commission in the relevant proceeding, but that party is to appear unrepresented at trial, then, if the party cannot satisfy the court of special circumstances, the trial will proceed.

Note: Where s 102NA applies, there will be no personal cross-examination by that party of the other party.

Note: Nothing in this section alters the court's general discretion to determine it is procedurally fair that there be no cross-examination.

We repeat that recommendation here, noting it is central to combatting family violence, in the form of systems abuse in the court process. We also repeat all other recommendations in our *Cross-Examination Report*. Ensuring that the s 102NA Scheme operates as intended is part of ensuring that victim-survivors of family violence can access safe, effective and efficient dispute resolution in the family law system, and ensuring that people who use family violence are held to account.

Therefore, we recommend:

Recommendation 1: That Government ensure that the scheme under s 102NA of the *Family Law Act 1975* (Cth) operates efficiently and as intended to protect victim-survivors of family violence, including by:

- (a) amending s 102NA to protect it against being abused or weaponised by people who use family violence, in the manner described in Recommendation 1 of the Family Law Council report titled *Asking Questions and Getting Answers: Fact Finding for Safety* ('*Cross-Examination Report*')
(b) actioning all other recommendations in the *Cross-Examination Report*.

That Report also set out the importance of cross-examination to the fact-finding process and therefore the ability to make orders which keep children and their parents as safe as possible.

The recommendations in the *Cross-Examination Report* directed at the text of s 102NA (Recommendations 1–9) are likely to involve little or modest, short-term costs. On the other hand, the recommendation to fund a Pilot Program in relation to early advice client conferences (Recommendation 10), with the potential to refer parties to a lawyer-assisted dispute resolution conference at an earlier stage, will front-end the response and involve short-term funding, but with the potential, in the longer term, to save the funding and resources associated with trials. The recommendation to fund ongoing research and analysis (Recommendation 11) is likely to involve modest, long-term funding. Council considers all recommendations worthwhile to tackle the destructive issue of systems abuse

and to ensure longevity of the ‘landmark’¹⁵ s 102NA Scheme that is otherwise well-supported.

In addition to addressing systems abuse in the s 102NA Scheme, Council recommends that Government build the capacity of the family law system at large to manage the issue. A first step is ensuring professionals working in the system have sufficient awareness, understanding of legal and other systems abuse, and the requisite skills to prevent the misuse of the system or to identify and address it where it takes place.

In its *Systems Abuse Report*, Council specifically recommended that the *Family Law Act* be amended so that systems abuse is listed as an example of behaviour that may constitute family violence.¹⁶ If systems abuse is more visible, better understood, and expressly referenced in the legislation, professionals in the system may be more prepared to recognise and address it and, where possible, to prevent misuse of the system.

Research suggests that referring people who use family violence in general (although not necessarily systems abuse) to other professional services, like behaviour change programs, may be useful in terms of supporting those people to recognise their violent behaviour, critically reflect on it, and stop using it.¹⁷ Members of Council understand that there are not enough of these programs and they are not diverse enough in terms of their location or variety.¹⁸

Further, recent research suggests there are additional, unique barriers to Aboriginal and Torres Strait Islander and migrant and refugee men participating in behaviour change programs, including that available programs are not always sufficiently resourced or skilled to manage participants with high risks and co-occurring needs, nor to provide culturally-appropriate or trauma-informed care, or to cater to languages other than English.¹⁹

¹⁵ National Legal Aid, *Challenges and Opportunities: Family Violence and Cross-Examination of Parties Scheme* (Web Report, last updated 11 September 2025) <<https://nationallegalaid.org.au/policy-and-advocacy/reports/challenges-opportunities-cross-examination>>.

¹⁶ Family Law Council, *Protecting Victims of Family Violence, Including Children, in the Family Law System: Disincentives to Disclosing Family Violence and Child Abuse, and Responding to Systems Abuse* (Report, Terms 1a and 1b, 2024) (*‘Systems Abuse Report’*) 61 [Recommendation 6].

¹⁷ Research in relation to the efficacy of behaviour change programs has produced mixed findings; see, eg: Jean-Luc Arrigo et al, ‘Domestic Violence, Behaviour Change Programs, Positive and Negative Outcomes: A Scoping Review’ (2015) 15(2) *Psychology of Violence* 164; Australian Institute of Health and Welfare, *Monitoring Perpetrator Interventions in Australia* (Report, Cat no. FDV 7, 2021) 31–7; Stephanie Beckwith et al, *Coercive Control Literature Review: Final Report* (Research Paper, May 2023) 29–30; Kate Fitz-Gibbon et al, *Engaging in Change: A Victorian Study of Perpetrator Program Attrition and Participant Engagement in Men’s Behaviour Change Programs* (Report, 2024); Amanda O’Connor et al, ‘Rapid Review of Men’s Behaviour Change Programs’ (2021) 22(5) 1068.

¹⁸ This was also noted in the *Metcalf Review Report*: Metcalfe, *Metcalf Review Report* (n 4) 76, 80.

¹⁹ Karen Block et al, *Interventions for Migrant and Refugee Men Who Use Domestic, Family and Sexual Violence: Experiences and Perspectives of Migrant and Refugee Men and Women, Service Providers and Other Stakeholders* (Research Report, Australia’s National Research Organisation for Women’s Safety, Issue 1, August 2026); Lauren Hamilton, Lucy Macmillan and Rodney Vlasis, *Evaluation of the Northern Territory’s Men’s Behaviour Change Programs: Key Learnings for Policy and Practice* (Evaluation Report, Australia’s National Research Organisation for Women’s Safety, Issue 1, April 2025).

While we acknowledge men's behaviour change programs are not a panacea for family violence,²⁰ Council considers it critical for the Government to continue carefully considering how to design and fund high-quality, accessible and diverse behaviour change programs.

Further, as we discuss in more detail in section 2.1, Council considers there ought be more funding for family law services to offer case management, including referrals to services that can assist in preventing family violence. That is also relevant here and is captured in part (b) of Recommendation 2 below.

Drawing on the recommendations Council has recently made to address systems abuse, Council now recommends:

Recommendation 2: That Government safeguard the family law system at large against systems abuse, including by:

- (a) listing systems abuse as an example of behaviour that may constitute family violence under s 4AB(2) of the *Family Law Act 1975* (Cth), per Recommendation 6 of the Family Law Council report titled *Protecting Victims of Family Violence, Including Children, in the Family Law System: Disincentives to Disclosing Family Violence and Child Abuse, and Responding to Systems Abuse*
- (b) ensuring that case management support funded under Recommendation 4(a) of this letter of advice includes referrals to suitable interventions – for example, behaviour change programs – where risks of systems abuse are identified
- (c) ensuring there are sufficient and varied behaviour change programs throughout Australia.

Recommendation 2(a) above is legislative in nature and as such is likely to involve modest, short-term costs.

Recommendation 2(b) concerns case management, which follows parties as they progress through the family law system and is therefore likely to involve considerable, long-term costs, but has the potential to reduce the costs and resources required for litigation. Council considers all these recommendations worthwhile because, again, they are designed to tackle the destructive issue of systems abuse, and, violent and abusive conduct in general. Further, Recommendation 2(b) is designed to improve the likelihood of disputes being resolved efficiently, and making the system more accessible overall, which ties it into the overarching questions Council is considering in this letter (see sections 2.1.2 and 3.1.1 for further discussion about the importance of case management).

²⁰ Nicola Helps et al, *The Role of Men's Behaviour Change Programs in Addressing Men's Use of Domestic, Family and Sexual Violence: An Evidence Brief* (Report, Australian National Research Organisation for Women's Safety, Insights, February 2025).

Recommendation 2(c) goes to the heart of the scourge that is family violence – the persons using violence. Ensuring such programs are available throughout the nation will come at a cost. But the savings would be measured in lives, not deaths.

2. How can we support separating families to settle their post-separation issues outside of the courts and what role can other professional services play?

