

Professor Helen Rhoades
Australian Law Reform Commissioner
Via email

Dear Professor Rhoades

On behalf of the members of our local Family Law Pathways Network, I present a response to the Issues Paper released by the ALRC regarding the current review of the Family Law Act 1975.

Our recommendation to the review is the introduction of a fully funded, community-based Collaborative Practice model which helps families separate, divorce, divide property and care for children. Litigation would be viewed as a tool of last resort. Families would be diverted away from entrenched conflict and into supportive, family-focussed services.

Toowoomba undertook a Collaborative Practice Pilot from 2013 to 2015; our hybrid model built on the internationally-recognised standard and made additions to reflect local need. Unfortunately, the pilot fell over in 2016 because there was no access to ongoing funding. Families with a low, zero or negative net worth could not afford even drastically discounted rates for professional services.

Collaborative Practice thrives in the private legal sector because high net worth, emotionally intelligent parents view this option as value for money. The cost of the model is a major barrier to its uptake, especially in low socio-economic areas.

Families with complex needs could benefit significantly by accessing this model. They would learn new problem solving skills and protect and nurture their children in the process. Our proposed model is the embodiment of a holistic approach to complex needs. It involves an initial family assessment to determine parental strengths and deficits. Parents proceed through the collaborative process only when they are ready, willing and able to do so. This reflects best practice in behaviour change programs, wherein individuals and families are supported by wrap-around services until such time as they are ready, willing and able to proceed.

A comprehensive family assessment identifies and responds to identified parental strengths and deficits, and provides a blueprint for working with complexities such as family violence, mental health issues, substance abuse and child safety concerns.

The model could easily be customised to incorporate the special needs of Aboriginal and Torres Strait Islander and CALD families. Given that Collaborative Practice hinges on a collective response to need (interests), the model could fit neatly within a cultural environment which prefers collective over individual action.

On the following page, we have included a description of the wrap-around services and community resources needed to support a community-based model of Collaborative Practice for families with complex needs. We will write up a Case Study and forward that material to you shortly.

Brooke Pugh
Chairperson
3 May 2018

Initiatives to support family law reform:

- i. Legislative change to replace a requirement for mandatory mediation with a requirement for parents in conflict to access a local service which provides collaborative practice on a menu of post-separation services.
- ii. A requirement for all separating parents to access and complete relationship education programs. These programs should include topics such as the effect of conflict and family violence on children, developing emotional intelligence, advanced and creative problem solving, identifying long-term needs of children and how to co-parent to protect the best interests of the child.
- iii. Significant increases in funding of mediation, child-focussed mediation and legally assisted mediation as an extended suite of services to support Collaborative Practice.
- iv. Significant increases in funding of wrap-around services to both parents and children, especially where family violence, mental illness, substance abuse and child protection concerns exist.
- v. Significant increases in funding to specialist indigenous and CALD services where parents generally avoid the family law system because of its complexity and overwhelming 'whiteness'. This includes mediation and family support services, among others. Such specialist services must be community designed and community controlled.
- vi. A community-based model of collaborative practice should be introduced immediately. This model could be viewed as a hybrid of pure collaborative practice.
- vii. This model would include an initial psychosocial family assessment which would identify parental strengths and deficits, and develop a case plan to boost strengths and shore up deficits. The case plan may involve several wrap-around services to both parents and children, and respond to urgent safety matters as well. The case plan would be reviewed regularly to assess the parents' capacity to progress to a collaborative practice stage. Parents would need to demonstrate that they were ready, willing and able to proceed.
- viii. Funding to a community model could flow in exactly the same way that a grant of Legal Aid does, or funding for an Independent Children's Lawyer does. It would simply take its place on the menu of socio/legal alternatives to litigation.
- ix. Alternatively, funding could flow to a Family Relationship Centre which would then act as a case manager and as a broker of specialist services.
- x. To support reform, workforce issues need to be addressed. All family law system professionals should be able to demonstrate core competencies in the following areas:
 - Trauma-informed practice;
 - Cultural competence;
 - Advanced understanding of the complexities of domestic and family violence; and
 - Professional wellbeing skills including dealing with client conflict and abuse, and managing vicarious trauma.