



# VICTORIAN ASSOCIATION OF COLLABORATIVE PROFESSIONALS

## Submission to the ALRC Enquiry into the Family Law System

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## **SUBMISSION TO AUSTRALIAN LAW REFORM COMMISSION REVIEW OF FAMILY LAW SYSTEM**

The Victorian Association of Collaborative Professionals is pleased to make this submission to the ALRC Review of the Family Law System.

VACP is the peak body for Family Law Collaborative Professionals in Victoria. It is an incorporated association under the *Associations Incorporation Reform Act 2012* (Vic), and is affiliated with the Law Institute of Victoria and the national body which is the Australian Association of Collaborative Professionals (AACP). The latter is a company limited by guarantee and a registered charity. Collaborative practice in Australia was birthed under the auspices of the International Academy of Collaborative Professional (IACP) based in the USA; excerpts from its website are in schedule 1.

The VACP represents approximately 100 practitioners in Victoria who are about 80% lawyers, 10% psychologists and 10% financial planners or accountants.

The Board of the VACP is made up of collaborative professionals all of whom have very substantial experience in the family law system. The Chair is Dr David List, psychologist, who is also the chair of AACP. Fellow psychologist, Ilana Katz, is on the Board. Both of them have over 35 years' experience working as expert witnesses in the family courts (and in allied roles) including in the Court counselling section.

The financial planners on the Board are Clare Rixon and Julie Gray both of whom have over 20 years' experience in the financial planning industry and in excess of 10 years involvement with collaborative practice. Julie is also on the AACP board.

The lawyers on the Board are Geoffrey Bonsall, Sarah Keenan, Jane Libbis, Maeve O'Brien, Marguerite Picard and Stephen Winspear. Marguerite has trained collaborative practitioners in Victoria, SA, WA, and the UK, and run IACP workshops in Canada, Germany and Washington. Stephen has been a past Chair of the Family Law Section of the Law Institute of Victoria and the Collaborative Practice Section of the Law Institute of Victoria. Collectively, the lawyers have well over 160 years' combined experience working in the family law system in all styles of ADR, and at all levels of the litigation pathways including contested trials and Full Court Appeals.

VACP has seen and supports the submission to the ALRC by AACP, while noting that our proposal for changes to the system go further than AACP's submission.

We are also aware that MELCA, an independent ICP firm, is also making a submission to the ALRC. MELCA is a respected member and valuable contributor to the collaborative community.

### **EXECUTIVE SUMMARY**

We say that Collaborative Practice is an effective and valuable method of alternative dispute resolution which should be recognised and encouraged for family law parties. It is holistic and endeavours to guide the clients through all issues, including psychological, financial and future planning, not just the immediate legal questions covered by the Family Law Act.

We recommend that collaborative practice usually be interdisciplinary and include a psychologist to recognise and support the emotional and psychological needs of clients, and to bring their expertise relating to parenting matters into the process. Further, financial

planners are included in the process. They simplify fact gathering (assets, liabilities, income and earning capacity for example) as a neutral on behalf of both parties, and they help plan for the future by preparing budgets for the clients and reality checking potential outcomes for the clients against their future needs. In this paper, we shall refer to this as Interdisciplinary Collaborative Practice or ICP.

We say in this paper that section 60I of the Family Law Act 1975 should be substantially altered to provide that in all family law matters (with very limited exceptions) the parties must enter into an ADR process (e.g. mediation or ICP) before litigating. If that process does not finalise the matter between the parties and one of them commences litigation, the Court should be mandated to consider whether the parties should be sent back to or for the first time should be sent to ADR. Further, if the Court believes ADR is not appropriate the Court should be mandated to send the parties to arbitration (with very limited exceptions).

The types of exceptions to ADR and/or arbitration will be matters of extreme violence of serious sexual abuse. Exclusions from mandatory ADR should be minimised.

Mediation in its various forms, ICP and arbitration should be defined in the Family Law Act. Private bodies should be auspiced to accredit practitioners as mediators, collaborators or arbitrators. The Act should be amended to provide that these processes are confidential in a similar way to family dispute resolution under sections 10H and 10J at present.

## **INTERDISCIPLINARY COLLABORATIVE PRACTICE: DEFINITION AND DESCRIPTION**

ICP is a form of face-to-face negotiation in family law. The parties do all negotiating in meetings involving themselves, their respective lawyers, and usually a psychologist and a financial advisor. For particular detail on the value added by the mental health professional, see under the heading *Responses To Questions From The ALRC Issues Paper* late in this paper. For more detail from financial planners on their role, see Schedule 7.

The negotiations are interest based and aim to resolve legal issues between the parties arising from separation and also where necessary discuss and aim to resolve non-legal issues which may arise between the parties.

The defining characteristics of the process are as follows:

1. The parties and professionals sign a contract which describes the collaborative process, and includes the expected aims and behaviours for the collaborative process.
2. The contract specifies that if either party decides to commence Court proceedings all professionals are prohibited from participating in those proceedings.
3. The parties voluntarily disclose all relevant information and documents.
4. Expert opinion and guidance from the psychologist and financial person are provided directly to the parties and the team during the process.
5. A joint problem solving approach is taken to diagnosing and resolving issues through the lenses of law, psychology and financial advice.
6. The parties agree to use good faith efforts in their negotiations and the negotiations are interest-based.
7. The contract specifies that the parties will seek to reach a mutually acceptable settlement.

8. All negotiations take place in joint meetings with the professionals and the clients. Substantive work does not take place outside the meeting and the client's "sight".
9. The parties must be represented by lawyers, who remain principally responsible to support their client through the process.
10. At the successful conclusion of the process the lawyers draw up and have the parties sign legally binding documents (consent orders, binding financial agreement, child support agreement etc.).
11. If the collaboration does not resolve all issues between the parties and a party chooses to litigate, the evidence obtained and the valuations obtained during the collaborative process are not admissible in Court pursuant to the terms of the collaboration contract. However, the collaborative lawyers may pass all such information and documents onto any successor lawyer for their information.

## **CASE STUDY**

The following case study is provided to demonstrate how a collaborative matter proceeds in practice. It is an anonymised recent real case.

### **Step one**

On 1 November 2017 Jill Bloggs attended family lawyer Simon Smith for advice after separating from her husband Jack some months before. Simon spent a large part of the first meeting discussing the process that the parties should follow to try and negotiate a settlement of the issues which included parenting matters for their three children and financial matters. (A traditional first client meeting focuses much more on gathering minute and detailed instructions and advising on possible outcomes between the parties under a legal model of settlement. It immediately inclines the client toward the positional and potentially adversarial, as opposed to the interest-based approach). Jack was the prime income earner and Jill was the prime carer of the children, with her own small business which was not returning a profit.

Simon gave Jill a two page letter describing ICP and providing three names with contact details of recommended collaborative lawyers whom Jack could approach with a view to endeavouring to resolve their issues through collaboration and without Court. Jill was very enthusiastic about keeping out of Court. She was anxious to keep matters very civil and respectful and saw the opportunities for mutual communication as well as psychologist support within ICP as being very attractive.

### **Step two**

Jill subsequently spoke to Jack and gave him a copy of Simon's letter, and Jack attended one of the recommended lawyers, Mary Jones, for advice on 14 November 2017. (Not uncommonly, the first lawyer would write to the husband directly, if the wife did not feel comfortable speaking to him, to make the same proposal for collaboration, and providing him with the same recommended names).

### **Step 3**

Mary discussed Jack's situation at length with him and explored the different processes for family law resolution including collaborative practice. Jack was also enthusiastic about keeping out of Court and coming up with a mutually agreeable settlement and Mary judged him as being reasonably capable of compromise and suitable to enter into the collaborative process.

#### **Step 4**

Jack gave the instructions to go ahead with the collaborative process and the two lawyers subsequently spoke by telephone to arrange next steps. They confirmed that because of the size of the asset pool (a factory worth \$5-\$6 million, a house worth in the vicinity of \$3 million and various other assets), and because of the differential earnings of the parties, employing a financial planner to help the parties with analysing their finances would be very helpful in the process.