Research based on representative data suggests that most family disputes about post-separation arrangements are handled outside Family Law Act Courts.²¹ In its 2024 report, *Access to Justice: A More Accessible and Equitable Family Law System* (‘*Access to Justice Report*’), Council recognised that ‘[t]he resolution of disputes other than by judicial determination is a central and essential part of the ‘family law landscape’ in modern Australia. It is universally recognised that judicial determination is, and should be, an option of last resort in the overwhelming majority of cases.’²²

That was recognised when Government first acted to establish Family Relationship Centres (now part of the Family Relationships Services Program, ‘FRSP’), with the intention of achieving long-term cultural change in post-separation dispute resolution. In turn, it recognised that when families have post-separation disputes, ‘they have a relationship problem, not necessarily a legal one.’²³

The recent review (‘*Metcalfe Review*’) of the FRSP stressed the importance of providing services outside the court system – including other professional services like counselling and education, and legal ones like mediation – to support families in resolving their disputes.²⁴ The review found that the FRSP already delivers these services to effectively meet the needs of Australian families, and should be supported to continue and expand delivery.²⁵

This section reiterates Council’s recent recommendations in relation to other professional and outside-court services, including the FRSP service of family dispute resolution (‘FDR’), as well as other initiatives that could be leveraged to meet more families’ needs outside the family court, including arbitration, case management and early legal advice.

2.1 Funding systemic initiatives

²¹ Family Law Council, *Asking Questions and Getting Answers: Fact Finding for Safety* (Report, Terms (a), (b) and (e), forthcoming) citing Rae Kaspiew et al, *Experiences of Separated Parents Study (Evaluation of the 2012 Family Violence Amendments)* (Report, October 2015) Table 4.8, Table 4.10 and Lixia Qu et al, *Post Separation Parenting, Property and Relationship Dynamics After Five Years* (Report, December 2014) Table 4.14. Council acknowledges that the studies cited in support of this point are over 10 years old and only relate to parenting arrangements.

²² Family Law Council, *Access to Justice: A More Accessible and Equitable Family Law System* (Report, Term 3, 2024) 16 (‘*Access to Justice Report*’).

²³ Patrick Parkinson, *The Idea of Family Relationship Centres in Australia* (Legal Studies Research Paper, No. 14/52, May 2014) 5; see also Australian Law Reform Commission, *Family Law for the Future: An Inquiry into the Family Law System* (ALRC Report 135, March 2019) 59–60 [2.14] (‘*ALRC Report 135*’).

²⁴ Metcalfe, *Metcalfe Review Report* (n 4) 30, 83–90.

²⁵ See generally Metcalfe, *Metcalfe Review Report* (n 4).

2.1.1 Alternative dispute resolution

Alternative dispute resolution ('ADR') refers to processes that allow families to discuss and resolve their disputes outside a trial, often through more therapeutic and less adversarial legal practices and procedures.²⁶

Child-Inclusive Mediation

Research suggests that child-inclusive mediation can be beneficial from a range of vantage points. Council considers it would ensure a greater focus on the needs of children and young people, including those who are victim-survivors of family violence in their own right.

Australian research has found that families who participated in child-inclusive mediation were less likely to re-litigate than those who participated in child-focused mediation (at least up to one year afterwards).²⁷ This research also found that the children who participated in the child-inclusive mediation presented with lower anxiety, fewer fears, less clinging behaviours and few depressive and somatic symptoms one year on.²⁸ Many children reported feeling supported and listened to when they were consulted in the course of their parents' mediation, and that they were more content with care and contact arrangements, had more available relationships with their parents and/or saw their parents be less argumentative or stressed around each other.²⁹ Many parents reported feeling that the child-inclusive mediation process itself was fair, they were content with the outcome, they had a closer relationship with their children, there was reduced interparental conflict and/or that they had recovered confidence in the co-parental relationship.³⁰

Supporting children and young people to participate in ADR is likely to be expensive, but costs would only arise sporadically in limited circumstances. Council considers these costs worthwhile given the identified benefits, and noting that children have a right and desire to be heard regarding decisions that affect them.³¹

²⁶ See, eg, Mieke Brandon and Linda Kochanski, *Mediating with Families* (Lawbook Co, 5th ed, 2025); Alison Taylor, *The Handbook of Family Dispute Resolution: Mediation Theory and Practice* (John Wiley & Sons, 2010).

²⁷ Jennifer McIntosh et al, 'Child-Focused and Child-Inclusive Divorce Mediation: Comparative Outcomes From a Prospective Study of Postseparation Adjustment' (2008) 46(1) *Family Court Review* 105, 113–4 ('*Child-Focused and Child-Inclusive Mediation*'); see also: Anne Barlow and Jan Ewing, 'Outcomes of Child-Inclusive Mediation' in Anne Barlow and Jan Ewing, *Children's Voices, Family Disputes and Child-Inclusive Mediation: The Right to be Heard* (Bristol University Press, 2024) 103, 104–111 ('*Outcomes of Child-Inclusive Mediation*').

²⁸ McIntosh et al, *Child-Focused and Child-Inclusive Mediation* (n 27) 115.

²⁹ McIntosh et al, *Child-Focused and Child-Inclusive Mediation* (n 27) 111–3, 119; see also Rachel Carson et al, *Children and Young People in Separated Families: Family Law System Experiences and Needs* (Final Report, 2018) 35–6, 59–60 ('*Children and Young People in Separated Families*').

³⁰ McIntosh et al, *Child-Focused and Child-Inclusive Mediation* (n 27) 111–3, 116–8, 120.

³¹ *Convention on the Rights of the Child*, GA Res 44/25 (20 November 1989) art 12; Australian Human Rights Commission, National Children's Commissioner, *In Their Own Right: Children's Rights in Australia* (Children's Rights Report 2019, 2019) 115–6 ('*Children's Rights Report*'); Anne Barlow and Jan Ewing, 'Experiences of Child-Inclusive Mediation' in Anne Barlow and Jan Ewing, *Children's Voices, Family Disputes and Child-Inclusive Mediation: The Right to be Heard* (Bristol University Press, 2024) 72, 85–6

Further, Council considers there are likely to be inter-generational benefits associated with having children and young people engaged in the resolution of a parenting dispute, rather than exposed to prolonged conflict. We note that studies have found correlations between exposure to dysfunctional family conflict and harsh and inconsistent parenting.³²

Family Dispute Resolution – FDR

FDR is a form of dispute resolution that is mandatory before any parenting applications can be filed, unless an exemption is granted. It is defined in s 10F of the *Family Law Act* as a process (other than a judicial process) in which a family dispute resolution practitioner (‘FDRP’) – who is independent of all parties involved – ‘(i) helps people affected, or likely to be affected, by separation or divorce to resolve some or all of their disputes with each other; or (ii) helps persons who may apply for a parenting order under s 65C to resolve some or all of their disputes with each other relating to the care of children’.

Council acknowledges that FDR may not always be appropriate,³³ and that it should be legally-supported in some instances, for example where parties have experienced or are experiencing family violence, unequal bargaining power and/or other vulnerabilities.³⁴ In recognition of this, in its *Access to Justice Report*, Council recommended that the Attorney-General’s Department consider options to facilitate access to legally-assisted FDR.³⁵

In the *Access to Justice Report*, Council specifically recommended that legally-assisted FDR be made available through the FRSP and Family Relationship Centres, in a manner that is integrated with legal advice and assistance.

Facilitating access to legally-assisted FDR (whether integrated or unbundled) is likely to involve considerable, long-term costs. Council considers the costs worthwhile, given the benefits of legally assisted FDR, which, beyond access to legal advice and representation, include lawyers providing referrals for clients and supporting their engagement with other services, assisting with safety planning, risk management and case management, improving financial disclosure, redressing power imbalances, facilitating safe

(‘Experiences of Child-Inclusive Mediation’); Carson et al, *Children and Young People in Separated Families* (n 29) 29–32; Georgina Dimopoulos et al, ‘Talk to Us, Not About Us’: Children’s Understandings and Experiences of Participation in Australian Family Law’ (2025) *Child & Family Social Work* (‘Children’s Participation in Family Law’); Family Law Council, *Support for Children and Young People (Children) and Strengthening Their Voices* (Report, Term 2, 2024) 28–31, 34 (‘Support for Children Report’).

³² Natasha A Bailey et al, ‘The Intergenerational Sequelae of Dysfunctional Conflict in the Family of Origin: Evidence from Two Samples’ (2026) *Development and Psychopathology* 1; Pin Chen, Sanne B Geeraerts and Susan Branje, ‘Learning From the Past: Intergenerational Transmission of Aggressive Conflict Resolution Between Intimate Partners Predicts Harsh and Inconsistent Parenting’ (2025) 35(5) *Journal of Research on Adolescence* e70102.

