



AUSTRALIAN ASSOCIATION OF COLLABORATIVE PROFESSIONALS

Submission to the ALRC Enquiry into the Family Law System

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INTRODUCTION & COLLABORATIVE OVERVIEW

Basis of Submission

This submission addresses the areas of enquiry of the Commission only insofar as Interdisciplinary Collaborative Practice might provide information or solutions to the areas of enquiry.

It is submitted that the breakdown of marriage and de facto relationships and the arrangements for children, which are currently covered by our Family Law system, are relationships and issues that have legal, social and financial obligations and consequences.

In few other areas of the legal system is this the case.

The Family Court system has recognised this diversity of relationships and consequences over the years since its creation in 1975.

The Court, for example, provides for social science expertise to be provided to the judge as decision maker in the form of Family Reports. It would be unusual in present-day practice for a case involving arrangements for the children not to have commissioned a report from a psychologist or social worker contributing to the judge their specific areas of expertise relevant to the decisions to be made in relation to a child.

Similarly, but not extensively, the input of, generally neutral, financial specialists is either ordered by the Judge or voluntarily obtained by the parties to provide that assistance and expertise to the Judge in their decision-making power.

The same cannot be said, in most circumstances, for the current dispute resolution range of options available to the public.

Family Dispute Resolution, that process which parties are required to undertake prior to commencing proceedings in relation to children's issues, is undertaken by those accredited as Family Dispute Resolution Practitioners.

The qualifications to obtain standing as a Family Dispute Resolution Practitioner, however requires no professional prequalification. Any member of the public can undertake a Family Dispute Resolution Practitioner course, generally 8 days in length.

In most of the government-based Family Dispute Resolution services, such as those delivered by the Family Dispute Resolution Centres, by Relationships Australia, by CentreCare and similar organisations, legal representation at the Family Dispute Resolution mediation sessions is not encouraged. In some cases it is prohibited.

This leaves parties attending mediation without the opportunity to obtain legal advice throughout the negotiation process to inform the options they generate and decisions they make. In addition, it is not necessary for FDRC practitioners to have obtained formal accreditation as mediators.

This practice ignores the fact that parties to a dispute about the children have legal rights and obligations and their decisions have legal, as well as social, consequences.

In relation to Financial disputes, mediation, or some form of it, is a requirement as parties travel through Family Court system, if they have not already attended mediation prior to instituting proceedings.

Almost universally, mediation is attended as a half day, or one day event and takes place after each side has collated their own information, exchanged disclosure documents through a formal and adversarial process and obtained valuations, usually by a neutral joint expert and delivered in the form of a written report with limited opportunity for clarification to be obtained in a meaningful, expeditious or joint way.

Interdisciplinary Collaborative Practice (ICP) is designed around at least two fundamental principles-

1. Parties who find themselves in a Family Law dispute are involved in a dispute that has legal, social and financial implications, obligations and consequences and all three need to be addressed in generating options for solutions and coming to a resolution. Parties are best served in the resolution process by having access to expertise from each of the legal, social and financial professions (as might be appropriate to their particular matter) in both the information gathering stage and the resolution phase;
2. The interests, goals and concerns of the parties themselves in the resolution of their Family Law matter extend beyond the rigid legal framework of the Family Law Act. Parties therefore benefit from a dispute resolution process that is founded in Interest Based Negotiation. Such founding in Interest Based Negotiation does not ignore the parties' legal rights and obligations but adds to the consideration of those legal rights and obligations, the social and financial impacts, goals and interests of the parties attempting to restructure the entirety of their lives following relationship breakdown, not just the legal aspect of the relationship.
3. In this submission, the term 'collaborative practice' refers not just to the principle of working collaboratively, but specifically to Interdisciplinary Collaborative Practice (ICP).

Interdisciplinary Collaborative Practice addresses these fundamentals in its process in the following way: _

1. Parties are assisted by a team of professionals from each of the legal, social science and financial disciplines, chosen according to the needs of the parties and the ambit of their dispute including:-

A lawyer for each party who represents that party and retains their professional obligation to provide advice for that particular party;

Financial professional/s, who are engaged to assist the parties in the information gathering process in a neutral way, relieving the lawyers from the task of gathering financial information which does not truly sit within the lawyers' skill set. Such gathering is done by the financial professional in a neutral, non-adversarial way. Financial Neutrals are then involved in the option generating and testing phases of the resolution process – giving parties some future focussed examples of how the options being considered might impact their lives;

the involvement of social scientists (mental health neutrals) in various aspects, usually involved as the chair of joint meetings and facilitating assistance with managing the dynamics between the parties, and, as necessary, with the team, including facilitating the briefing and debriefing of the team.