They also agreed that having a psychologist in the collaboration process to chair meetings and to help with the emotional issues of the parties, including having a preliminary meeting with the parties to confirm their suitability for collaboration, would be very helpful. The clients subsequently confirmed that they were happy to have a team in the collaboration including the psychologist and financial planner.

#### **Step 5**

To prepare for the first meeting the lawyers put their clients in contact with Cara Evans who is a collaboratively trained financial planner. She met with each of them separately to get details of the asset pool and their incomes. She had a number of follow up conversations and prepared a spread sheet of the asset pool, including income details and superannuation details for the first meeting. The parties were also put into contact with Sarah Wilson, a collaboratively trained psychologist, who met with both of the parties separately prior to the first meeting.

Cara and Sarah separately confirmed with the lawyers that the matter was appropriate to proceed through a collaborative process.

The lawyers communicated with each other and with their clients and prepared the agenda for the first meeting which is Schedule 2 to this paper.

Simon Smith prepared the proposed collaborative contract to cover the collaboration and it was emailed to all professionals and to the clients for review prior to the first meeting. See Schedule 3 to this paper.

#### **Step 6**

The first meeting then took place at Mary Jones' office on 20 December 2017. 45 mins before the meeting started the professional team met to prepare for the meeting, and generally discuss the personalities of the parties, and the way to proceed in a way that the parties would be comfortable with. It was evident that Jack was reluctant to agree to a regular routine of time with the children and indeed was only seeing them quite irregularly. Jill was anxious that he see them more often and that this be predictable and not done on the spur of the moment when he wanted.

The professionals and clients then met for 3 hours across lunch time and lunch was provided (break out rooms were also available as required). Together all parties reviewed and signed the collaboration contract. They agreed that all costs of the collaboration would be paid by Jill who managed the parties' joint finances (and would continue to do so for the time being). The focus was on interim issues.

The psychologist reported on the preliminary views of the parties about parenting and recommended that, especially as the children were in early secondary and primary school, that a child specialist be involved in discussing parenting matters and that the child specialist see the children so their voices would contribute to the parenting discussions. There was some further discussion about the immediate issues of Jack having regular time with the children and it was agreed that the parties would initially meet further with the

psychologist who would then refer them to a child specialist outside the professional meeting context.

Cara the financial planner then addressed the meeting. She put up the details of the assets and liabilities on a white board and confirmed the agreement of the parties to the different assets. They were comfortable that no further disclosure was necessary. The parties discussed what values could be agreed and what values needed to be checked with a formal valuation process.

A hot button issue was the private school fees and the parties agreed to approach the school to negotiate with them to pay a lump sum towards fees which would cover most or all of the schooling of the children for the future. The next collaborative meeting was set for 6 February 2018. The minutes taken of that meeting are Schedule 4. The minutes end with the “homework” for the parties and professionals to be completed before the second meeting.

As is normal practice, after the conclusion of the meeting, each lawyer had a short de-brief with their respective clients to ask in general how they found the process, if they had any comments about how each of the professionals had performed in the process and how they could see anything being done better. Both clients gave positive responses.

The clients then left and the four professionals together had a de-brief about the collaboration including how the process went, how the parties were feeling and the best way to move forward in a constructive way for the parties.

## **Step 7**

After preparatory meetings with clients, and the team pre-brief again, the second meeting took place on 6 February 2018 with all professionals and the clients. Parenting had effectively been agreed which was noted at the beginning of the meeting. The results in relation to school fees were recorded and the valuation results were recorded. There was some complexity around the business and family trust structure and the lawyers and financial planner rang the parties’ joint accountant to clarify aspects of that during a break from the formal meeting. Cara reported the results of that telephone conversation back to the meeting.

Jill put a proposal for settlement which Jack indicated he would consider.

## **Step 8**

A third collaborative meeting was fixed for 26 February 2018. The meeting began with an update on parenting arrangements and the conclusion of valuation questions. The parties agreed the family home was going on the market and they discussed who was managing the sale (Jill). Jack made a proposal for settlement and Jill put a counter-proposal. As Jack indicated a degree of “stuckness” at a very low point, it was agreed that Jack and Mary would meet subsequently to discuss the matter further to see if Jack was willing to compromise further. The minutes of that meeting are Schedule 5.

As a creative approach to reality checking Jack’s position and bringing extra influence on him, Mary employed a barrister to consult with Jack and give him an opinion of a realistic financial settlement in this case. Jack has subsequently “offline” made a proposal for settlement to Jill which is currently being considered.

## **Other matters**

Prior to each collaborative meeting the lawyers spend 1-2 hours with their respective clients preparing for the meeting. It includes things like considering what their underlying interests actually are so they can be communicated at the beginning of the first meeting.

Further, the clients are coached so they can present their proposals and wishes in an interest based way rather than with the fixedness of positions. The clients are coached to do most of the talking rather than have the lawyers present the proposals - which may have had the potential to be relatively inflammatory to the other party.

The clients are regularly brought back to the interests they listed in the first collaborative meeting (see, for example, Schedule 2) and encouraged to ensure that any proposal they may make as far as practicable fits the interests of both parties.

The lawyers commonly give their clients advice about what is a "just and equitable" settlement during collaborative meetings so that the other party hears this, and/or in private meetings before or after collaborative meetings. There is a high degree of transparency and there is an emphasis on proposals being realistic, interest based and not positional and certainly not ambit claims.

Pre-brief meetings with all professionals are essential as they help the professionals to strategise about the best way to run meetings, about who should do more or less talking and which issues were more or less hot button for the clients. For example, it would not be unusual to have a financial planner put forward an aspect of a proposal for settlement as if it came from the financial planner or stating that it was something the whole team had been discussing, rather than having the individual party put the proposal forward. This may well be more acceptable and easier for the other party to receive.

Similarly, the de-briefs after meetings are essential. On occasions a client will complain about the behaviour of one of the professionals (sometimes with justification, sometimes not) and their lawyer then takes that complaint or comment back to the other professional. When handled carefully and respectfully, this can (in our experience) result in professionals making an apology in the next meeting for having not responded appropriately in a particular situation during a meeting. Overall, the de-brief with the professional team helps to set the future expectations and practice of negotiations.

All professionals are working hard to be respectful, to be mutual, to recognise and respect and acknowledge the emotions of both parties and to avoid being adversarial while supporting their own client. It is extremely powerful for one client to experience their partner's lawyer being respectful to them and indeed, in the meeting, contradicting or taking steps to control "misbehaviour" by their own client.

At the conclusion of a collaboration the parties are usually satisfied that they have been well heard, they have been respected, they have not been allowed to get abusive or unkind towards the other party (and vice versa) and it is hoped that they have been encouraged to communicate better with the other party both now and for the years ahead, especially where there are children and such communications will be necessary.

## **HISTORY AND CONTEXT OF THE ADVERSARIAL FAMILY COURTS**

Little needs to be said about the origin of the adversarial system itself. Suffice to say we recognise it as an advance on unregulated methods of settling disputes, which at their worst, included acts of extreme violence. Despite those advances and the welcome creation of the Family Law Act 1975, a system based on adversarial litigation and thinking is uniquely unsuited to assisting average families to transition into two households.



Small and single issues are likely to increase in depth and breadth when each party has an adversarial approach. It is the nature of adversarial thinking that differentiation is valued above the identification of common ground. It values winning above any form of resolution that allows families to minimise differences and, in the best of resolutions, to improve relations as they go through a settlement process, rather than experience an inevitable deterioration as a result of the process itself.

We acknowledge the appropriateness of court-managed processes in family law in circumstances of urgency and risk and in cases of genuine legal complexity, although we see great scope for narrowing the definitions of these categories.

## **COLLABORATIVE PRACTICE: BRIEF HISTORY**

Collaborative practice had its origins in the early 1990s in the USA. It began and is predominantly practised in the family law area. It has now grown into an internationally practised form of ADR, auspiced by an international member body, the International Academy of Collaborative Professionals (IACP). It has members in 23 countries including Australia, the USA, Canada United Kingdom, Ireland, Brazil, New Zealand, Africa, Singapore, Hong Kong, Spain, France, Holland, Germany, Switzerland and a number of other European countries. Its annual conference, held in different parts of the USA, gathers over 500 collaborative practitioners from around the world, including dozens from Australia.