³³ This is reflected in the fact that certain matters are exempt from compulsory participation in family dispute resolution prior to applying for orders under Part VII (regarding children): s 60I(9) of the *Family Law Act*.

³⁴ Sarah Dobinson and Rebecca Gray, ‘A Review of the Literature on Family Dispute Resolution and Family Violence: Identifying Best Practice and Research Objectives for the Next 10 Years’ (2017) 30(3) *Australian Journal of Family Law* 180, 189–190; Family Law Council, *Access to Justice Report* (n 21) 42–5.

³⁵ Family Law Council, *Access to Justice Report* (n 22) 45.

negotiations, providing reality checks in negotiations, and providing parties with access to settlements they otherwise would not have been able to reach given prohibitive costs, delays and stress associated with litigation.³⁶ Council also notes that legally-assisted mediation has been found to produce system-wide returns on investment.³⁷

In its *Access to Justice Report*, Council recommended harnessing other professional services to complement FDR, by enhancing and extending programs wherein social scientists can attend legally-assisted FDR and bring a child-centred and family violence-informed approach, and encourage effective communication and more sustainable outcomes.³⁸

Inviting social science experts to participate in FDR is also likely to involve considerable costs, although this cost would arise sporadically in limited circumstances and is likely to have longer-term benefits for the system, including a reduction in ‘return clients’.

In another one of its 2024 reports, *Support for Children and Young People (Children) and Strengthening Their Voices* (‘*Supporting Children Report*’), Council recommended that family relationship services and LACs be funded to provide child-inclusive mediation.³⁹

Arbitration

Arbitration is one form of dispute resolution, defined in s 10L of the *Family Law Act* as ‘a process (other than the judicial process) in which parties to a dispute present arguments and evidence to an arbitrator, who makes a determination to resolve the dispute.’

In the *Access to Justice Report*, Council supported a streamlined and enhanced arbitration framework in the family law system.⁴⁰ One of its recommendations was to amend the *Family Law Act* to allow some children’s matters to be arbitrated, with a view to capturing

³⁶ Metcalfe, *Metcalfe Review Report* (n 4) 140; Family Law Council, *Access to Justice Report* (n 22) 43 citing Rachel Carson et al, *Evaluation of the Lawyer-Assisted Family Law Property Mediation: Legal Aid Commission Trial* (Final Report, 1 November 2022) 2 (‘*Evaluation of Lawyer-Assisted Mediation*’); see also: Metcalfe, *Metcalfe Review Report* (n 4) 84–6; Genevieve M Heard, Jennifer Lindstrom and Melody Petersen-Tan, ‘Legally Assisted Family Dispute Resolution: A Community Sector Partnership Model’ (2026) 48(2) *Journal of Social Welfare and Family Law* 133, 135 (‘*Legally Assisted FDR*’).

³⁷ Family Law Council, *Access to Justice Report* (n 22) 43 citing Carson et al, *Evaluation of Lawyer-Assisted Mediation* (n 36) 7; see also Genevieve M Heard and Andrew Bickerdike, “‘Am I on Track’?; Family Dispute Resolution and the Client Need for Guidance in Post-Separation Property Matters’ (2021) 34(3) *Australian Journal of Family Law* 211; Heard, Lindstrom and Petersen-Tan, *Legally Assisted FDR* (n 36) 133; Rachel Carson et al, *Evaluation of the Small Claims Property Pilot: Priority Property Pools Under \$500,000 (PPP500)* (Final Report, 1 November 2022) 123, 135 (‘*Evaluation of Small Claims Property Pilot*’); Rae Kaspiew et al, *Evaluation of a Pilot of Legally Assisted and Supported Family Dispute Resolution in Family Violence Cases* (Final Report, 12 December 2012); Lawrie Moloney et al, *Evaluation of the Family Relationship Centre Legal Assistance Partnership Program* (Final Report, March 2011).

³⁸ Family Law Council, *Access to Justice Report* (n 22) 41 [Recommendation 15].

³⁹ Family Law Council, *Support for Children Report* (n 31) 51 [Recommendation 8].

⁴⁰ Family Law Council, *Access to Justice Report* (n 22) 17–25 [Recommendation 2]–[Recommendation 4].

reasonably simple parenting matters,⁴¹ particularly where the dispute is largely about ‘timetabling’ rather than complex or risk-laden issues.⁴²

This recommendation centres on legislative changes and actioning them is therefore likely to involve modest costs. Council considers these funds are worth investing, given the benefits arbitration can bring, including an element of control, choice and convenience for the parties, flexibility, avoidance of the delay that can accompany court processes, promptness of the decision, confidentiality, a binding result, and cost savings.⁴³ The resolution of arbitrated matters outside the court system will in turn free up scarce resources in that system, to the benefit of families for whom arbitration might not be appropriate.

Taking Council’s recent recommendations in relation to ADR together,⁴⁴ Council recommends:

Recommendation 3: That Government strengthen opportunities for families to resolve their disputes outside a trial in the family law system, by:

- (a) funding and expanding the provision of legally-assisted family dispute resolution for appropriate cases, to be provided through Legal Aid Commissions and Family Relationship Services Program (‘FRSP’) services, including Family Relationship Centres, with sufficient provision for:
 - (i) having social science experts attend where appropriate; and/or
 - (ii) supporting children and young people to participate, to the extent that they wish to do so and it is safe and appropriate
- (b) funding and expanding the FRSP services
- (c) legislating changes to streamline and expand family law arbitration to include certain parenting disputes per the Recommendations in Council’s report, *Access to Justice: A More Accessible and Equitable Family Law System*.

2.1.2 Early advice, case management and coordinated services

⁴¹ But *not* matters involving international relocation, medical procedures of a nature requiring court approval, contravention, an Independent Children’s Lawyer, or family violence which satisfy ss 102NA(1)(b) and (c) of the *Family Law Act*

⁴² Family Law Council, *Access to Justice Report* (n 22) 20 [Recommendation 2].

⁴³ Family Law Council, *Access to Justice Report* (n 22) 19 citing Australian Institute of Family Law Arbitrators and Mediators, *Arbitration* (Web Page) <<https://www.aiflam.org.au/aiflam-members/arbitration>>.

⁴⁴ Council acknowledges that funding for the LAC legally-assisted property mediation was extended under the *National Access to Justice Partnership 2025–30*: Department of Social Services, *Legal Aid Commissions to Continue a Lawyer-Assisted Family Law Property Mediation Service* (Web Page, 9 December 2025) <<https://www.dss.gov.au/national-plan-end-violence-against-women-and-children/progress/first-action-plan-progress/first-action-plan-activities-addendum/legal-aid-commissions-continue-lawyer-assisted-family-law-property-mediation-service>>.

As Council explained in its 2026 report (forthcoming), *Safe to Speak: Navigating the Tension Between Information Sharing, Evidence and Therapeutic Support* ('Confidentiality Report'): 'families rarely approach a provider seeking a specifically named or legally defined service. Instead, they come seeking support, safety, and guidance, and move fluidly across programs depending on their needs at the time.'⁴⁵

Given the flexible way clients use the family law system, and noting how often clients engage with multiple services at once,⁴⁶ it is important that these services understand each other and ideally coordinate their work. This allows clients' needs to be understood and met holistically, rather than in silos.⁴⁷

The Family Law Pathways Networks ('FLPNs') performed a valuable role in enabling different services to understand each other and build communication networks which benefited children and families. The gap created by the decision to defund the Networks, which Council unanimously regards as wrong, needs to be filled.

One way to achieve coordination between services is through case management. In short, this refers to the process of:

1. assessing a family's matter to identify issues in dispute, risks, and needs
2. identifying the path towards safe, just and efficient dispute resolution
3. supporting the family to progress along that path, with referrals as needed.

One form of case management occurs in the family court itself, in terms of the sequencing of court events. The primary focus is on identifying which matters might safely progress to ADR and directing them on that pathway, and, for those that progress to litigation, to manage their progression along that pathway, for example through issuing directions, imposing disclosure requirements, and conducting hearings.⁴⁸

Another form of case management occurs outside (sometimes alongside) the court, with service providers sequencing a family's engagement with legal and/or other professional services depending not only on the issues in dispute, but also on the circumstances surrounding the dispute (for example, family violence, mental health challenges and other complexities).⁴⁹

In its *Access to Justice Report*, Council recommended that Government fund family law services to provide case management support.⁵⁰ Council explained that – though costly –

⁴⁵ Family Law Council, *Safe to Speak: Navigating the Tension Between Information Sharing, Evidence and Therapeutic Support* (Report, Term (c), forthcoming).