In addition, other mental health neutrals can act to provide the voice of the child(ren) to the team (including the parents), or to carry out a role similar to that of a Family Report Writer in the Court system, or to provide counselling or parental education to the parties either conjointly or individually,

The role of the mental health neutral in their meeting coordination role, also called the Communication Coach, is to assist parties to stay future focussed. and to chair meetings to support the lawyers and other professionals as they undertake their respective roles during the meeting process.

Because Interdisciplinary Collaborative Process provides the parties with the input of each of the three professionals throughout the entirety of the matter, including throughout the information gathering phase, and because much of it is done in a joint and neutral way, once parties arrive at the option generation and resolution phase of a Collaborative negotiation they each have a deep understanding of the legal, social and financial issues, obligations, rights involved and are better able to generate options that meet the goals and interests of each of them and their family, in each of those areas.

The clients are assisted to genuinely find their own solutions which reflect all three areas presented in any family law dispute and in owning the solutions have much better prospects of that solution being a durable one and one not subject to further litigation.

What is Collaborative Practice

An overview of collaborative practice can most simply be provided by quoting Pauline Tesler in her seminal text on the subject, "Collaborative Law" (2001 American Bar Association).

"Described simply, the collaborative law process consists of two parties and their respective lawyers who sign a binding stipulation defining the scope and the sole purpose of the lawyers representation: to help the parties engage in creative problem-solving aimed at reaching a negotiated agreement that meets the legitimate needs of both parties.

In the collaborative law process, the parties agree that no one will threaten or engage in litigation to coerce compromises. The parties retain a right of access to the courts, but if either party does resort to the courts for dispute resolution, both lawyers are automatically disqualified from further representation of either of the parties against the other. All experts are retained jointly within the collaborative law model and are similarly disqualified if the process breaks down. During the process, although the lawyers remain advocates for their respective clients within all bounds of professional responsibility, they share a formal and binding commitment to keep the process honest, respectful, and productive on both sides.....

.....The hallmarks of the process are:

- *Full, voluntary, early discovery disclosures.*
- *Acceptance by the parties of the highest fiduciary duties toward one another, whether imposed by state law or not.*
- *Voluntary acceptance, a priori, of settlement as the goal and respectful, fully participatory process as the means.*
- *Transparency of process.*
- *Joint retention of neutral experts.*
- *Commitment to meeting the legitimate goals of both parties if at all possible.*
- *Avoidance of even the threat of litigation.*
- *Disqualification of all lawyers and experts from participation in any legal proceedings between the parties outside the collaborative law process.*
- *Four-way settlement meetings as the principal means by which negotiations and communications take place.*

More than mediation, collaborative law utilises skilled and trained dispute-resolution professionals who are committed to helping parties reach personally-tailored solutions to divorce-related disputes. Like mediation, interdisciplinary collaborative practice offers:

- *more control*
- *more privacy*
- *customised results*
- *the likelihood of greater compliers*
- *a more civilised process than can be found in the divorce courts.*

Unlike mediators, however, collaborative lawyers function as active legal/psychological/financial advisers and negotiators alongside the clients at the centre of the dispute-resolution process, rather than on the sidelines, as is generally the case in family law mediations."

It is common (although not necessarily the case) that mediation protocols, as practiced, do not involve engaging parties in the same room at the same time, which limits the capacity of parties to collaborate on the basis of shared interests and values.

Since Pauline Tesler wrote her seminal text on a Collaborative Law in 2001, the process has matured and grown into one that incorporates social scientists and financial professionals into the process described by Ms Tesler above as "Collaborative Law" and has now become known as "Interdisciplinary Collaborative Practice".

All of Ms Tesler's observations about the nature of the Collaborative Law still apply to the matured and expanded, Interdisciplinary Collaborative Practice.

The Structure of ICP

Although the methodologies and protocols vary to some degree, the sequence of ICP activities is as follows:

1. Intake interviews with each of the parties by the mental health neutral, with their client by their solicitor, and with each by the financial neutral;
2. Team briefing, discussing the issues and dynamics involved in the dispute, and considering tactics (down to the level of who sits where) of conjoint meetings;
3. The first conjoint meeting both parties with the four professionals) includes the signing of the Participation Agreement, the establishment of the values and interests of each of the parties, and beginning discussion of those concerns, leading to homework

- where required (e.g., valuations, discussions with children, documentation);
4. Team debrief;
 5. Second and subsequent meetings will typically involve the generation of options, and consideration of the parties of those options, leading to resolution and future-based decisions.

AACP

The Australian Association of Collaborative Professionals (AACP) is a not-for-profit public company limited by guarantee which is registered by ASIC as a charity.