Originally collaborative practice involved two lawyers and their clients negotiating in roundtable meetings, having committed to remain outside the court system. The early model of practice has now widely evolved to an interdisciplinary model, variously including psychologists and social scientists, child psychologists, financial planners and accountants working in interdisciplinary teams.

### **Collaborative practice in Australia: timeline**

2005

Collaborative practice began in Australia, in both lawyer-only and interdisciplinary team models.

2010

The former Chief Justice of the family Court of Australia the Honourable Alistair Nicholson opened the Melbourne ICP practice, Melbourne Collaborative Alliance or MELCA, in 2010.

2010

Australia hosted an international conference of collaborative practitioners, auspiced by the IACP. The conference was opened by Her Honour the Chief Justice of the Family Court of Australia Diana Bryant and was attended by members of the International Academy including the founder of collaborative practice Mr Stuart Webb.

2011

Australian Collaborative Practice Guidelines for Lawyers were formulated by the Law Council of Australia in 2011 and launched by the Federal Attorney-General the Honourable Robert McLellan.

2015

Queensland hosted the second Australian national collaborative practice conference, again auspiced and attended by the president of the IACP and representatives of the IACP.

2016

The Australian Association of Collaborative Professionals (AACP) was formed in 2016 and has members in all states of Australia and the ACT, with each Australian state having a state member body. The Honourable Diana Bryant is the patron of AACP.

## **ICP AND CONFLICT**

Litigation does not resolve interpersonal conflict. It escalates it. There is a deep debate, analysis and learning in the ADR community about the nature and resolution of conflict. It is the belief of the writers that adversarial approaches, whether or not formally within the court system, lack capacity to manage or resolve conflict. They ignore root causes and focus on presenting issues and behaviours. They miss the opportunity to educate couples about their own conflict and thereby miss the opportunity for learnings to be taken into subsequent (dysfunctional) relationships.

Resolving conflict as opposed to legal settlement approaches can be a cost effective early intervention. Conflict is known to create and extend the life of adversarial negotiations and litigation. The work of Bill Eddie and the High Conflict Institute has observed that in 80% of the few matters that reach final hearing (in the USA) one or both members of the couple is a high conflict personality potentially.

For this group and for others within the litigation system, it is a safe assumption that the presenting issues are underpinned by relational conflict, and it warrants examination as to how conflict management at an early stage might alter the conduct of these disputes. The early intervention opportunities of ICP have that capacity.

### **Resolution as distinct from “settlement”**

The definition of resolution can extend beyond merely ending a dispute to a deeper experience for individuals and couples.

Adversarial powers and approaches provide a safety net and are a foundation-stone. Adjudicators thereby end legal processes; they do not end interpersonal conflict or disputes. The opposite is true by definition. Adversarial approaches to problem-solving have unique characteristics which make them unsuitable for assisting most families to transition successfully into two households

The first consequence of an adversarial approach in family separation is to polarise the issues, and thereby the couple, or it deepens polarisation and encourages a binary analysis as opposed to the potential of creative problem solving.

It is our observation and experience that irreversible damage is normally done to a couple relationship once an adversarial approach is embarked upon. If that approach culminates in judicial decision-making that damage is even greater. This is not to ignore the fact that the relationship of separating couples is already damaged, which in fact makes them more vulnerable to escalation that occurs within an adversarial process, as a continuation of the couple dynamic. It is not an helpful intervention in many cases, and that kind of intervention is what is required. ICP can provide intervention by engagement of the right team member at the right time.

## **THE POWER OF EARLY INTERVENTION**

Early and pre-emptive consensus building approaches seek to acknowledge and arrest or minimise relational damage, which is impossible to achieve once a divisive debate is established. Fundamentally, a data-driven argument, judicially-determined, can rarely get to the heart of conflict. The skills of both social scientists and financial experts are often directed to expert testimony in the adversarial system. We submit that families stand to benefit from working mutually and constructively with these disciplines at an early stage, and that consideration should be given to compulsory engagement with these professions to pre-empt disputes, narrow issues and de-escalate existing disputes.

It cannot be ignored that the lawyers who are engaged in litigated cases labour under the handicap of a single view of the conflict. They only ever (usually) meet one party to the dispute, and often have no objective view of the validity of that single perspective until there is no longer an opportunity to adjust for it.

The system is not built for lawyers to expect or need to do anything different. A lawyer's lack of knowledge and objectivity about the history and nature of their client's marital relationships, the relational dynamic and the personality or behaviour of the other party can have advantages in litigation. It allows for strong, partial advocacy for a client. It has disadvantages in litigation. It can lead to a course of preparation and argument that increases costs and does not enhance outcomes. There can be unwarranted evidence-gathering and argument based on mistrust and suspicion, for example.

We believe there is a strong case for neutral social scientists to intake couples before litigation or at an early stage, to bring to each client and the lawyers, some education and understanding of the personalities, the dynamic and the conflict style of a couple to encourage the narrowing of the dispute, identification of settlement opportunities, or an early decision by the lawyers and the court to fast-track couples who are intractable. Further, they have a vital potential role in assisting parties to come to terms with separation and to imagine and start to plan their future lives. Their strong presence in collaboration has been mentioned but their role potentially in all separations should be considered.

We also believe that there is a role for the collection of financial data by neutral financial advisors or accountants, as a requirement in any family law process. This work is an area of inefficiency when conducted by lawyers, and in a climate of suspicion generates mistrust, duplication and expense. Again, there is no reason in principle why they should not have a role in most family law financial negotiations.

## **COMPARISON WITH MEDIATION**

Collaboration and ICP differ from mediation in a number of respects. It is necessary to consider that there are different mediation practice models before looking at the distinctions from collaboration and ICP.

- Mediation conducted by lawyers (usually barristers) with lawyers present
- Mediation conducted by non-lawyers, with or without lawyers present
- Court based conciliation conferences
- Family Dispute resolution
- Co-mediation

## □ Child-focused and child-inclusive mediation

We say ICP often has advantages over most of these styles of mediation. Lawyer-led mediation and court conferences in practice usually involve lawyers beginning the process by making submissions as to what their client should get, following an adversarial and positional script. The clients often speak little and find the process intimidating.

Mediation without lawyers usually requires a fair level of equality of bargaining power and no or little history of family violence. Where this does not apply, the mediator, in making even small attempts to even up the bargaining between the parties, will often lose the stronger party who then claims the mediator was biased against them.

## **COMPARISON WITH ARBITRATION**

In reality of course, arbitration is simply court-lite, so to speak, and we say it has value as a very last resort prior to or even during litigation, but not as a genuine alternative when other ADR styles have a prospect of success.

Arbitration is cheaper for government, because the user pays. It's also cheaper for clients because they have the option to make their own rules of procedure, and it can be brilliant when the parties are absolutely stuck on something minor, and that minor matter alone can be dealt with quickly through such a means.

There is nothing inherently wrong with arbitration or any adversarial process, if that is your best option. But, it is not a natural progression for separating families to move towards a legal process. Rather, that move is a failure of a more rational approach that addresses what is really occupying the minds of separating couples.

Arbitration is not real change. Arguably there will not be real change until we cease talking about family law in the first instance and start talking about family separation. The fears separating couples need help with are about:

- their children's wellbeing and relationships with their mum and dad;
- child support;
- housing;
- retirement;
- fairness;
- business operation and succession;
- loss of the dream.

Amongst these fears there will be arguments about how to share what there is, blame, fault, parenting capacity/superiority/arrangements and all the stuff of relationship breakdown.

Sometimes these arguments will best be settled by introducing "law", when it is as good as any other option, or everyone has run out of clever ideas.

More often than not though, these arguments will only be truly resolved when somebody gets to the heart of the matter.

Judges and Arbitrators are not there to get to the heart of anything. They are there to make decisions when all else fails, based on the information and arguments they are presented

with, as long as they are the very same arguments they hear every day, because they are about the law.