⁴⁶ Metcalfe, *Metcalfe Review Report* (n 4) 104.

⁴⁷ Metcalfe, *Metcalfe Review Report* (n 4) 63, 96, 98, 104; Australian Law Reform Commission, *Review of the Family Law System* (Discussion Paper 86, October, October 2018) 80–1; Australian Law Reform Commission, *ALRC Report 135* (n 23) 457–8.

⁴⁸ See generally Federal Circuit and Family Court of Australia, *Central Practice Direction: Family Law Case Management* (Practice Direction, FAM-CPD, 1 September 2021).

⁴⁹ For examples of how referral patterns might look, see: Metcalfe, *Metcalfe Review Report* (n 4) 65, 111, 161.

⁵⁰ Family Law Council, *Access to Justice Report* (n 22) 47 [Recommendation 18].

case management is worthwhile for the welfare of separated/separating families, as well as for the broader public interest in avoiding costs associated with protracted litigation.⁵¹

The *Metcalf Review* indicates that case management can be beneficial for families' welfare in terms of making the system easier and less stressful to navigate, identifying risks and keeping families safe, and improving their experiences of service provision.⁵² Additional benefits may arise for some client groups. For example, culturally and linguistically diverse ('CALD') and culturally and racially marginalised ('CARM') people may appreciate the wrap-around nature of case management given that their experience of separation may isolate them from their community and family.⁵³

In making this recommendation, Council specifically noted that case management is important in matters that involve family violence, flagging the Family Safety Model, developed by Relationships Australia Victoria, as a promising example.⁵⁴ The Model prioritises safety while incorporating a whole-of-family response, assertive engagement with all family members, integrated and coordinated practice responses, and participation in behaviour change programs and other preventative and early intervention responses.

Council also notes measures introduced in the FCFCOA to support risk identification and triage, the allocation of matters involving family violence to the specialist *Evatt List*, and the provision of training and support to registrars and judicial officers that also support safe and effective case management.⁵⁵

Part of case management involves providing families with clarity around their dispute/s. In its *Cross-Examination Report*, Council discussed how providing families with access to legal advice early in their matter can provide such clarity, with lawyers applying a forensic and focused lens and reality testing client expectations.⁵⁶ In the process, families may discover that the court is not the right place to resolve all or part of their dispute/s.

Council specifically recommended that Government fund a Pilot Program of early advice client conferences in matters to which s 102NA applies. Funding this Pilot and providing ongoing funds for conferences and, where appropriate, lawyer-assisted dispute resolution conferences, if proven to be successful, is likely to involve considerable, front-end costs.

⁵¹ Family Law Council, *Access to Justice Report* (n 22) 47.

⁵² Metcalfe, *Metcalf Review Report* (n 4) 62, 70, 79, 104–5; see also Carson et al, *Evaluation of Lawyer-Assisted Mediation* (n 36) 93–4; Rae Kaspiew et al, *Family Relationships Services Program Review* (Final Input Technical Report, October 2024) 39–40, 118 ('*Technical FRSP Report*').

⁵³ Metcalfe, *Metcalf Review Report* (n 4) 130.

⁵⁴ Family Law Council, *Access to Justice Report* (n 22) 45–7; see also: Metcalfe, *Metcalf Review Report* (n 4) 104–5; Family Law Council, *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems* (Final Report, Terms 3, 4 & 5, June 2016) 85 ('*Families with Complex Needs Final Report*').

⁵⁵ Federal Circuit and Family Court of Australia, *Evatt List* (Practice Direction, FAM-EVATT, 28 November 2022); Federal Circuit and Family Court of Australia, *Evatt List* (Web Page) <<https://www.fcfcga.gov.au/fl/lighthouse/evatt>>.

⁵⁶ Family Law Council, *Asking Questions and Getting Answers: Fact Finding for Safety* (Report, Terms (a), (b) and (e), forthcoming) ('*Cross-Examination Report*'); see also Amy Sixsmith and Rachael Blakey, 'Family Mediation and Domestic Abuse: Lessons from Australia' (2025) 47(2–3) *Journal of Social Welfare and Family Law* 213, 229–230.

However, these costs come with the potential to reduce the length and cost of litigation and the demand on court resources. Council considers these costs worthwhile, given that research suggests early case management, legal advice and representation can have a significant role in supporting the cost-effective resolution of family law disputes.⁵⁷ Again, a systemwide positive return on investment would be anticipated.

Drawing on Council's recent discussion and recommendations around how early legal advice, case management and coordinated services can support families to stay out of family court, Council recommends:

Recommendation 4: That Government ensure families who approach the family law system for support with separation arrangements are provided with relevant services in a timely, case-managed and coordinated way, to encourage de-escalation of conflict and early resolution of disputes without the need for court intervention. Options to achieve this include:

- (a) funding family law services to provide case management support, tailored to clients' needs and capacity
- (b) funding a Pilot Program for early advice client conferences in matters involving s 102NA of the *Family Law Act 1975* (Cth), per Recommendation 10 from the Family Law Council report titled *Asking Questions and Getting Answers: Fact Finding for Safety*.

2.2 Accommodating children and young people

Recommendation 3(a)(ii) above, in relation to funding child-inclusive mediation, is a direct example of a practice that incorporates the views and/or participation of children and young people ('child-inclusive practice'), including those who are victim-survivors of family violence.

Throughout its 2024 report, *Support for Children and Young People (Children) and Strengthening Their Voices* ('*Support for Children Report*'), Council was supportive of child-inclusive practice.

In that report, Council noted that s 60B of the *Family Law Act* signals that Part VII – regarding arrangements for children – is to be interpreted as having regard to Australia's obligations under the *United Nations Convention on the Rights of the Child* ('*UNCRC*'), including the right for children and young people to express their views in matters that affect them (although that section does not incorporate the *UNCRC* into domestic law).⁵⁸

Council explained that the recent *Family Law Amendment Act 2023* (Cth) introduced amendments that were intended to increase the visibility of the *UNCRC*, and it is hoped it

⁵⁷ Metcalfe, *Metcalfe Review Report* (n 4) 62; Carson et al, *Evaluation of Small Claims Property Pilot* (n 37) 123, 135.

⁵⁸ Family Law Council, *Support for Children Report* (n 31) 13.

will bring a new focus on children as people with rights, not simply the passive ‘object of concern’ of paternalistic proceedings.⁵⁹

Council acknowledged the challenges that can be associated with supporting children and young people to participate in legal and other professional parts of the family law system, without exposing them to the harm that may arise from participation in circumstances involving risk or harm, including from family violence.⁶⁰ Nevertheless, Council noted that children and young people are victim-survivors in their own right and should have safe and effective options to participate should they wish to do so.⁶¹

As discussed in section 2.1.1, research has found a link between child-inclusive mediation and a lower likelihood of re-litigation,⁶² which suggests that involving children and young people in the family law system may be a way to support some families to stay out of family court.

Aside from the potential practical benefits of involving children and young people in family law matters, it is important to acknowledge their right and desire to be heard.⁶³ To that end, in its *Support for Children Report*, Council reiterated a long-standing recommendation around establishing a Children’s and Young Person’s Advisory Board,⁶⁴ and that children and young people be engaged in a co-design process to make recommendations to Government, to ensure the family law system appropriately addresses their post-separation needs.⁶⁵

Given that children and young people can be victim-survivors of family violence in their own right, it is important that Government be mindful of their unique vantage point when it comes to developing the Second Action Plan and addressing family violence in the family law system.

To support child-inclusive practice and design in the family law system, Council recommends:

Recommendation 5: That Government support children and young people to contribute to the design of the family law system, and to participate in the system, to

⁵⁹ Family Law Council, *Support for Children Report* (n 31) 14–6, 33–9.

⁶⁰ Family Law Council, *Support for Children Report* (n 31) 33.

⁶¹ Family Law Council, *Support for Children Report* (n 31) 34.

⁶² McIntosh et al, *Child-Focused and Child-Inclusive Mediation* (n 27) 113–4; Barlow and Ewing, *Outcomes of Child-Inclusive Mediation* (n 27) 104–111.

