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Collaborative Law and family law matters

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**Submission to the Australian Law Reform Commission (ALRC) – Review of the family law system**

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

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

Question 28: Should online dispute resolution processes play a greater role in helping people to resolve family law matters in Australia? If so, how can these processes be best supported, and what safeguards should be incorporated into their development?

Question 29: Is there scope for problem solving decision-making processes to be developed within the family law system to help manage risk to children in families with complex needs? How could this be done?

Question 30: Should family inclusive decision-making processes be incorporated to the family law system? How could this be done?

Dated: 10 May 2018

I am a student from the University of Technology, Sydney, and am currently studying collaborative law.

The main purpose of this submission is to articulate the nexus between collaborative law practice and the family court including, where there is the potential for this model or elements of collaborative law methodology to be leveraged, in order to practically resolve specific family law matters.

Collaborative law practice, “is an innovative client-centred form of law that has evolved from the concepts of mediation and unbundling legal services”<sup>1</sup>. It is a, “type of alternative dispute resolution in which the parties and their lawyers commit to work cooperatively to reach a settlement”<sup>2</sup>.

There are three key questions that are both directly relevant to, and where the solutions could incorporate, collaborative law practice that I have responded to in this submission. These questions include both *problem solving*, in supporting the needs of children (**Question 29**) and *inclusive* (**Question 30**), *decision making* processes. Collaborative law, “has its roots in mediation in promoting joint problem solving without adversarial representation...”<sup>3</sup>. Mosten notes that, “‘party decision making’, adopted from mediation”, is a key element of collaborative law practice<sup>4</sup>.

The third question response in this submission relates to *low cost options* for small property matters (**Question 22**). In recognising costs in general, special attention has been given to the practicality of alternative dispute resolution processes for self-represented litigants.

This submission addresses *misuse of process* (**Question 25**), particularly as this could serve as a potential argument against the use of collaborative law or for that matter, any alternative dispute resolution process. It also seeks to connect the issue of finding *low cost options* (Question 22), as referred to above, with *online dispute resolution* solutions (**Question 28**).

These solutions aim to ultimately improve collaboration not only between the parties but also between litigant, legal practitioner (where relevant) and the family court. A key

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<sup>1</sup> Forest S. Mosten, ‘Collaborative Law Practice: an Unbundled Approach to Informed Client Decision Making’ (2008) *Journal of Dispute Resolution* Vol 163.

<sup>2</sup> *Ibid* 168

<sup>3</sup> *Ibid* 164

<sup>4</sup> *Ibid*

theme throughout this submission is accessibility of family law information and legal support services. It is assumed that easy to access, simple to understand, publicly available information can only lead to wider access to legal support.

It is important to note that collaborative legal processes are currently used for quite specific legal matters<sup>5</sup>, including instances where domestic violence is not present<sup>6</sup>. Notably, there can never be a 'one size fits all' process for all family law matters and the role and cost of specialist advisory services, commonly leveraged in collaborative law practices,<sup>7</sup> have not been taken for granted in this submission. For collaborative law practices to be adopted more broadly, there would need to be flexible thinking around what elements of the methodology are appropriate, for what matters and at what point during the process.

**Question 29: Is there scope for problem solving decision-making processes to be developed within the family law system to help manage risk to children in families with complex needs? How could this be done?**

**Impact on children and the role of alternative family dispute resolution processes including collaborative law.**

The impact on children in family law matters is evident in the case of self-represented litigants where, "the stress, frustration and anger experienced by parties conducting their own case (has been) evident"<sup>8</sup>. Further, "the resulting impact on ... children is another hidden personal cost that is difficult to quantify"<sup>9</sup>.

Any attempts at collaborative practice in situations where the needs are complex are obviously going to need to be reviewed on a case by case basis and should not be attempted where there are concerns for safety. As noted by Judge Harman, "if you are protecting yourself from horrific violence, you are probably going to be starting in a court process because you need that level of protection and intervention"<sup>10</sup>.

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<sup>5</sup> Pauline H. Tesler, *Collaborative Law. Achieving Effective Resolution in Divorce without litigation* (American Bar Association 2016) 3<sup>rd</sup> Edition xlii.

<sup>6</sup> Ibid

<sup>7</sup> Marylyn Scott, 'Collaborative Law: A new role for lawyers' (2004) *Australian Dispute Resolution Journal* 207 216.

<sup>8</sup> Catherine Caroon, 'Meeting the needs of self-represented litigants in family law matters' (Winter, 2002) *Family Matters, Australian Institute of Family Studies* 38.