The principal purpose for which the organisation was established in 2015 and then incorporated and registered as a charity was, and remains, to promote the use and development of Interdisciplinary Collaborative Practice as an alternative dispute resolution process to resolve legal disputes respectfully, constructively and without recourse to litigation by the following:

1. To educate the Australian community, legal, mental health, financial and other professionals and institutions about the benefit of using Collaborative Practice to resolve family law, civil and other disputes; and
2. To advocate to Governments (Central and State), Courts and other institutions and stakeholders for the integration of Interdisciplinary Collaborative Practice into legislation, noting that this would potentially enable Australia to become the first country in the world with national ICP legislation
3. To support the development of training, accreditation, and utilisation of the ICP methodology as mainstream interest-based dispute resolution in order to substantially reduce the community's reliance upon litigation
4. To ensure that dispute resolution is respectful of the parties and their values, and to reduce the likelihood of post-litigation disputes;
5. To substantially consider and prioritise the best interests of the child by respecting the knowledge, commitment, and experience of parents as those who understand the needs of their children;
6. To advance the ICP community by supporting a network of training and other professional activities on a local, national, and international framework;
7. To maintain strong relationships with local practice groups, state organisations, and international bodies to advance research and development of the ICP methodology;
8. Over time, to progress alliances with educational and other bodies to further progress

- the development of ICP practice and training;
9. To support the interdisciplinary framework by supporting the relationships amongst the three principal disciplines involved in ICP;
 10. To enable communication using digital methods to support a national communications hub for the professional community.

AACP Board

The Board of AACP is constituted as follows:-

1. Chairperson Dr. David List (Psychologist, Victoria)
2. Vice-Chair Cassandra Pullos, Accredited Specialist Family Law (Lawyer, Queensland)
3. Treasurer Sue Abrams, Accredited Specialist Family Law (Lawyer, New South Wales)
4. Secretary Penny Keeley, Accredited Specialist Family Law (Lawyer, Western Australia)
5. Board Members:-
 - Freda Wigan, Accredited Specialist Family Law (Lawyer, Queensland)
 - David Roberts (Psychologist, New South Wales)
 - Caroline Counsel, Accredited Specialist Family Law (Lawyer, Victoria)
 - Kay Feeney, Accredited Specialist Family Law (Lawyer, Queensland)
 - Julie Gray (Financial Planner, Victoria).
6. Patron: The Honourable Diana Bryant AO QC

A Brief History of Collaborative Practice

A history of Collaborative Practice (up to 2007) is canvassed in the [2007 Family Law Council Report to the Attorney General](#). It sets out in greater detail the development of Collaborative practice up to 2007 – we have provided a very brief summary of its development internationally and in Australia here; whilst shorter on detail it also attempts to bring the history up to date in 2018.

The dispute resolution process known as "Collaborative Practice" was first developed in the United States in 1990 by Minneapolis lawyer Stu Webb.

18 years later, Collaborative Practice is an accepted method of dispute resolution throughout Canada and North America (with, in the USA alone, 8,000 to 10,000 lawyers having been trained, along with thousands more family and financial consultants¹).

The IACP, International Academy of Collaborative Professionals, is based in the USA and is the peak international body for collaborative professionals, lawyers, social scientists and financial professionals. The IACP has approximately **5,000 members** from all states of the USA and 24 countries. **Attached** at Annexure "A" is a list of those States.

Interdisciplinary Collaborative Practice is now practised in Europe in **England, Wales, Northern Ireland, Scotland, Eire, Netherlands, Germany, France, Austria, Czech Republic and Switzerland**. It practised otherwise in **Israel, Kenya and Uganda**. In Scotland the peak body is Consensus and in England the peak body is Resolution. It is reported that **1,250 UK family lawyers** have trained in ICP since 2003.

In the South East Asian area, Interdisciplinary Collaborative Practice is practised in **Hong Kong, Singapore, New Zealand and Australia**.

In the USA the practice of Interdisciplinary Collaborative Practice has received **legislative recognition** in the form of the **Uniform Collaborative Law Act** which has been adopted in at least 16 states of the USA.

It has also received judicial support from the UK in the form of agreements reached through collaborative practice being "fast tracked" for acceptance by the Courts leading to Orders being made more quickly.

Collaborative Practice in Australia

Collaborative Practice was introduced to Australia in 2003 when His Honour Justice Robert Benjamin, the then President of the Law Society of New South Wales, returned to Australia from attending the ABA conference, keen to introduce the legal profession to Collaborative Practice.²

In 2005, Stu Webb, the founder of Collaborative Practice, conducted a collaborative training in Canberra and in New South Wales at UTS.

In 2006, three Queensland lawyers travelled to Seattle, Washington to train with co-founder of IACP, Pauline Tesler and then founded what was then called Queensland Collaborative Law (now QACP, Queensland Association of Collaborative Practitioners).