⁶³ *Convention on the Rights of the Child*, GA Res 44/25 (20 November 1989) art 12; Australian Human Rights Commission, National Children’s Commissioner, *Children’s Rights Report* (n 31) 115–6; Barlow and Ewing, *Experiences of Child-Inclusive Mediation* (n 31) 85–6; Carson et al, *Children and Young People in Separated Families* (n 29) 29–32; Dimopoulos et al, *Children’s Participation in Family Law* (n 31); Family Law Council, *Support for Children Report* (n 31) 28–31, 34.

⁶⁴ Family Law Council, *Support for Children Report* (n 31) 62 [Recommendation 11]; Council made a similar recommendation in 2016: see Family Law Council, *Families with Complex Needs Final Report* (n 54) 142 [Recommendation 13]. Government has indicated it is considering this recommendation: Australian Government, *Australian Government Response to the Inquiry of the Joint Select Committee on Australia’s Family Law System* (January 2023) 30.

⁶⁵ Family Law Council, *Support for Children Report* (n 31) 63 [Recommendation 12].

the extent that it is safe and that children and young people who wish to do so, including by:

- (a) consulting children and young people in relation to initiatives that may affect them, including the Second Action Plan under the *National Plan to End Violence against Women and Children 2022–2032*, in the manner described by Recommendations 11 and 12 of the Family Law Council report titled *Support for Children and Young People (Children) and Strengthening Their Voices*
- (b) supporting children and young people to participate in the legal and other professional parts of the family law system, to the extent that they wish to do so and it is safe and appropriate (see also Recommendation 10 of this letter of advice).

The first part of this recommendation is likely to involve modest, sporadic, short-term costs, while the second is likely to involve considerable, long-term costs. Council considers both worth incurring, noting child-inclusive practice is critical for the rights and wellbeing of children and young people, and given that child-inclusive mediation has been linked to lower re-litigation, in turn keeping some families out of family court.

2.3 Building the evidence base and conducting research for impact

In various reports, Council has consistently stressed the importance of evidence-based action, supported by current and robust empirical research. To answer the question of how to support families to settle disputes outside courts, including through other professional services, Council recommends:

Recommendation 6: That Government continue to make provisions for consistent and systematic collection and analysis of quantitative and qualitative data, and evaluation, at regular timepoints in relation to government-funded services designed to support the early resolution of disputes in the family law system without trial – including, but not limited to, the Family Relationships Services Program, community legal centres and Legal Aid Commissions – to understand how families use family law services other than the courts and to evaluate the efficacy of those services.

It is critical that the family law system is informed by a current and robust evidence base, including in relation to pathways families use to resolve their disputes outside family court. Therefore, although the costs associated with generating and maintaining that evidence base are unlikely to be modest, and will be ongoing, Council considers them worthwhile.

3. How can we ensure the whole family law system is trauma-informed and accessible?

The *National Plan* explains that ‘trauma-informed’ practice involves ‘integrating an understanding of past and current experiences of violence and trauma⁶⁶ in all aspects of

⁶⁶ The *National Plan* broadly defines trauma as something that ‘occurs when someone’s ability to cope is overwhelmed’: Department of Social Services, *National Plan* (n 8) 133. More specifically, the Australian

service delivery’, to ‘avoid re-traumatising⁶⁷ individuals and support safety, choice and control to promote healing.’⁶⁸

Trauma-informed practice is critical in contexts like the family law system, where a large proportion of matters involve complex, challenging and potentially traumatic experiences, including family violence. Relatedly, Council also notes the importance of family violence-informed practice, including to ensure that professionals are well-positioned to identify, assess and respond to family members who have experienced or used violence and to take steps to prevent further violence.

As for ‘accessible’, the Australian Government *Disability Gateway* defines ‘accessibility’ as a measure of ‘whether a product, service, process, or design can be used and/or understood by everyone who interacts with it’.⁶⁹

Products, services, processes or designs are often created with ‘typical’ users in mind and are not automatically accessible for everyone.⁷⁰ It is therefore common for inclusivity to be considered in tandem with accessibility, so that systems are not only accessible to all, but respect and accommodate their diversity.⁷¹

Embedding accessibility and inclusivity in the family law system supports the fundamental principle of equal justice for all, including for those who are often marginalised, such as Aboriginal and Torres Strait Islander people, CALD and CARM people, people who identify as lesbian, gay, bisexual, trans, intersex, queer, asexual or another sexually or gender diverse identity (LGBTIQA+), people with disability, and people living in regional, rural and remote areas.⁷²

The family law system has already taken important steps towards more accessible, inclusive and trauma-informed principles and practices. For example, the FCFCOA has a Joint Court Diversity and Inclusion Working Group that ‘advises the Chief Justice and Chief Executive Officer and Principal Registrar on practical initiatives to enhance diversity and inclusion within the Courts and for those engaging with them,’ including promoting

Psychological Society defines ‘trauma’ as a form of psychological harm that can be caused by very frightening or distressing events, including acts of violence, loss, accident or injury: Australian Psychological Society, *Trauma* (Web Page) <<https://psychology.org.au/for-the-public/psychology-topics/trauma>>.

⁶⁷ The *National Plan* does not define ‘re-traumatisation’, and nor does the Australian Psychological Society. Victoria State Government defines it as something that occurs ‘when a person who has experienced trauma has a physiological and emotional stress response triggered by a thought, sense activation, event, circumstance or interaction that causes trauma’: Victoria State Government Department of Families, Fairness and Housing, *Framework for Trauma-Informed Practice: Supporting Children, Young People and their Families* (Framework, November 2022) 9.

⁶⁸ Department of Social Services, *National Plan* (n 8) 240.

⁶⁹ Australian Government, *Language and definitions* (Web Page) <<https://www.disabilitygateway.gov.au/ads/strategy/good-practice-guidelines/language-and-definitions>> (*‘Language and Definitions’*).

⁷⁰ Mark Harniss, ‘Accessibility’ In Filomena Maggino (ed) *Encyclopedia of Quality of Life and Well-Being Research*. (Springer, 2024) 9–10

⁷¹ Australian Government, *Language and Definitions* (n 69).

⁷² This principle goes beyond equal treatment, to involve accommodations that ensure ‘relative’ or substantive equality: *B and R and the Separate Representative* (1995) FLC 92-636.

awareness and training around diversity, and developing a resource hub and inclusive language guide.⁷³ The FCFCOA also recently issued a Practice Direction regarding interpreters, to ensure access to justice for litigants whose first language is not English,⁷⁴ and an Information Notice about the correct pronunciation of names and use of appropriate pronouns, as a matter of respect.⁷⁵

The FCFCOA also has Specialist Indigenous Lists, to enhance access to justice for Aboriginal and Torres Strait Islander families. While this List is important, and something Council has advocated for,⁷⁶ we acknowledge that a label alone is not enough to ensure cultural capability and safety, which are principles that must be embedded into systems and continually fostered through regular and ongoing training.

3.1 Funding systemic initiatives

3.1.1 Early advice, case management and coordinated services

What was said in section 2.1.2 is also relevant here, because early advice, case management and coordinated service provision can not only facilitate some disputes being resolved early and/or without trial for some families, but it can also make the system more accessible and reduce risks of re-traumatisation.⁷⁷

For families who do go to court, one important aspect of case management support is having continuous care from the start to the end of their matter. When the same service provider accompanies a person as they progress through the system, this reduces the risks of that person being re-traumatised by repeatedly sharing potentially traumatic details with separate service providers, and minimises inefficiencies associated with that repetition.⁷⁸

In its *Access to Justice Report*, Council recommended that frontline legal service providers be funded to provide ‘beginning to end service’.⁷⁹ Implementing this recommendation is likely to involve considerable long-term costs, but it represents an important investment in accessible and trauma-informed support. Further, as we noted in section 2.1.2, early advice can play a significant role in the cost-effective resolution of family law disputes, meaning this recommendation may lead to cost-savings. Council therefore reiterates it here:⁸⁰

Recommendation 7: That Government fund frontline legal services to provide beginning to end service, as described in Recommendation 16 of the Family Law

⁷³ Federal Circuit and Family Court of Australia, *Annual Reports 2024–25* (n 5) 31, 253.

⁷⁴ Federal Circuit and Family Court of Australia, *Working with Interpreters* (Practice Direction, PD-INTERP).

⁷⁵ Federal Circuit and Family Court of Australia, *Pronunciation of Names & Forms of Address* (Information Notice, IN-PFA).

