



Chairperson: Associate Professor Helen Rhoades

Members: Ms Nicky Davies  
Mr Clive Price  
Federal Magistrate Kevin Laphorn  
Justice Garry Watts  
Dr Rae Kaspiew  
Mr Jeremy Culshaw  
Ms Elizabeth Kelly

## Family Law Council

22 July 2011  
Sent by email

**Question taken on notice from the Senate inquiry – Public hearing of 8 July 2011 on the  
Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011**

The Family Law Council (the Council) is providing you with the attached response to the Question taken on notice from the Senate inquiry – Public hearing on 8 July 2011.

I would be happy to provide further information about the content of the response should this be required.

Yours sincerely

(...)

Nicky Davies  
Member

## **Family Law Council**

### **Senate inquiry - Public hearing of 8 July 2011 - Questions on Notice**

**Senator SIEWERT:** Because I know we are short on time, you might take this question on notice. Professor Chisholm suggested amendments to the definition. They are contained in his submission. If you could look at that and give us some comments, that would be appreciated. The professor's supplementary submission suggests making amendments to section 60CC(3)(k). He also has some recommended amendments. If you could give us your opinion on that, that would be appreciated.

### **Family Law Council's response to Professor Chisholm's suggested amendments to the definition of family violence**

Council agrees with Professor Chisholm's views, at page 4 of his original submission of 13 April 2011, that there should be no requirement of 'reasonable fear' in the definition of family violence in the *Family Law Act 1975 (as amended)*. In Council's view the critical element of the definition of family violence should be that the behaviour is threatening, coercive or controlling. A reasonableness requirement would undermine the government's objective of removing barriers to disclosure.

Professor Chisholm raises concerns about the potential over-inclusiveness of "other behaviour" that "causes a family member to be fearful" in situations such as the scenarios he describes. In Council's view in light of the research evidence referred to in Council's submission to the Committee of 27 April 2011, the experience of domestic and family violence services and the recommendations of the Australian and New South Wales Law Reform Commissions in 2010<sup>1</sup>, family violence should be defined in terms of a pattern of conduct. Council acknowledges that violence can consist of a single act or threat of harm, and the definition in the Act should capture this.

Council supports Professor Chisholm's second proposed definition at page 5 of his submission of 13 April 2011 being:

For the purpose of this Act, family violence means behaviour by a person towards a member of the person's family that is violent, threatening, coercive or controlling, or is intended to cause the family member to be fearful.

### **Family Law Council's response to Professor Chisholm's suggested amendments to section 60CC(3)(k) of the *Family Law Act 1975 (as amended)***

Council supports Professor Chisholm's supplementary submission dated 8 July 2011 and his proposed redrafting of section 60CC(3)(k) at page 4 of the supplementary submission.

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<sup>1</sup> Family Violence – A National Legal Response, 2010.

The proposed section will provide the community, professionals in the broad family law system and the courts with greater guidance about what evidence will be important in establishing family violence. In particular, Council supports the views stated in the final two sentences of Professor Chisholm's supplementary submission at page 4.