International trainers, including IACP's co-founder Pauline Tesler, were first brought to Australia in 2007 to provide training to a core group of lawyers, social scientists and financial professionals.

¹ <http://www.bnplaw.com.au/pdf/Collaborative-CLE-Paper-07-03-12.pdf>

² www.lopichlawyers.com.au

Australian professionals then formed training and practice groups. There are now at least 5 groups of trainers around the country, including one full interdisciplinary training team based in QLD, providing training to lawyers, social scientists and financial professionals. One of those trainers, Dr Anne Purcell, has been selected to sit on the IACP Training faculty and a number of the Australian trainers, including Dr Purcell have delivered training internationally.

State based organisations and practice groups grew throughout Australia with now between approximately 500 and 600 lawyers, social scientists and financial professionals having been trained in Collaborative Practice and being members of either or both State based organisations and practice groups.

A summary of those organisations and practice groups, providing either numbers taken from the websites of the organisations or from data collected directly, is set out in the table below:

Name of body	Structure	Website	Number of members	Trainers
ACT				
Collaborative Practice Canberra	Practice group		32 members	
New South Wales				
Collaborative Professionals NSW Inc	NSW State Body Incorporated association	www.collaborativeprofessionals.nsw.org.au	108 members 87 lawyers 13 social scientists 8 financial advisors	Training team: Jackie Jones (lawyer) Nigel Nichols (lawyer)
ICP Practice Group	Practice Group	David Roberts david@ransw.org.au	23 members Researcher (1); Project Officer (1); Clinical Supervisor (1); Lawyers (9) Financial Specialists (3) Social Scientists (8)	David Roberts (Practice Leader at relationships Australia) interdisciplinary-collaborative-practice-course-and-masterclass 30.6.18 and 11.8.18
Greater Sydney Collaborative Family	Practice group	www.divorcewithoutcourts	27 members	

Name of body	Structure	Website	Number of members	Trainers
Lawyers		.com.au	9 lawyers 8 mental health professionals 10 financial professionals	
Central Sydney Collaborative Forum	Practice group	www.sydneycollablaw.com.au	46 members 35 lawyers 6 financial professionals 5 mental health professionals	
Northern Sydney Collaborative Family Lawyers	Practice group	www.nsydcollab.com	11 members 6 lawyers; 3 social scientists 2 financial professionals	
Southern Highlands Collaborative Lawyers	Practice group		8 members 7 lawyers 1 psychologist	
Collaborative Family Lawyers Illawarra Shoalhaven	Practice group		16 members (lawyers) Note whilst mention is made of other specialist advisors – no individual professionals are listed on the website.	
Macarthur Collaborative Law Group	Practice group		4 members (lawyers)	
Bathurst Collaborative Family Lawyers	Practice group		2 members (lawyers)	
Sydney Collaborative Lawyers	Practice group		1 member (lawyer)	
Central North Shore Collaborative Practice Group	Practice group		3 members (lawyers)	

Name of body	Structure	Website	Number of members	Trainers
Queensland				
Queensland Association of Collaborative Practice (QACP)	QLD State Body Incorporated association	www.qacp.org.au	110 members 80 lawyers; 8 social scientists 23 financial professionals)	QACP current and past events and training 2 training teams:
Brisbane Practice Group (including North Brisbane)	Practice group		20 members 15 lawyers; 2 social scientists 3 financial professionals	1. Anne Purcell (social scientist) John Thynne (financial professional)
Cairns Practice Group	Practice group		20 members	Cassandra Pullos (lawyer);
Gold Coast Practice Group	Practice group		32 members 19 lawyers; 6 financials, 6 social scientists 1 law student)	2. Clarissa Rayward (lawyer) Anne Marie Rice (lawyer)
Townsville Practice Group	Practice group		15 members 10 lawyers; 4 social scientists 1 valuer	intro & advanced-collaborative training 2018
Toowoomba Practice Group	Practice group		20 members (10 lawyers 2 financial professionals 8 social scientists)	

South Australia

Resolution SA	Practice group		6 members 5 lawyers 1 financial professional	Trainers: Adelaide Collaborative Centre comprising of: 1. Bev Clarke (lawyer) 2. Garth Craig (financial advisor) 3. Rachel Jolly (family relationships consultant) 4. Christopher Swan (lawyer) Collaborative training SA - introductory
Adelaide Collaborative Practice Group	Practice group		10 members 8 lawyers; 2 social scientists	
Relationships Australia South Australia	Practice Group	The website rasa.org.au lists members who form part of their practice group.	24 members 20 lawyers 4 financial neutrals	