Arbitration is, in the end, a legal process – adjudication rather than resolution. Let's not forget that as, we say, we should seek a new opportunity to turn family separation into a de-legalised zone, where emotion, communication, financial planning and creativity rule. That is the heart of ICP.

## **THE ROLE OF ICP IN SEPARATION**

ICP provides a settlement process that addresses the legal, emotional and financial needs of separating families in an integrated co-operative manner. It is the only single process that does so.

One of the great opportunities presented by collaboration is for families to enter the process via any of the professions that are involved. Not only lawyers, but counsellors/psychologists and financial advisors can refer families into collaboration, allowing for early intervention at the point of crisis for the individual, couple or family. The potential for early intervention is a significant feature of ICP and one that distinguishes it from other forms of ADR.

ICP has the potential to be the default approach for separation, and could occupy the place that is currently held by the court system, of which adversarial negotiation is a part. Legislative support for ICP has the capacity to create cultural change from a focus on division to consensus-building, as the norm. For families to engage with ICP allows for conflict management, deep resolution and early intervention. ICP allows for the development of a new awareness of the crucial role of psychologists and financial planners in separation, not just as expert witnesses or advisors who are recruited post-litigation or settlement, but as a resource for families before separation or in the early stages of separation.

## **SYSTEMS CHANGE**

There will be change to the existing family law system when people opt out of it, or are forced out of it, into alternative processes. That movement can be driven by continuing current budgetary cuts to the system, but there needs to be a safety net for the “sandwich class” who cannot afford litigation, or who are in the philosophical sandwich class and don't wish to litigate.

System change has already begun as access to regular “justice” is now well beyond the financial reach of many people, and because the cost of the courts is growing beyond the tolerance of governments, for example.

Changes brought about by these pressures do not occur in the context of designing an ideal system, but are ad hoc and inconsistent.

## **CONSENSUS VERSUS ADVERSARIALISM**

For the large majority of separating couples and their families, including extended family, a consensus building rather than an adversarial or litigious approach is desirable to minimise:

- harm to relationships;
- harm to children;
- the burden of costs;

- emotional pain;
- the emotional and practical cost of delay; and
- the cost to government.

This permits the prospect of:

- positive parenting;
- healthy reconfiguring of couple relationships;
- a common understanding of children's expenses removing contention associated with the payer/ payee frame; and
- interest-based discussions about the sharing of property and resources.

### **ALTERNATIVE DISPUTE RESOLUTION – ADR – MANDATING**

In our submission a major problem with the Family Law Act is that it all heads towards Court as its ultimate destination. We say the trajectory of the Family Law Act should be towards Alternative Dispute Resolution (also called appropriate dispute resolution or primary dispute resolution), and only to court as a last resort. As the system stands however, ADR processes such as mediation or conciliation conferences still have Court hanging over them. A party can always say, and often does, “You take my offer or we go to court!” – the ultimate terror for some clients. Even where agreement is reached in such a conference parties can resile from that and go to Court. Arbitration, of course, is the only ADR method which prevents Court applications (except on very limited grounds pursuant to which the award may be challenged).

Accordingly, the Family Law Act should compel parties to go into an ADR process before litigating – with very limited exceptions.

Even when the matter gets into Court after no ADR or an unsuccessful attempt at ADR, we say there should be a mandated reconsideration by the Court, and ongoing consideration by the court during the court process, of whether to compulsorily send the parties either back to or, for the first time, into an ADR process.

This should apply in all matters except for matters of serious family violence of which there is more detail below. In particular we consider section 60I further below.

This would in a real sense privatise a good deal of family law which we say would be a good thing. It is in keeping with the original concept of the Family Law Act when Court hearings were compulsorily private and only those directly involved in the litigation were permitted into Court. We say this should simply go a step further and the settlement processes should be actually removed from the Court precincts. Obviously safeguards need to be put in place in relation to the quality of training and standards of those who take part in such processes and we will speak of that further below.

In our submission an enlarged requirement for family dispute resolution (however named) is so important that it should have its own part in the Family Law Act. Perhaps this would be Part VIA so that it preceded the major litigation areas of Part VII and Part VIII.

Our concept is that the parties should not be obliged to go to arbitration before commencing proceedings. The other forms of ADR referred to are more relationally focussed and more

likely to have social science components which are, we say, essential to a helpful settlement process which avoids the adversarialism of the legal system.

We would mandate that as part of the ADR referred to there be a compulsory element considering the exploration of relevant emotional and psychological issues between the parties in an attempt to ease the separation process regardless of the question of settlement of legal issues.

If the ADR process does not settle all issues satisfactorily, one or more of the practitioners in the process needs to provide a section 60I certificate (which may well be renamed) which will be required if a party wants to take the matter to Court.

As mentioned, once a Court application is issued we say that the matter should go to a Registrar (in either the Family Court or the Federal Circuit Court) and consideration should be given to sending the matter to ADR either for the first time or again.

If before court was commenced, the matter was found to be inappropriate for ADR because of serious family violence, a Registrar should be empowered to receive evidence from the parties arising from and in connection with the ADR process but limited to questions of whether further ADR should be attempted. At this point a Registrar should be statutorily encouraged to order the parties to go to ADR including the option of arbitration which may be appropriate where other ADR has failed including in cases with a history of serious family violence.

We say that at each subsequent stage in any Court process the Court's first consideration should be whether the parties should be ordered to go to ADR either again or for the first time. It is of course well understood that the tensions and unpleasantness which may exist in the early days of separation can ameliorate over time leaving the parties more amenable to ADR, perhaps especially by way of arbitration if the matter was still emotionally difficult between the parties but not "high risk" in a violence sense.

## **SECTION 60I ISSUES**

In our submission, Section 60I of the *Family Law Act 1975* ought to be substantially enlarged to encompass virtually all matters coming under the jurisdiction of the Family Courts (meaning the Family Court and Federal Circuit Court sitting in its family law jurisdiction).

There would be limited areas where this could not be applicable such as: divorce and annulment of marriage, Hague Convention Applications brought by the State Central Authority, and miscellaneous other matters which may be prescribed.

In the majority of cases separated couples have children, whether they are minors or adults. Accordingly, it is most important to create a paradigm shift to recognise that alternative means of resolution outside the adversarialism of the Court system are important across the board.

In relation to the current sub-section 60I(9) we say the ability to avoid family dispute resolution is far too broad.

Sub-section 60I(9) should be much more restricted in the ways it allows people to avoid ADR. In relation to parenting matters, we recommend the removal of sub-paragraph 60I(9)(b)(i) - the automatic removal of the certificate requirement if there has been historical child abuse. It is not clear to us how *historical* abuse always contra indicates ADR. Similarly, the automatic exemption from family dispute resolution if family violence order has been made is just silly: many such orders are, quite rightly, based on harassment and not violence, for example. Further, the team approach, including two lawyers, provides for

more real protection (in every sense) in ICP, as compared with the usually solo FDRP in the FDR process.

In relation to the next sub-paragraph, (b)(ii), rather than simply referring to risk of abuse of the child, the reference should be to “significant risk of abuse of the child”. We make this more stringent because domestic violence legislation, which is state or territory based, by and large covers the main part of the risks here. In any event, the Family Courts are so overloaded, they are often unable to deal with risk of abuse cases satisfactorily except, we submit, in the relatively extreme cases where the evidence is very powerful.

Sub-paragraphs (b)(iii) and (iv) should also be changed to require that there needs to have been serious family violence such that the family dispute resolution practitioner considers family dispute resolution impractical.

In paragraph 60I(9)(d) the reference should be to circumstances of “serious urgency” before a certificate is not needed. The “urgency” word here is far too often ignored or subjectively applied in practice by Registrars in the court system and this needs to be tightened up.

As mentioned above, evidence of what happened in ADR should be admissible on the question of whether ADR should be ordered. Perhaps ADR practitioners should be required to give more details of why ADR failed. Together these steps would keep more people in ADR and introduce quality control into the process of excusing people from ADR.