<sup>9</sup> Ibid

<sup>10</sup> Elloise Farrow-Smith, 'Family Court Judge cautions against 'quick-fix' to family violence' ABC News (online), 1 November 2016

<http://www.abc.net.au/news/2016-11-01/family-court-judge-cautions-against-quick-fix-to-family-violence/7983180>

However, the role of collaborative legal processes could, in certain circumstances, be considered, even where violence has occurred, where both parties have agreed to participate and behave constructively, provided the victim is safe, well supported and the intention is to work to remove the child/ren from a continuing cycle of stress and animosity. In other words, the best interests of the child is paramount<sup>11</sup>. Where the situation is simply too dangerous for the victim, something like the Magellan program<sup>12</sup> could be put into place where a dedicated team exists and the process is expedited. There is currently compulsory required mandatory mediation in children matters under the *Family Law Act 1975*<sup>13</sup> however notably, not in cases where there is a risk of domestic violence.

This submission asks the family court to consider how a family can recover from the family court and surrounding processes and function in a normal and healthy way that could be positive for the children involved afterwards. In other words, for the family court to consider, “the presence and influences of a full cycle of emotions within families”<sup>14</sup>.

### **Children with additional needs**

In order for there to be *scope* for problem solving decision-making, there needs to be a mechanism for identifying children with additional needs such as social, emotional, or any other special needs, such as where Autism or a learning specific disability, or where symptoms of such a condition, have been ‘flagged’ through the process by a GP, paediatrician, child psychologist or occupational therapist.

A collaborative model could be driven by a neutral, qualified and trained, court appointed representative acting as ‘coach’<sup>15</sup>. This would require communication between parents, legal representative (where relevant), a neutral representative from the court, a qualified child specialist, such as identified above, and with permission from parents, contact with the child’s day care centre or school. As observed by Scott, “collaborative law is based on an interdisciplinary, team-oriented process, that assists in the settlement...”<sup>16</sup>.

The purpose of the school involvement is not to undermine the parents, but rather to support them and to make sure that the child has been identified and is properly

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<sup>11</sup> *Family Law Act 1975* s60CA

<sup>12</sup> Family Court of Australia, *Magellan program*

<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/family-law-matters/family-violence/child-abuse-allegations/>

<sup>13</sup> *Family Law Act 1975* Part 5

<sup>14</sup> Deborah, Cantrell, ‘The role of Equipose in Family Law’ (2012) *Journal of Family Law Studies* Vol 14.

<sup>15</sup> Marylyn Scott, ‘Collaborative Law: A new role for lawyers’ (2004) *Australian Dispute Resolution Journal* 207 216.

<sup>16</sup> Marylyn Scott, ‘Collaborative Law: A new role for lawyers’ (2004) *Australian Dispute Resolution Journal* 207 209.

supported including that the school apply for funding for that child, particularly in cases where the parents are unable to fund appropriate and necessary intervention themselves. In addition, the parent should be supported in an application to the National Disability Insurance Scheme (NDIS) in order to seek funding for the child for intervention where the child meets the requirements for access<sup>17</sup>. Where parents only qualify for minimal funding support within the context of school or where NDIS funding is inadequate to support appropriate and necessary intervention, the group, collaboratively as facilitated by the 'coach', should attempt to find a solution on how the parents will fund the gap.

This submission recommends that there also be a process to connect the outcome, such as the agreement made between the parties and child support<sup>18</sup>, including that the information is recorded and included in the child support statement. A 'flag' between child support and NDIS would also be beneficial however it is noted that although system interconnectedness across government human services departments would be beneficial it is not critical.

### **Question 30: Should family inclusive decision-making processes be incorporated to the family law system? How could this be done?**

Collaborative law, by its very nature, involves inclusive decision-making processes<sup>19</sup> and is more inclusive<sup>20</sup> in terms of problem solving.

Tesler notes the human element of collaborative law and how it is, "a process with integrity that values and preserves the residual core of positive connection that divorcing spouses can often retain toward one another"<sup>21</sup>.

#### **Self- represented litigants**

It has been noted in 2000 that, "only 31 percent of judges interviewed in the Family Court study thought that the unrepresented litigants in the sample cases participated in proceedings with competence; almost a third of the litigants interviewed said they were

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<sup>17</sup> National Disability Insurance Scheme, *Accessing the NDIS*

<https://www.ndis.gov.au/people-disability/access-requirements.html>

<sup>18</sup> Australian Government Department of Human Services, *Child Support*

<https://www.humanservices.gov.au/individuals/child-support>

<sup>19</sup> Forest S. Mosten, 'Collaborative Law Practice: an Unbundled Approach to Informed Client Decision Making' (2008) *Journal of Dispute Resolution* Vol 163.