Tasmania

Collaborative Alliance Tasmania (CAT)	Practice group	www.collaborativealliance.tas.com	5 members 3 lawyers 1 social scientist 1 financial professional	
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Victoria				
Victorian Association of Collaborative Professionals (VACP)	VIC State Organisation Incorporated association	www.viccollab.com.au	Mailing list comprises of 100 subscribers	Monash University MELCA
Western Australia				
Collaborative Professionals WA (incorporated)	Peak body & Practice group	www.collaborativeprofessionalswa.com.au	30 members 19 lawyers; 6 financial professionals 5 social scientists	N/A

Research Papers, Surveys and Australian Family Law Council Report to the Attorney General

In 2009 IACP undertook a major research paper into Collaborative Practice generally, issues of cost, most common reason for termination of the process, client experience and other issues (see [IACP Research 2009 Forum Article](#) that was presented at the 2009 IACP Forum).

In 2010 IACP released a client experience survey [IACP Client Experience Survey](#) and Professional and Practice survey [IACP Professional Practice Survey](#)

In 2010 IACP also released its major practice survey of Collaborative Practice undertaken with the assistance of Crescent Inc [IACP Practice Survey - Crescent Inc.](#)

In the 2010 study 933 cases were studied over 4 years and statistics gathered to review the collaborative experience both for practitioners and parties. Some findings included:

- a) 86% of the cases settled, although a high percentage were rated by the practitioners as difficult or very difficult cases; and
- b) 93% of the cases were completed in 18 months and most were finished within 9 months.

Family Law Council Report to the Attorney General of Australia on Collaborative Practice – December 2006

In December 2006 the Family Law Council released a report to the Attorney General in relation to Collaborative Practice in Family Law, a report of consisting of some 104 pages under the following headings:-

- 1. Introduction**
- 2. What is collaborative law?**
- 3. Growth of Collaborative Practice**
- 4. Collaborative law in Australia**
- 5. Collaborative Practice and the new family law system**
- 6. Collaborative law and legislative change**
- 7. Collaborative law and court processes**
- 8. Collaborative law and the legal aid system**
- 9. Limitations of Collaborative Practice**

AACP commends to this Commission of Enquiry that 2007 report of the Family Law Council to the Attorney General.

The report can be found at [2007 Family Law Council Report to the Attorney General](#).

The report made 8 recommendations, the first two of which have been completed and the remaining 6 remain to be done.

It is the respectful submission of AACP that these remaining 6 recommendations should be adopted by this Commission of Enquiry.

The recommendations are contained in the executive summary commencing at page 4 of the report.

The recommendations still outstanding to be actioned can be summarised as follows:-

Recommendation 3

The regulations referred to in section 60I(8)(aa) of the Family Law Act 1975 should include a provision that when deciding whether to grant a certificate for the purposes of this section a family dispute resolution practitioner may have regard to a person's participation in a collaborative process.

Recommendation 4

The Law Council of Australia should consider developing and disseminating information about Collaborative Practice and lists of collaborative practitioners to Family Relationship Centres and community based service providers of family dispute resolution.

Recommendation 5

The Family Law Act 1975 should be amended to provide confidentiality of communications in the collaborative process similar to the protection is provided to communications made in family dispute resolution by sections 10H and 10J of the Act

Recommendation 6

The Family Law Act 1975 should be amended to provide for courts exercising family law jurisdiction to have jurisdiction in relation to enforcement of collaborative contracts concerning family law disputes.

Recommendation 7

Courts exercising jurisdiction under the Family Law Act 1975 should match those cases where proceedings have been commenced and the parties wish to undertake a collaborative process, so that priority in the allocation of a hearing date is not lost if a complete resolution of the dispute is not achieved.

Recommendation 8

National Legal Aid should monitor developments in Collaborative Practice.

Literary review

A Literary Review has not been separately undertaken for the purposes of this submission. The Commission is referred to the extensive Bibliography that appears at pages 61 – 66 of the [2007 Family Law Council Report to the Attorney General extracted and attached to this submission, which provides a comprehensive review of the literature available in relation to Collaborative Practice up to the date of the release of the report in December 2006.](#)

If required AACP can undertake a full Literary Review from 2007 to the current date.

The Commission is referred to the studies referenced above.

ALRC SUBMISSIONS PAPER - QUESTIONS

Submissions made by AACP to the Questions put by the Commission as relevant to Interdisciplinary Collaborative Practice.

Objectives and principles

The role and objectives of the modern family law system

Question 1 What should be the role and objectives of the modern family law system?

The modern family law system needs to recognise, and incorporate into its role and objectives, the goals and interests of its end users, the clients, including, not only the resolution of their legal dispute and consideration of their legal rights and obligations, but also the restructuring of their family and personal lives which carries with it social and financial rights, obligations and consequences that also require consideration and resolution if durable outcomes are to be provided to clients navigating the modern family law system.