## **ARBITRATION**

The current provisions of the Act relating to arbitration only cover property matters. They do not cover injunctions, they do not cover child support and they do not cover maintenance of adult children or parenting matters. We believe the arbitration provisions should cover all these areas. The arbitrators need to be experienced family lawyers with appropriate training (see more below) and as such they will be obliged to make parenting decisions in accordance with the provisions of the Act and the best interests of the children and with use as appropriate of child specialist expert evidence. We see many parenting matters which are only complex because of the personalities of the parties. They are usually not legally complex as such and we see no necessity for parenting matters to be limited to Courts and not dealt with by arbitrators.

Accordingly the arbitration provisions will need to be substantially enlarged for the efficient operation of such processes.

There is a very successful program in Queensland where the Legal Aid office there provides arbitration processes and funding for small claims up to \$400,000. It funds itself by payment from settlement monies, in effect. Serious consideration should be given to such a program being put in place around the country which would require work with the relevant Legal Aid offices in different States and Territories.

## **QUALIFICATIONS OF ADR PRACTITIONERS**

The qualifications for ADR practitioners are obviously most important. We recommend that private or at least quasi non-government organisations be delegated the powers to prescribe necessary qualifications for ADR practitioners as follows.

1. There are many categories of mediators, conciliators, family dispute resolution practitioners and the like. There is training provided by universities, by relationship centres like Relationships Australia, the Australian Institute of Family Law Arbitrators and Mediators (AIFLAM) and the list goes on. We are concerned to have one body



prescribe appropriate qualifications for “mediators” (a collective term for these categories).

This needs to be a body that is not exclusively legal and not exclusively social science in its background and expertise. It should not be the Attorney-General’s Department for that reason. We propose that the Australian Institute of Family Studies be given a slightly wider mandate so it may prescribe qualifications for conciliators and maintain a record of those who are qualified to conciliate for Family Law Act purposes. The AIFS has very substantial backgrounding and academic credibility in both the social science and legal aspects of family law and a high degree of independence and as such we consider that they take are eminently well qualified to take on this role of accreditation.

2. Qualified arbitrators are currently those whose names are kept on a list pursuant to Regulation 67B of the Family Law Regulations and the list is kept by the Law Council of Australia or its delegate. Its delegate is AIFLAM which has a good track record in this area and we recommend it continue its arbitrator listing role.
3. In relation to collaborative practice, this is relatively new in the Australian Family Law sphere although it has been used as a settlement process in the United States for over 25 years. There are experienced collaborative practitioners in all States and Territories of Australia except the Northern Territory (to the best of our knowledge).

Accordingly, the collaborative community has State or Territory based bodies in seven jurisdictions and more than one in some States. As mentioned, the Australian based body which the State and Territory organisations sit under is the Australian Association of Collaborative Professionals. We say that those who wish to go into an ADR process which is collaborative law or collaborative practice should be required to work with professionals who are accredited or approved by AACCP.

## **PROPOSED LEGISLATIVE CHANGES**

What legislative and governance mechanisms are required to recognise collaborative practice?

This can be attended to we believe in a minimal way. E.g. pass provisions similar to sections 10F and 10G relating to family dispute resolution practitioners, defining what a collaborative practitioner is, such as (taken from the Rules of VACP):

- a. “Collaborative practice” means an alternate dispute resolution process which avoids litigation and promotes the wellbeing of the whole family and other relevant stakeholders;
- b. “Collaborative professional” means a family consultant, financial professional or lawyer who is a member of the Australian Association of Collaborative Professionals (AACCP);
- c. “Family consultant” means a legally registered psychologist with the Psychology Board of Australia or equivalent; or, a qualified social worker, counsellor or similar who is a member of a relevant Professional Association, and who is recognised by the AACCP as having appropriate expertise to be a Collaborative professional.
- d. “Financial professional” means an ASIC registered Financial Services Licence Holder or a Licensed Authorised Representative; or, a qualified accountant who is a member of a relevant Professional Association, and who is recognised by the AACCP as having appropriate expertise to be a Collaborative professional.

- e. “Lawyer” means a person who is a practising Lawyer and a member of the AACP;
- f. Provide for collaborative professionals who are engaged in collaborative practice to have confidentiality protections similar to sections 10H and 10J.
- g. We suggest amending s. 60I, as referred to above, to make it much wider in scope:
  - to apply to all contested family law proceedings (with minimal exceptions such as Hague Convention matters perhaps),
  - make exemptions in connection with family violence and the like much narrower, and
  - to prescribe other processes as coming within s. 60I. For example, the heading to the section could read, “Attending Family Dispute Resolution, Mediation or Collaborative Practice” and consequential amendments would then be added through the section.
- h. Consider moving all the ADR related provisions (eg. IOH, IOJ, 60I, ICP provisions referred to above, and arbitration provisions) into a new Part VIA of the Act to send a clear message of the importance and priority given to these processes, compared with litigation.

## **RESPONSES TO QUESTIONS FROM THE ALRC ISSUES PAPER**

*Q26. 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?*

Specifically there are a number of features of Collaborative practice that makes it superior to other non-adjudicative dispute resolution processes currently being offered. Most particularly, it is the unique nature of the multi-disciplinary team where all of the skilled professionals involved (lawyers, financial planners, mental health professionals and child experts) work together in collaboration both modelling a non-adversarial, respectful approach to separation and coaching the clients to achieve the best outcomes for their family in the most mutually respectful and considerate manner.

Having worked within the Family Court for over twenty years (the voice here is psychologist Ms Ilana Katz, formerly director of Court counselling in the Melbourne Registry), it was consistently observed that clients left at the conclusion of their matter with relationships further degraded, and increased rather than decreased disaffection and anger towards the other parent. This did not bode well for the future and the capacity of parents to implement Court Orders and move forward to parent their children in an effective manner. When this occurs, matters are at increased risk of returning periodically to the Court System when arrangements break down.

Rather than in an adversarial setting where relationships between the parties and, most commonly, trust are further eroded and where clients report experiencing the system as abusive, collaboration provides a problem solving and respectful approach which tends to empower clients and coaches them to interact in a more productive manner.

The crucial roles of the neutral Mental Health Professional and Financial Planner as part of the Collaborative team are significant in what sets this process apart. Both Neutral roles, support both clients equally as well as gathering information from them. The role of the Neutrals also provides a counter balance to the team, allowing the clients to enjoy the benefits of having a dedicated Lawyer but with all roles contributing to a team approach to problem solving.

Specifically, the Mental Health professional is also available to support clients who are particularly vulnerable or struggling with individual issues such as difficulties with adjustment and mental health problems while supporting and guiding the dialogue both between the parties and between the team and the parties.

This process also empowers the family to retain control over the decisions being taken for their family into the future and maximizes the potential for positive outcomes for the family such as improved communications, more effective co-parenting relationships and better problem solving skills into the future.

*Q29 & Q30. 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? And, should family inclusive decision-making processes be incorporated into the family law system? How could this be done?*

Children are invariably affected by their parents' separation. Children experience their own grieving process about the changes in the family and commonly find it difficult to understand what is occurring for them and the emotions being expressed or acted out by their parents.

Further, children are frequently unable to express their concerns to their parents who are often too vulnerable and distracted to hear their voices. The Collaborative process encourages a focus on and discussion about the children's best interests and invites the parents to incorporate the use of a Child Expert to meet with the children and to assist with the development of a Parenting Plan.

This process ensures that the children are provided with the opportunity to express their feelings and concerns thus bringing the voice of the child into the Collaboration. It also works to ensure the development of optimum parenting arrangements. In this way, the Child Specialist can identify any risks in relation to the child(ren) and the appropriate strategies can then be discussed and determined such as the possible need for the child to be assisted by their own counsellor.

## **OTHER FAQ'S RELATING TO COLLABORATIVE PRACTICE**

1. *What if one party decides to exit the collaboration? Does that create unfairness to the other party?*

No more than in any other ADR method. Some of us have experienced a client going through multiple formal, barrister-led mediations, agreeing on a settlement, and having the other client pull out of the agreement both times and go back into the court process which had been adjourned!

Further, the breadth and formality of collaborative meetings with the minutes taken as well really do potentially short-cut a subsequent litigation process.

2. *Isn't interdisciplinary collaborative practice the same as any other ADR if that other ADR is also an interest-based system?*

No. There is no comparison between a single professional facilitating a mediation or arbitration and ICP, which embraces the skills and experiences of all the professions involved.