<sup>20</sup> Ibid

<sup>21</sup> Pauline H. Tesler, *Collaborative Law. Achieving Effective Resolution in Divorce without litigation* (American Bar Association 2016) xliii-xliv.

not confident at all in presenting their cases (Dewar)<sup>22</sup>. In other words, a self-represented litigant does not have the experience to deal competently with court proceedings.

It has been determined that self-represented litigants can achieve, “less favourable adjudicated outcomes, agreeing to a settlement that is not in their interests, or simply giving up”<sup>23</sup>. Conversely, collaborative processes often find more creative ways<sup>24</sup> to problem solve.

For represented litigants, as noted by Scott, “...the parties in collaborative law engage single experts such as financial advisors, valuers and taxation accountants to advise both parties rather than separate experts who may offer partisan opinions that encourage positional bargaining rather than problem solving negotiation”<sup>25</sup>.

This submission recommends that both parties would need to agree to use the alternative process in keeping with the spirit of collaborative law methodology with a ‘written commitment’<sup>26</sup>, referencing the need for “respectful, constructive, good-faith negotiations including full and early disclosure of relevant information...”<sup>27</sup>. This would need to include that either party does not use the process to prolong the traditional, adversarial court process.

Points in the court process where a collaborative law process could be adopted are prior to case conference, conciliation or mention. At any of these points, or even post these, could capture certain litigants, “...who have developed a cynicism for the legal profession such that they are prepared to cope as well as they can without legal advice...”<sup>28</sup>.

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

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<sup>22</sup> A report to the Family Court of Australia, Professor John Dewar, Barry W. Smith and Cate Banks, ‘Litigants in Person to the family court of Australia’ Report No 20 (2000) 55,53

<sup>23</sup> Catherine Caroon, ‘Meeting the needs of self-represented litigants in family law matters’ (Winter, 2002) *Family Matters, Australian Institute of Family Studies* 38.

<sup>24</sup> Pauline H. Tesler, *Collaborative Law: Achieving Effective Resolution in Divorce without litigation* (American Bar Association 2016) xlii

<sup>25</sup> Marylyn Scott, ‘Collaborative Law: A new role for lawyers’ (2004) *Australian Dispute Resolution Journal* 207 215-216

<sup>26</sup> Ibid

<sup>27</sup> Ibid

<sup>28</sup> 206

This submission recommends that there is access to the court for everyone in need, including those with ‘small property matters’.

### **Defining ‘small property matters’ and self-assisted solutions**

In order for current dispute resolution processes to be modified to provide effective low cost options for resolving small property matters, the court would need to define what a ‘small property matter’ is. One issue being that, for example, in capital cities such as, Sydney, that property prices are so high there is effectively no such thing as a ‘small property matter’, where the ‘balance sheet’<sup>29</sup> includes real estate property.

A critical element of resolving a property matter is the production of the ‘balance sheet’<sup>30</sup> which would involve understanding, ‘what an asset is’ and, ‘what a liability is’. ‘Help with forms’<sup>31</sup>, on the family court website, should include, ‘how to fill out the form’ as opposed to simply, ‘how to print the form’. Despite the fact there are ‘Do-it-yourself kits’<sup>32</sup> available via the family court website, these are not contextualised as part of a process, so a self-represented litigant would need to know of them and understand what they are for in order to search for them. There also needs to be easy to understand content as the current explanations are brief and the forms are often complex.

Self-represented litigants may require help with identification of assets, such as superannuation balances<sup>33</sup>, in addition to determining the value of real property. It is noted that currently there are links to forms such as the ‘superannuation information kit’<sup>34</sup>. Whilst parties are equipped to do their own research, clients could avoid or reduce ‘discovery’ costs<sup>35</sup>.