⁷⁶ Family Law Council, *Access to Justice Report* (n 22) 49 [Recommendation 19].

⁷⁷ See generally Metcalfe, *Metcalfe Review Report* (n 4); Kaspiew et al, *Technical FRSP Report* (n 52).

⁷⁸ Family Law Council, *Access to Justice Report* (n 22) 42.

⁷⁹ Family Law Council, *Access to Justice Report* (n 22) 42 [Recommendation 16].

⁸⁰ For Council’s earlier recommendations around coordinated and holistic service provision, see Family Law Council, *Families with Complex Needs Final Report* (n 54) 123 [Recommendation 2], 132 [Recommendation 6(1)]; In terms of enhancing collaboration for the purposes of supporting CALD and CARM clients in particular, see Family Law Council, *Improving the Family Law System for Clients from Culturally and Linguistically Diverse Backgrounds* (Report, February 2012) 95 [Recommendation 3].

Council report titled *Access to Justice: A More Accessible and Equitable Family Law System*.

3.1.2 Information sharing across services

One component of coordinating services for holistic support is information sharing. When services or systems do not talk to each other, ‘the right hand doesn’t know what the left hand is doing’ and a family’s needs may not be understood or met as a whole.⁸¹

If services communicate with each other, this gives them a better sense of the full picture of the family. Further, it can save clients from repeating information that can be time-consuming, stressful and potentially traumatic to repeat.⁸² This approach is not only trauma-informed, but accessible, as a system is generally easier to navigate when its parts communicate.⁸³ It can also enhance safety, because relevant risks can be jointly understood and monitored.⁸⁴

Council acknowledges, however, that information-sharing must be supported by training for professionals across the family law system, and appropriate resourcing and infrastructure. Relevant practical steps and theoretical considerations professionals ought observe before sharing clients’ information include assessing risks, communicating with clients and seeking informed consent, and considering the potential loss of client privilege.

There are a range of instruments to support information sharing between criminal, child protection and family law systems.⁸⁵ However, in its 2024 report, *Protecting Victims of Family Violence, Including Children, in the Family Law System: International Child Abduction* (‘*Child Abduction Report*’), Council recommended additional collaboration and information sharing measures for matters that involve the *Hague Convention on the Civil Aspects of International Child Abduction* (‘*Hague Convention*’), including international registration of Family Violence Orders and any protection measures undertaken in *Hague* proceedings.⁸⁶

⁸¹ Commonwealth, *Parliamentary Debates*, House of Representatives, 8 September 2020 (Jacoba Brasch, President-elect, Law Council of Australia) 31.

⁸² Metcalfe, *Metcalfe Review Report* (n 4) 99.

⁸³ Metcalfe, *Metcalfe Review Report* (n 4) 95–6.

⁸⁴ Georgina Dimopoulos and Eliza Hew, “‘Courts are Not... Therapeutic Agencies’: What Role for Therapeutic Jurisprudence in Australian Family Law Parenting Disputes Involving Family Violence?” (2026) *Family Court Review* 1, 8 citing Rosemary O’Malley, ‘CollaborACTION: Ending Men’s Violence Against Women and Children’ (2013) 1(1) *The No to Violence Journal*, Spring.

⁸⁵ Attorney-General’s Department, *Family Law Information Sharing* (Web Page) <<https://www.ag.gov.au/families-and-marriage/families/family-law-information-sharing>>; Attorney-General’s Department, *National Strategic Framework for Information Sharing Between the Family Law and Family Violence and Child Protection Systems* (2023); Family Court of Western Australia, Department of Justice, Department of Communities and Legal Aid Western Australia, *Memorandum of Understanding to Support the Sharing of Information Between Family Court of Western Australia, Department of Justice, Department of Communities, Legal Aid Western Australia* (Memorandum of Understanding, January 2022); *Family Law Amendment (Information Sharing) Act 2023* (Cth).

⁸⁶ Family Law Council, *Protecting Victims of Family Violence, Including Children, in the Family Law System: International Child Abduction* (Report, Term 1c, 2024) 48–53, [Recommendation 7], [Recommendation 8], [Recommendation 10], [Recommendation 11] (‘*Child Abduction Report*’).

Implementing these measures is likely to involve considerable upfront establishment costs and modest long-term administration costs. Council considers these costs worthwhile. Firstly, information sharing creates a more accessible, trauma-informed and safe system. This is particularly critical in matters that involve family violence and risks to children,⁸⁷ as *Hague Convention* matters often do. Further, the investment of funds associated with facilitating comprehensive information sharing is likely to significantly reduce costs associated with poor information sharing, including the duplication of resources where different services assess and record information about the same matter.

Council therefore reiterates its recent recommendations around information sharing in *Hague Convention* matters, but observes that the need for information sharing has equal application to many matters that progress through the family law system:⁸⁸

Recommendation 8: That Government implement recommendations to facilitate collaboration and information sharing in all proceedings, including but not limited to those arising under the *Hague Convention on the Civil Aspects of International Child Abduction*, per Recommendations 7, 8, 10 and 11 of the Family Law Council report titled *Protecting Victims of Family Violence, Including Children, in the Family Law System: International Child Abduction*.

Council notes that, despite the importance of information sharing, it should not come at the expense of protecting confidentiality where appropriate. For more detailed discussion around the importance of confidentiality, see Council's *Confidentiality Report*.⁸⁹

3.1.3 Streamlining access to information and entry to the system

Having services communicate and coordinate with each other is one way to make them more accessible. Another way is making them approachable in the first instance. Sometimes, families may not know who to approach, or how, to receive support in relation to a family law matter.⁹⁰ In its *Access to Justice Report*, Council reiterated the point from the *Metcalf Review* that there needs to be a centralised source of clear and consistent information about the family law system and its services.⁹¹ To that end, it recommended that a single authoritative online information platform be created and kept up to date.⁹²

⁸⁷ For Council's earlier recommendations that relate to this point, see Family Law Council, *Improving Responses to Family Violence in the Family Law System: An Advice on the Intersection of Family Violence and Family Law Issues* (Report, December 2009) 61–2 [Recommendation 5], 81–2 [Recommendation 12]. ('*Improving Responses to Family Violence Report*')

⁸⁸ For Council's earlier recommendations in relation to sharing information for the purposes of safeguarding children and victim-survivors of family violence in particular, see: Family Law Council, *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems* (Interim Report, Terms 1 & 2, June 2015) 105 [Recommendation 5] ('*Families with Complex Needs Interim Report*'); Family Law Council *Improving Responses to Family Violence Report* (n 87) 61–2 [Recommendation 5], 81–2 [Recommendation 12].

⁸⁹ See also Family Law Council, *Families with Complex Needs Final Report* (n 54) 132 [Recommendation 6(1)].

⁹⁰ See, eg, Metcalfe, *Metcalf Review Report* (n 4) 93–4.

⁹¹ Family Law Council, *Access to Justice Report* (n 22) 15.

⁹² Family Law Council, *Access to Justice Report* (n 22) 31 [Recommendation 8], 31 [Recommendation 9]; see also Family Law Council, *Support for Children Report* (n 31) 32 [Recommendation 4].

Council recommended that the platform be accessible, with clear formatting and plain English language, and inclusive, with translated versions available in multiple languages and specific content for Aboriginal and Torres Strait Islander families.

Council's recommendation for FLPNs to deliver 'Family Relationship Information Hubs' no longer stands, given FLPNs have had their funding discontinued.⁹³ Without FLPNs to run these Hubs, it is especially important that there is an alternative, accessible way for families to receive clear, timely information. While the online information platform may serve this purpose for many families, Council notes that some people do not have access to the technology or skills required to use such a platform and it is critical that Government consider how not to leave these people behind.

It is also critical that improvements to the accessibility and approachability of the family law system – including the use of simple, digital and automated processes – do not come at the cost of the more tailored, person-centred and holistic approaches Council has highlighted throughout this letter, including risk assessment and case management. We consider that simplifying, digitising and automating some touchpoints in the family law system could free up resources to be used at others. For example, a person may use online resources to learn what is involved in the system before entering it, but thereafter have human resources providing risk assessment, case management and tailored services.