3. *Which clients are not suitable for collaborative?*

Only those for whom the team cannot establish a safe envelope. A safe envelope requires that the team knows the limits of its skills to keep people physically and emotionally safe.

The concept of screening out is misguided unless you are screening people into a safer or better alternative.

For example, people with severe mental illness may be able to cope with the process with extra layers of support, like their own personal conflict coach to assist through the process.

5. *How is the issue of professional ethics addressed?*

Same as elsewhere. Each of the professionals are subject to the ethical obligations of their respective professional bodies. Further, collaborative professionals, in practice, will not work with other professionals whom they do not trust!

6. *What is the capacity, and perhaps the opportunity, to use information gathered in a collaborative matter that does not result in a full agreement, in court, specifically by way of agreement between the parties?*

The collaborative contract is just that – a contract, and the parties can agree to use information in court if they choose to. At present, it may be argued that any one of the professionals could prevent this happening as they too are parties to the contract. This could be changed so that the clients could override disagreement from the professionals if this was thought to be helpful.

## **CONCLUSION**

In our respectful submission, our society is ready for substantial change to our family law system, with a major focus on moving away from a court and litigation based system, to a multifaceted and flexible ADR system. This should be achievable by legislation which in the large majority of cases, with only limited exceptions, requires parties to go through ADR rather than litigation.

In particular, we say that it is time for interdisciplinary collaborative practice to form a major part of the network of available ADR options, given its unique capacity to attend to the holistic needs of clients, be they in the realms of emotional, psychological, financial, security, and parenting considerations, among others. ICP prides itself on going beyond the legal needs of clients to provide the opportunity for them to gain assistance in all areas which are important to them.

# SCHEDULE 1

*From the website of the International Academy of Collaborative Professionals,  
<https://collaborativepractice.com>*

## **About IACP**

IACP is the International Academy of Collaborative Professionals, an international community of legal, mental health and financial professionals working in concert to create client-centered processes for resolving conflict.

## **Vision**

Transform how conflict is resolved worldwide through Collaborative Practice.

## **Mission**

IACP supports Collaborative Practice as a conflict resolution option worldwide by:

- establishing and upholding the essential elements, ethical and practice standards of Collaborative Practice;
- fostering professional excellence by educating and providing resources to Collaborative practitioners;
- leading and integrating the Collaborative community; and
- promoting the growth of Collaborative Practice.

For more information about IACP please contact us at [info@collaborativepractice.com](mailto:info@collaborativepractice.com)

## **What Is Collaborative Practice?**

Collaborative Practice is a voluntary dispute resolution process in which parties settle without resort to litigation.

In Collaborative Practice:

1. The parties sign a collaborative participation agreement describing the nature and scope of the matter;
2. The parties voluntarily disclose all information which is relevant and material to the matter that must be decided;
3. The parties agree to use good faith efforts in their negotiations to reach a mutually acceptable settlement;
4. Each party must be represented by a lawyer whose representation terminates upon the undertaking of any contested court proceeding;
5. The parties may engage mental health and financial professionals whose engagement terminates upon the undertaking of any contested court proceeding; and

6. The parties may jointly engage other experts as needed.

Collaborative Practice provides you and your spouse or partner with the support and guidance of your own lawyers without going to court. Additionally, Collaborative Practice allows you the benefit of coaches, child and financial specialists all working together with you on your team.

In Collaborative Practice, core elements form your commitments to this process, which are to:

- Negotiate a mutually acceptable resolution without having courts decide issues.
- Maintain open communication and information sharing.
- Create shared solutions acknowledging the highest priorities of all.

## **SCHEDULE 2**

### **BLOGGS**

#### **COLLABORATION ON 20 DECEMBER 2017**

### **AGENDA**

12. Welcome.
13. Discuss collaborative contract and all present to sign contract.
14. Jill and Jack to articulate their underlying interests or goals for the process and for the future.
15. Discuss (if necessary) payment of costs of the collaboration.

#### **Interim Issues**

16. Parenting and communication arrangements.
17. Cash-flow.
18. Jill's use of the family home.
19. Jack's personal things in the family home.

#### **Other Matters**

20. Clarify what is the asset pool.
21. Clarify respective incomes and future earning capacity.
22. Clarify value of assets. Are formal valuations required?
23. Is disclosure of financial documentation required?
24. What homework is required before our next collaborative meeting?
25. Any other matters.
26. Set next meeting date.

## **SCHEDULE 3**

### **COLLABORATION CONTRACT**

THE PARTICIPANTS IN THIS COLLABORATION ARE THE PEOPLE NAMED BELOW

**CLIENT NAME 1 – JILL BLOGGS**

and

**CLIENT NAME 2 – JACK BLOGGS**

THE LAWYERS IN THIS COLLABORATION ARE:

**Lawyer for Jill: SIMON SMITH**

and

**Lawyer for Jack: MARY JONES**

THE NEUTRAL COMMUNICATION COACH IN THIS CASE IS: **SARAH WILSON  
(Psychologist)**

THE NEUTRAL FINANCIAL PROFESSIONAL IN THIS COLLABORATION IS: **CARA  
EVANS (Financial Planner)**



## **A. CONTRACT**

Jill and Jack and the other participants are entering into an enforceable contract with each other by signing this Agreement.

## **B. GOALS**

1. Jill and Jack wish to resolve their family law differences by Collaboration instead of going to Court.
2. All of the participants agree to:
  - 2.1 Focus on the future wellbeing of Jill and Jack and their Children;
  - 2.2 Assist in resolving Jill and Jack's issues in the best interests of their whole family;
  - 2.3 Resolve all financial issues between Jill and Jack, including issues of property division and superannuation and family financial support;
  - 2.4 Try to reduce the negative emotional, social and financial consequences of Jill and Jack's separation;
  - 2.5 Find solutions acceptable to Jill and Jack.

## **C. WHAT WE WILL DO**

3. The Professionals on the team will work with Jill and Jack to help them:
  - 3.1 Discover what is important to each of them;
  - 3.2 Identify the questions they need to answer;
  - 3.3 Gather information;
  - 3.4 Create and consider options to help them meet their goals; and
  - 3.5 Reach agreement.
4. Jill and Jack shall provide complete, honest and open disclosure of all information and documents in an informal exchange in this Collaboration. The duty of full disclosure is an essential element of the Collaboration.
5. Negotiations will take place in joint meetings.
6. We will act with good faith, respect, dignity, honesty, and cooperation.
7. We understand the success of Collaboration depends on all of us working cooperatively.

8. We will immediately identify and correct any mistakes. We will not take advantage of any mistakes anyone makes in Collaboration.
9. We will do our best to follow the "Expectations of Participants in Joint Meetings" at attachment 1.

**D. RIGHTS AND OBLIGATIONS PENDING SETTLEMENT**

Jill and Jack agree that unless specifically agreed within the Collaborative process:

10. Neither of them may dispose of any assets except
  - 10.1 for their reasonable living expenses;
  - 10.2 for the necessary generation of income or preserving assets;
  - 10.3 by agreement; or
  - 10.4 to pay for the cost of this Collaboration.
11. All currently available insurance coverage will be maintained and continued without change in coverage or beneficiary.
12. Neither of them shall incur or increase any debt for which the other is liable, unless previously agreed or in the ordinary course of business.
13. Either of them through their Lawyer is entitled to lodge a Caveat at the Titles Office against any real estate in which the other may have an interest.
14. Either of them may apply to the Department of Human Services (Child Support) to assess the amount of child support payable in their particular case.
15. Neither of them shall ask the Department of Human Services (Child Support) to take action to collect any child support or to review any child support assessment.
16. Neither of them may harass the other.
17. Neither of them shall permanently remove the children from the suburb/town/city/state in which they currently reside without the consent of the other.
18. They will follow temporary agreements.

**E. GUIDELINES**

19. Each Lawyer represents only his/her own client in Collaboration, even though we will all work together.
20. We acknowledge that Collaboration has the greatest chance of success if:

- 20.1 The Participants are prepared for Collaboration and for each joint meeting;
- 20.2 Jill and Jack accomplish *tasks* they have agreed to do in a timely way; and
- 20.3 Jill and Jack avoid one-sided actions.