### **Collaborative law and small property matters**

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<sup>29</sup> Family Court of Australia, *Balance Sheet*  
[http://www.familycourt.gov.au/wps/wcm/connect/f07ade91-3cc5-4074-8c66-9d6221bf4761/Balance\\_sheet\\_010309V2.pdf?MOD=AJPERES&CONVERT\\_TO=url&CACHEID=ROOTWORKSPACE-f07ade91-3cc5-4074-8c66-9d6221bf4761-l.WSUqk](http://www.familycourt.gov.au/wps/wcm/connect/f07ade91-3cc5-4074-8c66-9d6221bf4761/Balance_sheet_010309V2.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE-f07ade91-3cc5-4074-8c66-9d6221bf4761-l.WSUqk)

<sup>30</sup> Ibid

<sup>31</sup> Family Court of Australia, *Help with forms*  
<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/forms-and-fees/court-forms/help-with-forms/>

<sup>32</sup> Family Court of Australia, *Do-it-yourself kits*  
<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/forms-and-fees/court-forms/diy-kits/>

<sup>33</sup> *Family Law Act 1975*, Reg 62 ss 90MZB2

<sup>34</sup> Family Court of Australia, *Superannuation information kit*  
<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/forms-and-fees/court-forms/diy-kits/kit-diy-superannuation-info>

<sup>35</sup> Australian Law Reform Commission, *Ensuring Professional Integrity: Ethical Obligations and Discovery*,  
<https://www.alrc.gov.au/publications/4.%20Ensuring%20Professional%20Integrity%3A%20Ethical%20Obligations%20and%20Discovery/legal-ethical-obl>

Collaborative law methodology could be used to resolve small property matters however this would require access to an independent, qualified and trained ‘coach’ and a ‘financial expert’<sup>36</sup>, who could be accessed via the family court to resolve the matter. This assumes that both parties have equal access to information and to the process which supports the requirement for simple to read, online content. Online solutions that support alternative dispute resolution processes are further explored in the response to Question 28 below.

As part of the collaborative process, both parties should be advised that the adversarial court process should only be used, “in case of emergency”<sup>37</sup>.

Both self-represented and litigants represented by a practitioner should have the option to postpone financial settlement for a period of time when agreeing to make an attempt at collaborative practice. In this case, an interim solution should be agreed upon. Acknowledgement of readiness and the stage of emotion<sup>38</sup> that the individual is at is an important element of alternative dispute resolution. This submission recommends that both parties would need to agree to use the alternative process in keeping with the spirit of collaborative law methodology and for the coach to be able to recognise and avoid the use of the process to prolong the traditional, adversarial court process.

As per the submission for Question 30, points in the court process where an alternative collaborative law process could be adopted are prior to case conference, conciliation or mention. Clients may be motivated to return to a collaborative law model if they have become cynical about the adversarial model<sup>39</sup>.

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

### **Identifying power struggles and collaborative law**

To avoid a misuse of process in the context of collaborative law practice or other forms of alternative dispute resolution, the existence of power struggles need to be identified early and for the sake of the children involved. Cloke suggests, “such power struggles may result from the quandary where (the client) out of anger and hurt, feels compelled

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<sup>36</sup> Marylyn Scott, ‘Collaborative Law: A new role for lawyers’ (2004) *Australian Dispute Resolution Journal* 207 215.

<sup>37</sup> Pauline H. Tesler, *Collaborative Law: Achieving Effective Resolution in Divorce without litigation* (American Bar Association 2016) xlii

<sup>38</sup> Tony Gee, Jane Picton, Walter Ibbs, and Diane Gibson, ‘Separation process’, L Fischer and M, Brandon *Mediating with families* (2009) Family Court Mediation section

<sup>39</sup> Marylyn Scott, ‘Collaborative Law: A new role for lawyers’ (2004) *Australian Dispute Resolution Journal* 207 206.



to engage in conduct that does not comport with his self-view of a moral and decent human being<sup>40</sup>. In other words, a party consumed by anger does not even see that they are hurt or angry and actually sees themselves as a victim seeking justice, rightfully owed to them. Cloke points out that, “the client reconciles the vengeful conduct with his self-view as a decent human being by portraying himself as an innocent victim who is somehow entitled to wreak vengeance on an evil wrongdoer”<sup>41</sup>. In other words, the perpetrator will just continue because they see it as their right and not a reflection of themselves. This means that the situation requires intervention and will not be fixed on its own, such as, the individual will not simply tire of the process but rather, may thrive on it.

### **Self-represented litigants and violence**

One of the key issues that the family court faces today and has from the late nineties<sup>42</sup> are the increasing number of self-represented litigants<sup>43</sup>, where it has been noted that, “allegations of spousal violence or child abuse present special difficulties and one party...may be further intimidated”<sup>44</sup>. The desire for one party to continue the violence against the other party, can lead to meaningless cross-examination where the real circumstances of the children are ‘extremely difficult’ to assess<sup>45</sup>.