Principles guiding redevelopment of the family law system

Question 2 What principles should guide any redevelopment of the family law system?

- That the primary role of the Family Court is to provide judicial officers to make decisions for those litigants who cannot reach resolution themselves and to make those decisions in a timely manner after having had the opportunity to give full and proper consideration to all of the evidence - whether that determination is made on an interim or a final basis.
- That dispute resolution services, other than litigation, should be delivered separately to the court system and not by judicial officers referring parties, who have come to court for a decision to resolve the conflict, out of the courtroom for further negotiations when that negotiation has not, to the point of hearing, resulted in a resolution. If parties are at Court they need to be given a hearing.

- That parties' disputes are complex in their nature arising primarily out of the relationship that has broken down being one that consists of legal, social and financial rights, obligations, responsibilities and consequences and that deep, durable resolution needs to involve a consideration of all of those areas of clients' lives.
- That if the widest suite of dispute resolution processes are available to clients outside the court system, and have the support and understanding of judicial officers, that dispute resolution process should take place prior to parties approaching the court for judicial decision-making.

Access and engagement

Improving access to information about family law and family law related services

Question 3 In what ways could access to information about family law and family law related services, including family violence services, be improved?

- The Family Court websites could provide a list of dispute resolution processes, including Interdisciplinary Collaborative Practice, together with links to the various organisations offering those services;
- Judicial officers could be educated in the various forms of alternate dispute resolution processes available to parties, enabling them to identify, when parties appear before them, which process might be appropriate to those parties. Such referrals should be made only as an adjunct to a judicial decision, not in place of one.
- Brochures and other resources and materials should be available at each client point of contact with the Family Court, not only advising clients of dispute resolution processes, but also providing them with links to the resources available to deliver those processes to the clients.

Improving access to the family law system for rural, regional and remote individuals

Question 9 How can the accessibility of the family law system be improved for people living in rural, regional and remote areas of Australia?

Interdisciplinary Collaborative Practice can be delivered via Skype and other conferencing facilities enable that process to be delivered into rural, regional and remote areas of Australia.

Collaborative practitioners throughout Australia have already delivered Interdisciplinary Collaborative Practice services to clients both in the rural and regional areas of Australia and internationally, some in cases where the professionals and the clients will never meet in person.

The anecdotal evidence from those having undertaken those cases is a good level of resolution and high satisfaction rate amongst the clients who have taken advantage of that service.

Changes to the family law system to reduce client costs in resolving family dispute

Question 10 What changes could be made to the family law system, including to the provision of legal services and private reports, to reduce the cost to clients of resolving family disputes?

- Interdisciplinary Collaborative Practice includes the engagement of private reports, both financial and child related, undertaken by professionals engaged on a neutral basis. Whilst the cost to clients of those reports in terms of the dollar cost payable for the preparation of those reports does not differ from those reports obtained within the Court system, the **value** of those reports to the clients is greatly enhanced through the Interdisciplinary Collaborative Process.
- Through the Interdisciplinary Collaborative Process, the authors of reports attend a joint meeting of the clients, their lawyers and any other relevant professionals, to deliver the report in person, as well as in writing. The author of the report is available, in person, to explain the concepts, assumptions, factual backgrounds and conclusions and to take and answer questions from both clients and professionals alike in a joint setting enabling all parties and their advisors to truly gain a deeper understanding of the report and its recommendations.

The report then delivers both an educative and an evidentiary and conclusion based purpose.

The deep mistrust of reports delivered in the adversarial system can be addressed, minimised and, in most cases, removed altogether, to be replaced with deep understanding and acceptance of the conclusions.

- The requirement of the Collaborative contract excluding experts from giving evidence in later litigation can be waived with the consent of the parties. Whilst full agreement might not always be able to be reached through the Collaborative process, agreement on the valuations or recommendations contained in reports commissioned during the process may well be agreed upon and in those circumstances be available in any subsequent litigation undertaken to have the narrowed issues determined.

Resolution and adjudication processes

Changes to court processes to facilitate timely and cost-effective dispute resolution

Question 20 What changes to court processes could be made to facilitate the timely and cost-effective resolution of family law disputes?

In the context of integrating collaborative practice into the Family Law System, in order to facilitate timely and cost-effective resolution of family law disputes that have gone through the collaborative process but not settled to the extent that they still require judicial determination, either in whole or in part, it is proposed:-

- 1 Parties who have completed a collaborative process be given priority in the allocation of trial dates;
- 2 Interdisciplinary Collaborative Practice to be incorporated into Family Law legislation as an equivalent method of FDR
- 3 Parties who have undertaken a collaborative process be excused from undertaking any further alternative dispute resolution prior to being allocated trial dates.
- 4 Parties who come to the court seeking urgent listing dates, either on an interim or final basis, after involvement in a collaborative practice negotiation, be allocated those urgent dates as a matter of priority.