Another technological initiative recommended in the *Access to Justice Report* was to provide funding for the development of smart form and easy read technology in the FCFCOA and FCWA.⁹⁴ These developments would address a regular theme in Council's consultations with professionals across Australia: that the number and complexity of court documents that the large cohort of parties having to represent themselves are required to complete is a major barrier to accessing the family courts.

Implementing Council's recommendations in relation to technological innovations is likely to involve considerable upfront development costs and modest ongoing operational costs. Council considers these costs worthwhile for the sake of introducing more accessible, user-friendly information and processes, so that families can more easily understand and use the system, and so the system can receive administrative resource and cost savings.

Drawing on its recent recommendations in relation to simplifying information and access to the system,⁹⁵ Council recommends:

Recommendation 9: That Government fund the development and ongoing refinement of accessible digital complements to the family law system, including an online information platform as contemplated by Recommendations 8 and 9 in the

⁹³ Family Law Council, *Access to Justice Report* (n 22) 34 [Recommendation 10].

⁹⁴ Family Law Council, *Access to Justice Report* (n 22) 39 [Recommendation 13].

⁹⁵ For Council's earlier consideration of the theme of simplifying information and access to services: see, eg: Family Law Council, *Families with Complex Needs Interim Report* (n 88); Family Law Council, *Families with Complex Needs Final Report* (n 54); Family Law Council *Improving Responses to Family Violence Report* (n 87) 47 [Recommendation 4].

Family Law Council Report titled *Access to Justice: A More Accessible and Equitable Family Law System*.

3.2 Accommodating children and young people

One cohort for whom the family law system may feel particularly inaccessible is children and young people. Specific measures are required to support children and young people to access the system safely, and meaningfully participate in it where they wish to do so and it is safe for them.

In terms of facilitating access to the system, in its *Support for Children Report*, Council recommended that children and young people be informed about the system generally as well as their options to participate in proceedings, through informational websites, electronic brochures and other appropriate mediums.⁹⁶

One important way for children and young people to participate is by sharing their views. A range of recommendations in Council's *Support for Children Report* were directed at ensuring children and young people were provided with opportunities to do so.⁹⁷

In that report, Council also made recommendations to promote the number, training and quality of Independent Children's Lawyers ('ICLs'), given their role in conveying the views of children and young people. Beyond providing additional funding for ICLs, Council recommended creative incentives to attract and retain more in-house ICLs in LACs, such as waiving HECS debt on a basis proportionate to years of service.⁹⁸

Drawing on these recent recommendations, and building on Recommendation 5 in this letter of advice, Council recommends:

Recommendation 10: That Government support children and young people to safely participate in the family law system if they wish to do so, including by:

- (a) developing informational resources to inform children and young people about the family law system and their rights and options to participate in it, per Recommendations 4, 5, 13 and 14 of the Family Law Council report titled *Support for Children and Young People (Children) and Strengthening Their Voices* ('*Support for Children Report*')
- (b) providing safe and effective opportunities for children and young people to express their views – for example, by allowing them to do so digitally, as that may be most comfortable or familiar to some children – as described in Recommendations 1, 2, 3, 6 and 7 in Council's *Support for Children Report*

⁹⁶ Family Law Council, *Support for Children Report* (n 31) 32 [Recommendation 4], [Recommendation 5], 67 [Recommendation 13], [Recommendation 14].

⁹⁷ Family Law Council, *Support for Children Report* (n 31) 20 [Recommendation 1], 26 [Recommendation 2], [Recommendation 3], 44 [Recommendation 6], [Recommendation 7].

⁹⁸ Family Law Council, *Support for Children Report* (n 31) 60 [Recommendation 10].

- (c) supporting the hiring and retention of Independent Children’s Lawyers (‘ICLs’), including by implementing Recommendation 10 of Council’s *Support for Children Report*
- (d) investing in having Aboriginal and Torres Strait Islander legal services play a leading role in culturally safe service provision for Aboriginal and Torres Strait Islander children, including as ICLs, per Recommendation 16 of Council’s *Support for Children Report*.

The first part of this recommendation (a) is likely to involve modest, short-term costs. The remainder of the recommendation (b)–(d) involve systemic changes that are likely to involve considerable, long-term costs. Council considers these short- and long-term costs worthwhile investments in furthering the family law system’s existing and overarching focus on the best interests of children.

3.3 Building professional capabilities

3.3.1 Cultural capability and safety

It is worth drawing particular attention to Council’s two significant, published reports from 2016 in relation to improving accessibility for Aboriginal and Torres Strait Islander clients and CALD and CARM clients:⁹⁹

- *Improving the Family Law System for Aboriginal and Torres Strait Islander Clients*
- *Improving the Family Law System for Clients from Culturally and Linguistically Diverse Backgrounds*.

Council notes that careful consideration ought be given to the detailed discussion and recommendations in those reports – which, though a decade old, have enduring relevance in the context of reducing family violence against women and children. However, for present purposes, we draw on our more recent recommendations with respect to accessibility, cultural capability and safety in the family law system and recommend:

Recommendation 11: That Government support people from diverse backgrounds to participate in the family law system, including by:

- (a) investing in initiatives designed with and for Aboriginal and Torres Strait Islander people, including:
 - (i) empowering and improving culturally safe service delivery and training, per Recommendation 1 in the Family Law Council report titled *Protecting Victims of Family Violence, Including Children, in the Family Law System: Disincentives to Disclosing Family Violence and Child*

⁹⁹ Council reinstated the recommendations from these reports in 2016, and offered additional recommendations to better accommodate Aboriginal and Torres Strait Islander and CALD and CARM clients in the family law system: see Family Law Council, *Families with Complex Needs Final Report* (n 54) 150–2 [Recommendation 16]–[Recommendation 18].

Abuse, and Responding to Systems Abuse and Recommendation 16 in the report titled *Support for Children and Young People (Children) and Strengthening Their Voices* ('*Support for Children Report*')

- (ii) increasing the availability of Indigenous Liaison Officers, as described in Recommendation 20 in the Family Law Council report titled *Access to Justice: A More Accessible and Equitable Family Law System* ('*Access to Justice Report*')
- (iii) increasing the availability of cultural reports, as described in Recommendation 22 of the *Access to Justice Report*
- (iv) increasing the availability of Aboriginal and Torres Strait Islander Independent Children's Lawyers, per Recommendation 16 of Council's *Support for Children Report*
- (v) implementing and co-designing First Nations Hubs, per Recommendation 23 of the *Access to Justice Report*
- (b) investing in initiatives designed with and for CALD and CARM people, including:
 - (i) funding a pilot to introduce Multicultural Liaison Officers, per Recommendation 24 of the *Access to Justice Report*
 - (ii) supporting FRSP providers to build partnerships with specialist organisations to meet the needs of communities, including CALD and CARM clients, as described in Recommendation 25 of the *Access to Justice Report*
- (c) investing in initiatives designed to better understand and meet the needs of people with disability, including:
 - (i) funding a pilot to introduce Disability Liaison Officers, per Recommendation 26 of the *Access to Justice Report*
- (d) considering how best to capture the frequency with which clients disclose disability, and how best to understand the effectiveness of programs in supporting clients with disability, per Recommendation 26 of the *Access to Justice Report*
- (e) investing in initiatives designed to better understand and meet the needs of LGBTIQ+ people, including:
 - (i) providing FRSP providers with appropriate training to support LGBTIQ+ families, per Recommendation 28 of the *Access to Justice Report*

- (f) considering how best to capture the frequency with which clients disclose LGBTIQ+ identification, and how best to understand the effectiveness of programs in supporting LGBTIQ+ clients, per Recommendation 29 of the *Access to Justice Report*.

We acknowledge that implementing the recommendations paraphrased above is likely to involve considerable, long-term cost. Council considers this cost worthwhile as an important investment in accessibility and inclusivity in Australia's family law system.

3.3.2 Family violence understanding and skills

In addition to being capable of working with diverse families, for the practical recommendations made throughout this letter to be most effective, it is critical that those within the family law system are capable of working with families affected by family violence.

This requires professionals across the family law system having an appropriate level of awareness, understanding and skill in relation to the topic of family violence, to engage in family violence-informed practice that supports safe case management (including risk assessment, safety planning and referrals), and more broadly to facilitate access to dispute resolution and trauma-informed engagement with victim-survivors, and to facilitate those using violence to engage in appropriate behaviour change programs.