The family court of Australia has a difficult and complex job overlaid with this delicate area of domestic violence and self-represented litigants. Judges are forced, “to tread a very fine line”<sup>46</sup>, between adducing evidence and protecting witnesses and at the same time trying to be objective<sup>47</sup>. This ‘significant’<sup>48</sup> and ‘growing user group’<sup>49</sup>, needs to be addressed in new and different ways.

### **Cross-examination by ex-partner**

This submission recommends that the *draft family law amendment bill (family violence and cross-examination of parties)*<sup>50</sup> be adopted to include protection against victims of

<sup>40</sup> Kenneth Cloke, ‘Revenge and the Magic of Forgiveness’ (1994) *Centre for Dispute Resolution CA Second Ed* 481

<sup>41</sup> Ibid

<sup>42</sup> Catherine Caroon, ‘Meeting the needs of self-represented litigants in family law matters’ (Winter, 2002) *Family Matters, Australian Institute of Family Studies* 38.

<sup>43</sup> The Hon Chief Justice Alastair Nicholson and Margaret Harrison, ‘Self-Represented Litigants, Family Law and The Family Court of Australia: Experiences of the First 25 Years’ (2000) *Melbourne Law Review* 30

<sup>44</sup> Ibid

<sup>45</sup> Ibid

<sup>46</sup> Ibid

<sup>47</sup> Ibid

<sup>48</sup> Ibid

<sup>49</sup> Ibid

<sup>50</sup> *Family Law Amendment Bill (Family Violence and Cross-examination of parties) Exposure Draft (July 2017) Div. 4 102NA ss1-3*

family violence by not allowing the parties to cross-examine in cases of domestic violence unless leave is given by the court<sup>51</sup>.

### **Report writers and collaborative law**

Focus group research has indicated that family court writers are most often not trained properly, where the majority of court writers tended to, “invalidate coercively controlling violence”<sup>52</sup>. These same focus groups found that there was not nearly enough understanding about the types and level of violence that had occurred<sup>53</sup>. This was noted to even be in situations where there was, “overwhelming evidence to the contrary”<sup>54</sup>, such that the abuse was “minimised”<sup>55</sup>, or worse, “dismissed or completely negated”<sup>56</sup>.

The family court needs to provide better trained report writers, such as specifically trained in domestic violence, in order to achieve fair and equitable access to justice within the family court system<sup>57</sup>. The “limited availability of ‘preferred’ family report writers”<sup>58</sup>, is even worse for victims of domestic violence who are also self-represented litigants<sup>59</sup>. For example, a self-represented litigant could be asked to choose one out of three options for a family reporter and have absolutely no idea or understanding about the difference in qualifications<sup>60</sup>. Focus group research indicates that, “knowledgeable family court writers were thought to be self-taught”<sup>61</sup>, and took the initiative to do their own research<sup>62</sup>. This submission recommends that report writers are collaboratively trained so that they can be pulled into collaborative discussions as part of the team.

**Question 28: Should online dispute resolution processes play a greater role in helping people to resolve family law matters in Australia? If so, how can these**

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<sup>51</sup> Ibid

<sup>52</sup> Jeffries, Samantha. Field, Rachael. Menih. Helena. Ratus, Zoe, ‘Good Evidence, Safe Outcomes in Parenting Matters Involving Domestic Violence: Understanding Family Report Writing Practice from the Perspective of Professionals Working in the Family Law System’ (2016) *University of New South Wales Journal* 39 1371

<sup>53</sup> Ibid

<sup>54</sup> Ibid

<sup>55</sup> Ibid

<sup>56</sup> Ibid

<sup>57</sup> Ibid

<sup>58</sup> Ibid

<sup>59</sup> Ibid

<sup>60</sup> Ibid

<sup>61</sup> Ibid

<sup>62</sup> Ibid

## **processes be best supported, and what safeguards should be incorporated into their development?**

### **Support collaborative approaches with content**

The family court website could contain a tab/link with the headers to the effect of, 'working collaboratively to reach financial settlement'. This could include links and information, such as the underlying principles of collaborative law and what is involved.

The website could also have a tab/link with the header to the effect of, "working collaboratively and the positive impact on children". This could include a link to information such as the after effects of a prolonged adversarial process.