#### **F. CONFIDENTIALITY**

- 21. Confidentiality is an essential and central element of collaborative practice.
- 22. All communications, information and documents arising from or relating to this collaborative process are confidential and may not in any way be released or communicated to a party outside this collaborative process without signed agreement between the Participants to do so.

#### **G. WHAT HAPPENS IF A PARTICIPANT CHOOSES TO GO TO COURT**

- 23. If all issues are not resolved in this Collaboration, neither Lawyer nor their law firm can represent their client in a Court proceeding.
- 24. Any information or document gathered or developed during Collaboration may be transferred to a new Lawyer. It may not be used in a Court proceeding unless, prior to the provision of such information or document during the Collaboration, Jack and Jill agree in writing that it shall be able to be used in Court proceedings.
- 25. It is acknowledged that in some limited circumstances, a Court may choose to override the Agreement that information will not be used in Court proceedings.
- 26. For the purposes of this Contract, the expressions “going to Court” or “Court proceedings” (and similar expressions) shall include any application, whether to the Department of Human Services (Child Support), a Tribunal or a Court, to review an assessment of or liability for child support and any Court application about any matter involving Jill and Jack.

#### **H. ENDING THE COLLABORATION**

- 27. Jill or Jack may choose to end the collaboration at any time.
- 28. If Jill or Jack has in the opinion of any of the Professionals acted significantly contrary to their obligations under this agreement that Professional may resign from the collaboration.
- 29. Unless the rest of the Participants agree in writing to continue, the collaboration shall then end.

#### **I. FORMALISING A SETTLEMENT**

- 30. When Jill and Jack reach Agreements, their lawyers will advise on the different ways of documenting Agreements and they will agree on the best method of documenting their Agreements.
- 31. If it is agreed that Consent Orders will be obtained, for this purpose only, the Lawyers may represent Jill and Jack in Court.

**J. PROMISE TO FOLLOW CONTRACT**

- 32. The Participants agree to be bound by the terms of this Agreement and to promote the spirit of Collaboration.
- 33. It is understood that each Lawyer represents only the Participant who retained that Lawyer. This Collaboration Agreement does not change the lawyer-client relationship between that Lawyer and that Participant.
- 34. It is understood that the communication coach and the financial professional have been engaged as neutral experts, and that neither will advise nor act for either Jill or Jack at the conclusion of this case.

**DATED THE            day of December 2017**

\_\_\_\_\_

Jill

\_\_\_\_\_

Lawyer Name

\_\_\_\_\_

Jack

\_\_\_\_\_

Lawyer Name

\_\_\_\_\_

Coaching Specialist

\_\_\_\_\_

Financial Professional

# ATTACHMENT 1

## EXPECTATIONS OF PARTICIPANTS IN JOINT MEETINGS

1. We will focus on reaching agreements for our future.
2. We will focus on the future and avoid unnecessary discussions of the past. We will focus on resolving conflict and not on blaming others.
3. We will keep in mind Jill and Jack's shared goals at every joint meeting, and will take actions and make decisions to achieve those goals.
4. We will address others in a courteous manner and tone. We will not interrupt when another person is speaking. We will try our best to be kind! We will avoid sarcastic, critical, defensive, or judgmental communications.
5. If someone feels that progress has ceased or that he/she is about to lose control of himself/herself, that participant will call for a break. If the break is insufficient to calm the affected person, the meeting may be adjourned.
6. Each participant will speak only for himself/herself. We will use "I" instead of "You" sentences.
7. We will express our genuine interests, goals and intentions.
8. Participants will be patient with each other and the professionals. We all will assume that each participant is acting in good faith and realize that everyone does not move at the same pace. To pull together, each participant must sometimes accommodate by slowing down. Delays can happen, even with everyone acting in good faith.
9. We will follow the agenda for each joint meeting. If there are other topics that someone wants to address, he/she shall ask that it be included in the agenda for the next joint meeting.
10. We will avoid arguments and instead discuss differences with a focus on reaching agreement.

# SCHEDULE 4

## BLOGGS

### Minutes of collaborative meeting on 20/12/2017

Present: Jill Bloggs  
Jack Bloggs  
Simon Smith, Lawyer  
Mary Jones, Lawyer  
Sarah Wilson, Psychologist  
Cara Evans, Financial Planner

## COLLABORATIVE CONTRACT

Both parties confirm they have read and understand the contract

- Respectful process, open and transparent
- New lawyers required if cannot settle and parties seek to go to court

Signed contract

## HOUSEKEEPING

Payment of costs of collaboration – from joint account

- Jill happy to pay the bills from the joint account
- Bills for all 4 team members will be copied to Jack and paid from the joint account by Jill

GOALS AND UNDERLYING INTERESTS – what is important to the two of you post-separation and for the future.

### Jill

- Foremost, the welfare of the children. Jack and I communicating effectively in relation to parenting the children.
- Structure around the children and co-parenting. I need structure and communication. There to be regular time. (*Structured co-parenting plan – helps children cope best with change*).
- Security of a family home for the children.

- Reliable and safe vehicle.
- Friendship with Jack. Would like mutual respect, be able to move forward. To be able to get through the big events which we will both be at
- Sufficient income to support family.
- Continue to build business and have financial independence.

### Jack

- Welfare of the children.
- Effective parenting communication with Jill.
- Minimise impact of separation on the children.
- Structured co-parenting plan.
- Maintain friendly, amicable relationship with Jill.
- Comfortable home for Jack and the children.
- Having financial certainty / clarity.

## INTERIM ISSUES

### Parenting and communication

How do we reduce anxiety around parenting and communication?

- Any significant changes to contact or communication – changes need to be telephoned. Don't rely on text message or email
- "significant" – how much variance? If more than an hour difference in prior agreed arrangement, telephone the other parent.

*Agreement: phone about any changes of more than one hour to agreed pick up or drop off times. Less than one hour, text is ok.*

- Possibility that people have other things planned and this can become an issue.
- If either parent proposes taking the children away overnight, discuss with the other parent before discussing with the children.
  - o Stops the children getting excited about an arrangement that may not work for other reasons;
  - o Mutual respect for other parent.
- Does it include other things that impact on what is going on in the household – parents have other plans.

*Agreement: Discuss with the other parent any planned overnight trips, before discussing with the children.*

- When is it ok to leave the children alone? For extended periods – children under 14 shouldn't be left alone. Don't have the wisdom to deal with any issues that arise.

*Agreement: Not to leave the kids alone for extended (2-3 hours or more) periods of time.*

- Jill is concerned that there are no beds or anything for the children, coming to the family home. Would like Jack to move quickly in getting that set up. E.g. Christmas. Jill would like this set up.
- Boundaries are important for both of them to set up. Jill seeks to set up those boundaries which seems hard for Jack because that used to be his home.
- Is it doable for Jack to set up his home for the kids and have them come there?
- Jack has ordered beds and is waiting on delivery. Is having difficulty because of the Christmas period.
- Jill is concerned about the communication as to what is happening at Christmas, there has been a lack of communication. Jill invited him to join Christmas lunch. Jack has said no to this but Jill is concerned that they spend time with their father and wants to communicate this to the kids. Suggests Christmas night.
- She is happy for Jack to come to Jill's on Christmas night. Jack says that is the only option as there is no furniture, cups, plates etc. Discussed a visit to Ikea.
- Jack doesn't feel like it can all get set up in the next few days. needs a lounge, chairs and table.
- Is there some sense of when that can happen?
- For Christmas night – discussed Jack coming to the home from 5pm and going to his home at the end of the evening? Jill is not comfortable with them both being there together. He can be there until late when she gets home / kids go to bed.

*Agreement – Jack to come at 5.00pm to Jill's. Jill will go out and Jack can spend time with the children.*

- It's a concern of Jill's. She would also like to talk about presents and where Santa comes. Jack is happy for Santa to come to Nanna's house. He doesn't mind not being there when they open gifts.
- There'll be a further plan about birthday gifts etc. when they do the co-parenting plan.