Diverting litigation to other dispute resolution processes or services

Question 21 Should courts provide greater opportunities for parties involved in litigation to be diverted to other dispute resolution processes or services to facilitate earlier resolution of disputes?

- It is submitted that the court, and court officers, should have sufficient knowledge of ICP process to recommend that process to couples as appropriate, including both children's and property disputes.

- It is not recommended that parties be ordered to participate in ICP, which should always be a process entered into voluntarily.
- By providing the incentives proposed in the answer to question 20 to parties who have undergone a collaborative negotiation process, it is anticipated that parties will then choose to be diverted into that process to facilitate early resolution of their dispute.

Modifying current dispute resolution processes to provide low-cost options for resolving small property matters

Question 22 How can current dispute resolution processes be modified to provide effective low-cost options for resolving small property matters?

- The ICP process can be modified to suit each individual client's requirements, including to enable it to provide effective low-cost options for resolving property matters.
- Small pool property matters will probably, for example, be operated with the minimum number of professionals involved for the minimum amount of time.
- IACP has undertaken studies which can be obtained and provided to the commission if required, into specific low-cost models.
- The design of low-cost collaborative models for resolving small property matters is an issue that can be addressed further by AACCP in its role as the national peak body for collaborative practice.
- Options developed in the past include a very limited number of meetings, of limited duration, with information gathering outsourced.

Improved court support for parties experiencing family violence or abuse

Question 23 How can parties who have experienced family violence or abuse be better supported at court?

- This question is specifically directed at better support for parties at court where those parties have experienced family violence or abuse. It is a recognised by the collaborative community that the question of whether the collaborative process is suitable where there have been allegations or occasions of family violence or abuse, is one that is often asked and needs answering.

- Whilst the existence of family violence creates a layer of complexity in a collaborative case, it creates that layer of complexity in whatever dispute resolution process (including adjudication) is undertaken in those circumstances.
- The collaborative process is uniquely placed to provide appropriate professional support to victims and perpetrators and children of family violence or abuse through the services of the mental health professionals in the collaborative team.
- All members of a collaborative team are trained to identify issues of family violence or abuse and the related issues of power imbalance. Once those issues are identified, it is the role of the team to consider the appropriate professional intervention required to enable the collaborative negotiation to continue in a safe manner. The collaborative process is uniquely designed for each client's individual needs in general performance, and in those circumstances.

Legally-assisted family dispute resolution in family violence or abuse matters

Question 24 Should legally-assisted family dispute resolution processes play a greater role in the resolution of disputes involving family violence or abuse?

- With the changes submitted in these submissions to allow practitioners involved in a collaborative matter to issue a section 60I certificate, ICP can provide legally-assisted family dispute resolution in disputes involving family violence or abuse.
- The unique advantages of the collaborative process being used in such circumstances have been outlined in our response to question 23 above. Primarily, that advantage is that parties have the availability of support, not only from legal advisers but from appropriately qualified social scientists all the way through the collaborative negotiation, and not limited to only the one or two sessions of family dispute resolution mediation offered in the usual model of FDR.

Misuse of process as a form of abuse in the family law system

Question 25 How should the family law system address misuse of process as a form of abuse in family law matters?

- The issue of misuse of process in the collaborative context is often raised, particularly in the context of one party entering into the collaborative process in

bad faith for the purposes, perhaps, of either maintaining engagement with the other spouse with no real intent to reach agreement or to "run the other spouse out of money", a strategy often adopted in the adversarial process.

- The collaborative process offers the opportunity to screen out clients with those misuse of process intentions in the initial interview and selection process.
- Once in the collaborative process, collaborative professionals have the opportunity to work with the spouse likely use the process as a form of abuse by way of the skills of the team, including both the lawyers and social scientists. Many, but certainly not all, attempts at misuse of process can be diverted, using the skills of the collaborative practitioners, in taking both parties back to their interests and refocusing them on future-focused problem-solving and reality testing of outcomes.

Development or expansion of non-adjudicative dispute resolution processes to resolve disputes in a timely and cost-effective way

Question 26 In what ways could non-adjudicative dispute resolution processes, such as family dispute resolution and conciliation, be developed or expanded to better support families to resolve disputes in a timely and cost-effective way?