### **Better access to self-service, alternatives and support when needed**

Notably, there is a 'Divorce Service Kit'<sup>63</sup>, where a party can file for their own divorce without the use of a lawyer. The kit is well supported and includes step by step instructions<sup>64</sup>. However, it is still a relatively cumbersome process. There are parts of the form, for example, where the user must provide information. It would be easy for a future litigant to be concerned about what they did and did not disclose on the form. Even in the case where there is no impact, simply because the user needs to know that (there is no impact). The document is also required to be 'served'<sup>65</sup>, which in itself could endanger a victim of domestic violence, such as, triggering further violence.

### **Safeguards - navigating the family court website**

The Family Court of Australia has a website<sup>66</sup>. Within this website there are four main headers, one labelled 'for public, resources for self-represented litigants'<sup>67</sup>. Further down under this tab, there is a header entitled, 'family law matters'<sup>68</sup>, and under that header, there is a link, listed sixth in order out of seven, labelled, 'family violence'<sup>69</sup>. If the user clicks on the 'for public', 'family violence' tab, there is also a link, however, it will take the user to a different page<sup>70</sup>, therefore there is not currently a consistent set of

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<sup>63</sup> Family Court of Australia, *Divorce Service Kit*

[http://www.familycourt.gov.au/wps/wcm/connect/6bca8754-d4e7-4147-8929-7432f59e3d75/Divorce\\_ServiceKit\\_0313\\_V3.pdf?MOD=AJPERES&CONVERT\\_TO=url&CACHEID=ROOTWORKSPACE-6bca8754-d4e7-4147-8929-7432f59e3d75-lPd8-Hd](http://www.familycourt.gov.au/wps/wcm/connect/6bca8754-d4e7-4147-8929-7432f59e3d75/Divorce_ServiceKit_0313_V3.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE-6bca8754-d4e7-4147-8929-7432f59e3d75-lPd8-Hd)

<sup>64</sup> Ibid

<sup>65</sup> Ibid

<sup>66</sup> Family Court of Australia, *home*

<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/home>

<sup>67</sup> Ibid

<sup>68</sup> Ibid

<sup>69</sup> Ibid

<sup>70</sup> Family Court of Australia, *Family violence, Family Law matters*

information. If the user clicks on 'family violence' (a separate link on the home page), there are then five headers (tabs) or links, including, 'separation and divorce', 'parenting' 'property and finance', 'going to court' and 'frequently asked questions'<sup>71</sup>.

A person is required to navigate around the website in order to gain information about various matters involving separation and divorce, parenting, property and so on, and about actually going to court.

Notably, there is the absence of a timeline, in terms of the family law court process, from start to finish. There could be, for example, a high level timeline explaining each stage of the family court process, such as; mediation (and a link to an explanation of that process); conciliation (and a link to alternatives and supports including available collaborative law practices); case conferences (again, to include options and supports); mentions (and an explanation of their meaning, potential next steps and possible consequences including where alternative dispute resolution is accessible); court orders, interim orders and consent orders (their meaning, potential consequences and where to obtain additional information and support); procedural and interim hearings, and the significance of each. Again, each stage should highlight where there is the option to defer to collaborative law practice.

### **Safeguards – links and direct access to support services**

Notably, under each 'domestic violence' link on the family law website<sup>72</sup>, there is no contact number that the user can dial for further information, an explanation for each complex area or even a general dedicated hotline for the key areas that a litigant would need to understand. Nor are there interconnections between the processes and legal aid or domestic violence hotlines or support centres. There is a 'glossary of legal terms',<sup>73</sup> which includes some of these definitions however, the user needs to search to find it.

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<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/family-law-matters/family-violence>

<sup>71</sup> Family Court of Australia, *family violence*

<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/home/audience/family-violence-concerned-for-your-safety>

<sup>72</sup> Family Court of Australia website, *home*

<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/home>

<sup>73</sup> Family Court of Australia, *glossary of legal terms*

<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/publications/getting-ready-for-court/legal-words-used-in-court>

This submission concludes that it is possible to include collaborative law processes as an option to resolve certain family law matters. Just as there are multiple avenues for representation - notwithstanding the issue of cost - there are multiple processes which can be adopted. Collaborative law practice should be seen as one of those in specific instances. However, elements of the methodology have the potential to be used more broadly and flexibly. Additionally, the methodology could be adopted in terms of the spirit of inclusive and problem solving decision making regardless of whether the litigant is self-represented or supported by a legal practitioner, providing they are well supported with easy to access, intuitive, practical online content.

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Family Court of Australia website, *home*

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