The FCFCOA has published *Family Violence Best Practice Principles*,¹⁰⁰ and Council has also made a range of recommendations that go towards achieving this. For example, in its *Systems Abuse Report* and *International Child Abduction Report*, Council highlighted the role of proper guidance, training and standards and made a range of recommendations to embed these into the system across legal and other professional services, and court and outside-court contexts.¹⁰¹ Further, Council has proposed a range of amendments to the *Family Law Act* to embed a more nuanced and comprehensive understanding of family violence.¹⁰²

Drawing on these recent recommendations,¹⁰³ we recommend:

Recommendation 12: That Government invest in ensuring the family law system is family violence-informed in principle and practice, including by:

¹⁰⁰ Federal Circuit and Family Court of Australia, *Family Violence Best Practice Principles* (5th Edition).

¹⁰¹ Family Law Council, *Child Abduction Report* (n 86) 46 [Recommendation 6]; Family Law Council, *Systems Abuse Report* (n 16) 51 [Recommendation 2], 52 [Recommendation 3], 53 [Recommendation 5], 71 [Recommendation 11].

¹⁰² Family Law Council, *Child Abduction Report* (n 86) 37 [Recommendation 1]; Family Law Council, *Cross-Examination Report* (n 56) [Recommendation 2]; Family Law Council, *Systems Abuse Report* (n 16) 68–9 [Recommendation 8], 71 [Recommendation 9], [Recommendation 10].

¹⁰³ For Council's earlier recommendations on this topic, see Family Law Council, *Families with Complex Needs Final Report* (n 54) 121 [Recommendation 1], 137 [Recommendation 10], 139–141 [Recommendation 11], [Recommendation 12].

- (a) ensuring that professionals working in the system are suitably trained and qualified in relation to family violence, including by:
 - (i) expanding the legislative criteria for suitability for appointment as a judge dealing with family law matters to include a demonstrated commitment to undertaking continuing education in relation to family violence, per Recommendation 2 in the Family Law Council report titled *Protecting Victims of Family Violence, Including Children, in the Family Law System: Disincentives to Disclosing Family Violence and Child Abuse, and Responding to Systems Abuse* (‘*Systems Abuse Report*’)
 - (ii) ensuring the relevant requirements and standards for FDRPs, family counsellors and other family service providers adequately reflect community standards in respect of family violence, per Recommendation 3 of the *Systems Abuse Report*
 - (iii) giving consideration to undertaking a ‘safety by design’ review of the family law system, to understand how it may be misused by people using family violence and to prevent this misuse, akin to the work being undertaken by the Commonwealth Ombudsman and Department of Social Services in relation to the child support system,¹⁰⁴ and informed by Recommendation 16 of the Rapid Review Expert Panel report titled *Unlocking the Prevention Potential – Accelerating Action to End Domestic, Family and Sexual Violence*¹⁰⁵
 - (iv) requiring the Family Law Specialist Accreditation bodies to review, and if required, update their modules in relation to family violence in the accreditation assessment
- (b) the Attorney-General’s Department publishing appropriate guidelines with respect to family violence, including:
 - (i) guidelines to assist legal professionals in identifying and understanding the impacts of coercive or controlling behaviour, as well as competing allegations of child abuse and alienating behaviour, as described in Recommendations 5 and 11 of the *Systems Abuse Report*
 - (ii) a best practice guide to assist in considering allegations of family violence matters that involve the Hague Convention on the *Civil Aspects of International Child Abduction* – replicating part 5 of the European Union’s guide – as described in Recommendation 6 in the Family Law Council Report titled *Protecting Victims of Family Violence, Including*

¹⁰⁴ Commonwealth Ombudsman, *Weaponising Child Support: When the System Fails Families* (Report, June 2025).

¹⁰⁵ Rapid Review Expert Panel, *Unlocking the Prevention Potential: Accelerating Action to End Domestic, Family and Sexual Violence* (Report, 23 August 2024) 103 [Recommendation 16].

Children, in the Family Law System: International Child Abduction
(‘*Child Abduction Report*’)

- (c) amending the *Family Law Act 1975* (Cth) to embed a more nuanced and comprehensive understanding of family violence, through:
 - (i) the introduction of a new section that allows judicial officers to proceed on the basis that certain fundamental matters concerning family violence do not require proof, as described in Recommendation 8 of the *Systems Abuse Report*
 - (ii) the introduction of a new section that allows parties or Independent Children’s Lawyers to adduce, or judicial officers to admit of their own violation, material from the *National Domestic and Family Violence Bench Book*, without the author being required to give evidence, as described in Recommendation 9 of the *Systems Abuse Report*¹⁰⁶
 - (iii) the addition of a notation to s 4AB that cross-references the power for judicial officers to take judicial notice of the matters in the two points above, as described in Recommendation 10 of the *Systems Abuse Report*
 - (iv) the addition of emphasis to s 4AB(3) to clarify what it means for a child to be ‘exposed’ to family violence, as described in Recommendation 1 of the *Child Abduction Report*
 - (v) an amendment of s 102NA(1)(c)(i), to refer to ‘family violence’ as defined in s 4AB of the *Family Law Act*, as described in Recommendation 2 of the Family Law Council report titled *Asking Questions and Getting Answers: Fact Finding for Safety*.

Most of the recommendations paraphrased in this section involve legislative changes that are likely to involve little or modest, short-term costs. Others involve the development of guidance materials, which are likely to involve some upfront, relatively short-term, costs. Council considers these costs worthwhile given Government’s ongoing commitment to combatting family violence, including in the family law system.

3.4 Building the evidence base and conducting research for impact

As stated earlier, Council has regularly made recommendations around research to inform evidence-based action. Although Council’s recent recommendations in this regard have not explicitly focused on accessible or trauma-informed principles or practice, they are likely to generate insights that would be relevant to inform those topics. Taking those recent recommendations together,¹⁰⁷ Council now recommends:

¹⁰⁶ Family Law Council, *Systems Abuse Report* (n 16) 71 [Recommendation 9].

¹⁰⁷ For Council’s earlier recommendations on this topic, see, eg, Family Law Council, *Families with Complex Needs Final Report* (n 54) 124–6 [Recommendation 3]–[Recommendation 4], 133 [Recommendation 7];

Recommendation 13: That Government, in concert with the FCFCOA and in concert with the Western Australian Government for the FCWA, develop a robust research base to inform evidence-based action in the family law system, including by:

- (a) improving quantitative and qualitative data collection and analysis in relation to the scheme that operates to ban personal cross-examination under s 102NA of the *Family Law Act 1975* (Cth), in the manner described in Recommendation 11 of the Family Law Council report titled *Asking Questions and Getting Answers: Fact Finding for Safety*
- (b) gathering data regarding any barriers to disclosing family violence and child abuse that remain following the *Family Law Amendment Act 2023* (Cth), per Recommendation 4 of the Family Law Council report titled *Support for Children and Young People (Children) and Strengthening Their Voices* ('*Support for Children Report*')
- (c) commissioning longitudinal research and establishing and drawing on a national minimum dataset to evaluate the impact of litigation and interaction with family law services for families, including children and young people, as described in Recommendation 17 of the *Support for Children Report*
- (d) conducting consultations with a view to developing guidelines for judicial officers meeting with children, per Recommendation 3 of the *Support for Children Report*
- (e) conducting consultations with a view to identifying the scope of government-funded services to be designated as eligible to provide family counselling, per Recommendation 2 of the Family Law Council report titled *Safe to Speak: Navigating the Tension Between Information Sharing, Evidence and Therapeutic Support*.

Most of the research projects are discrete and short-term, with the exception of the s 102NA Scheme data gathering and analysis project. Some of these projects are likely to involve modest funding arrangements, while others may involve more considerable funding arrangements. Council considers both worthwhile, noting that conducting both short- and long-term research and data collection is imperative to generate an evidence base that can inform and support improvements to the family law system, including in terms of accessibility and trauma-informed and family violence-informed practice.

Council has also previously recommended improving the knowledge base around family violence, including through lived experience and practice as well as academic and grey literature: Family Law Council, *Improving Responses to Family Violence Report* (n 87) 45–6 [Recommendation 2].

Council thanks you for the opportunity to provide this advice and the Chair is happy to discuss any aspects of this with you.

It is our intention that this letter be published on Council's website, consistent with previous letters.

Yours sincerely,

[REDACTED]

E-mail: [REDACTED]

Encl. Family Law Council Letter of Advice – Second Action Plan

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