- It is submitted by AACP that the primary way in which non-adjudicative dispute resolution processes can be developed or expanded to better support families to resolve disputes in a timely and cost-effective way, is by the adoption of Interdisciplinary Collaborative Practice as a primary source of family dispute resolution.
- We refer the Commission to the research papers, surveys and Australian Family Law Council Report to the Attorney General, summarised at page 14 and following of this paper, in relation to the illustrated advantages of Interdisciplinary Collaborative Practice as a primary method of family dispute resolution. In that regard, we quote again below the summary of the 2010 study of 933 cases undertaken by the IACP over a four-year period, those findings included:
 - 1.1 86% of the cases settled, although a high percentage were rated by practitioners as difficult or very difficult cases; and
 - 1.2 93% of the cases were completed in 18 months and most were finished within 9 months;
 - 1.3 AACP also respectfully recommends to the Commission the conclusions of the Family Law Council's recommendations to the Attorney General in 2007, at page 59 of that report, summarised below as follows:-

- 10.1... Council believes collaborative practice to be a valuable addition to the range of dispute resolution options available, particularly in relation to property matters.
- 10.2 Collaborative practitioners have been practising in the United States and Canada for at least 15 years, and there seems to be an acceptance of the practice in the judiciaries of those countries. In Australia, there is a growing body of enthusiastic practitioners, together with anecdotal reports of high client satisfaction. More research should be done to evaluate collaborative law as a dispute resolution option. *[The Commission is referred to the 2010 IACP report referenced earlier herein in relation to that further research which has now been undertaken].*
- 10.3 In the legal aid context, aspects of the collaborative model are already in place in the Legal Aid conferencing program, although this program has been developed independently of collaborative law. At present, it does not appear to Council that a fully articulated collaborative model can be applied in the Australian Legal Aid context. Council has recommended that National Legal Aid monitor developments in collaborative practice.
- 10.4 The collaborative practice model can be adapted to the individual requirements of parties in dispute. Independent experts including financial, relationship and child experts can be brought into the process in accordance with parties' requirements and means. This aspect of collaborative practice will make it an attractive option in many cases where parties have the means to engage such experts. Where parties have been able to access such services, it is appropriate in Council's view that this be taken into consideration in the event that collaboration fails and parties wish to commence litigation.....
- 10.5 In cases where the collaborative process works well, it provides significant advantages to litigation. In common with other dispute resolution models such as mediation, it offers parties the opportunity to manage both the process and outcome of dispute resolution. It also offers parties the support of traditional legal advocacy, with the difference that legal advisers focus exclusively on a negotiated outcome.

10.6 Finally, Interdisciplinary Collaborative Practice fits well with the new direction in family law marked by the 2006 Family Law Reforms. In common with those reforms, it focuses on parties reaching their own solutions in an atmosphere which avoids the negative consequences of the adversarial court system.The legislative changes proposed in recommendations 3, 5, 6 and 7 are aimed at placing collaborative practice on an equal footing with other non-litigious dispute resolution processes.

Annexure A

Collaborative Statutes/Rules - Citations by Jurisdiction (as of January 1, 2018)

Alabama: limited to family and probate
Ala. Code 1975 §§ 6-6-26.1 to 6-6-26.21 (2014)

Arizona: limited to family
17B A.R.S. Rules Fam. Law Proc., Rule 67.1 (eff. 2016)

District of Columbia: limited to family law
D.C. Code §§ 16-4001 to -4022 (2011).

Florida: limited to family
Florida Statutes, SS 61.55-61.58 (2016)

Hawaii: no limit as to scope
Haw. Rev. Stat. §§ 658G-1 to 658G-22 (2012).

Illinois: limited to family law
Illinois Civil Statutes 750 ILCS 90/1 to 750 ILCS 90/70. (eff. 2018)

Maryland: no limit as to scope
Md. Code, Com. Law § 3-2001–3-2015 (2014).

Michigan: limited to family law
Mich. Comp. Laws § 691.1331-691.1354 (eff. 2014)

Montana: no limit as to scope
MT SB 272 (2015)

Nevada: limited to family law
Nev. Rev. Stat. §§ 38.400-38.575 (2013).

New Jersey: limited to family law
N. J. Rev. Stat. § 2A:23D-1-23D-18 (eff. 2014)

New Mexico: limited to family law
NMRA 1-128 - 128.13 (eff. 2016)

North Dakota: no limit as to scope
N.D.R.Ct. 8.10 (2016)

Ohio: limited to family law
Ohio Rev. Code Ann. §§ 3105.41-3105.54 (2013).

Texas: limited to family law
Tex. Fam. Code Ann. §§ 15.001-15.116 (2011).

Utah: no limit as to scope
Utah Code Ann. §§ 78b-19-101 to -116 (2010)

Washington: no limit as to scope
Wash. Rev. Code §§ 7.77.010-7.77.902 (2013).

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