#### Child specialist intervention suggested by Sarah

This is part of the process – one off intervention with a child psychologist to see where the kids are at. They gather any information that the children feel that the parents ought to know and give feedback to the parents about this as they consider putting an ongoing parenting plan together. This involves:

- Independent person that the children can be opened with.
- Children can feel heard.



- One off – children get a chance to feed back – feel empowered.
- Jill feels that is something she would like to do. Jack is comfortable with that.
- Sarah will set up that to happen. Integral to the parenting plan process. She will provide the name and details of the person she suggests.

### Jack's personal things in the home

This is around the boundaries previously spoken about.

- Some of Jack's items are still in the home.
- Jill would like a clear break.
- Books, things in the garage, photo albums, other items need to be removed.
- Jack says he doesn't have anywhere to put those things at the moment.
- Jack is also concerned about the process of going through paperwork and working out what is to stay and what is to go. The computer – he will need files.
- Jill says the computer is Jack's, she has her own laptop.

What is the process that this could take?

- Jill is not caught up with the material side. Would like to retain the furniture for the children. She is open to Jack taking artwork and things that are meaningful to him.
- She would like a clean break. Would not feel comfortable walking into his home, doesn't want Jack to be coming and going to get what he needs from her home. Would like to know when he is coming.
- Jack says he would need to box it up and put in storage. What is a realistic timeline?
- 4-5 boxes worth. Jack is concerned it will be time consuming to go through the stuff in the garage. Could this be done in the New Year?
- Break it up into different rooms?
- Jill says she is happy to pack up the books and photo albums into boxes while he is away with the kids. Jack would like to do that himself. Jill would like a timeframe for this.
- By the end of December? Jack agrees that this is doable.
- Clear garage by the end of January is agreed.
- Caravan? Jill is open to leaving it in the basement for the time being. She ultimately doesn't want to keep it but is not in a rush for it to be gone.

The issues of going in and out of the house – how to best resolve that.

- Jill would prefer a phone call to let her know (outside of changeover) beforehand if he needs to go there.

- Key situation – at the moment Jack has a key. Is that ok for now? Jill is not completely comfortable with this, would like to be advised when he is coming and going. When his things are moved, she would like the keys returned.
- These are part of the issues around boundaries. Issues arising from separation.

*Agreement: Jack will let Jill know when he intends to go around to the house prior to attending.*

### Cash-flow

As part of the collaborative process, until things are settled, finances will normally stay as they are.

- Money to continue flowing through the joint account (with tax set aside) as has happened up till now.

### Phones

Jill would like the oldest children to have phones – starting secondary school next year.

She would like to get them iPhone 6.

- Jack does not think that the children need \$1000 phones. He would be happier for them to have the iPhone 4's or a cheap upgrade. Jill is happy to attempt that as a first step provided that they can be suitably upgraded.
- Jill would like it this week. Jack says that to have this done before school starts is ok.
- Jill would prefer for them to have them before Jack's holiday with them (in January) as they'll be away for 16 days.
- Jill has volunteered to organise this.

## FINANCIAL MATTERS

Cara summary of assets:

- Home (built themselves)
- Business in Murrumbena – sold and proceeds of sale (50%) used on home
- Factory retained.
- A further property – Carnegie – Jack's step-mother lives there. This is owned by Jack and sister.
- Property in Wangaratta
- Land – was purchased and sold (CGT paid)

## Income:

- \$120,000 from the trust per year, \$7,000 to running household, \$3,000 to tax
- Jill has started a new business in November 2016, early stages. Jack has been very supportive of this.
- Loan from the family trust to set this up - \$40,000

## Expenses

- Need to assess what is required for each of Jill's and Jack's households to run, and what expenses are required for the children
- This is a work in progress with Cara
- Jack isn't sure yet what his expenses are
- They are not yet sure what the children's expenses are as they become teenagers; they will be higher
- Jill is finding next year is already becoming more expensive for the children.
- Jack would like to sit down and do the budget for the children together.
- Extra-curricular activities, phones, etc.
- Does anything need to change from what kids have previously been doing? (May be nothing that needs to change.)
- Jill thinks that it's probably only a few thousand each year for extra-curricular (<\$5,000), doesn't think that will be a huge concern.
- Jack is happy for the activities to continue provide they're in budget etc. One of his goals is minimal disruption for the children.
- School fees – that amount has been set aside. Fees are \$14,000 per year per child. There was \$400,000 set aside for the children's education, uniforms, school activities (music, technology, etc.).
- They have negotiated with the school to pay all the school fees upfront and the school has come back with a figure of \$350,000 for all 4 children at 2018 fixed prices.
- The \$400,000 set aside has whittled down to \$327,000 approx. The school has asked for the \$350,000 prior to school starting next year unless a suitable other arrangement is made with the school.
- Jack would like to ask the school if they can pay \$270,000 now and remainder when the youngest starts in 6 years. Or some kind of staggered agreement.
- Wanted to speak with Jill first about this. Jill is ok with this proposal and would like to be involved in the discussion with the school together with Jack.

- Jack is concerned about how they fund everything.
- \$40,000 was used to start business. Some of it was used to pay rent.
- Cara suggests that they both attend the school to have the discussion – can that be done before Friday?
- They need to make sure that there is an exit strategy / claw back if one of the children leaves the school or doesn't go there.

*Agreement: they will both attend the school and meet with the bursar to work out how the lump sum is to be paid.*

ASSET		VALUE
Home – Box Hill		\$2.5m - \$3.0m ( <i>appraisal</i> )
Carnegie property	Owned by the family trust (controlled by Jack and sister)	\$1.2m - \$1.5m+ ( <i>Unknown asset value</i> )
Family car	Jill's	Agreed \$100,000
Land at Wangaratta (50 acres – some cleared, some uncleared)  - Not income producing  - Can't be developed (flood plain)	Owned by the family trust (controlled by Jack and sister)	In 1995 - \$156,000 – only 50% of this property in the pool.  Value not known.
Jack's car – 2010 Landcruiser	Jack's	\$60,000 approx. (\$120,000 in 2010)
Cash – joint  - Earmarked for education		\$327,000
Factory – leased until November 2018, have a right to renew (decision by May – 3 year option)	Income producing	Approximate value: ?  (conservative value – NAB – close to \$6,000,000 in 2010)  - 50% of value in the property pool
Jill's business		Nominal or no value at this stage?  \$20k stock, lease of shopfront, currently not taking income

		- 50% of value
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LIABILITY		VALUE
Loan from the trust		(\$40,000)
NAB credit card	Jill	(\$10,000)
Jack debt to trust – owed effectively to sister		(\$300,000)
Drawings from the family trust - To be reconciled by accountant		

SUPER		VALUE
Jack super	MLC	\$125,000
Jill super		\$82,000
Jack	AMP	?

Carnegie – suitable for Aunt at this stage. She is 71 and mobile. Not overly big. Unclear if it will remain suitable for her as she ages.

Wangaratta – place they went as a family. Sister shares it. She goes there with her family also

Factory – because of size of the asset, would probably value the asset. Value of commercial properties – gone up in that area? A joint valuer would normally be appointed by both parties. They provide a sworn value – specific figure.

### Superannuation

- Both have death and disability insurance through their superannuation fund.
- Neither have appointed beneficiaries for their superannuation fund.

### Valuations

- Should the family home be valued?
- Is it likely that the home will be sold or is this partly based on what the value of the property is? Is it likely to be sold soon?
- Might be guided by the value as to Jill's decision whether to sell the home?
- Jill is open to selling the home.

- Jill says she and Jack have agreed that it would be about \$3m. Do they spend the money to get the valuation or agree on \$3m.
- Valuation cost on home approximately \$2,000.
- Jack says he is comfortable agreeing to \$3m for these purposes. Jill is also comfortable with that.
- Should we be valuing all assets if we are valuing any of the assets? A valuation might make it easier to live with down the track if the value is higher or lower at a sale.
- Jack's view is that it would be disappointing to sell – overcapitalised the build expecting it to be a long-term asset, build for children for lifestyle, disappointing that won't be realised.
- Can the children have a similar lifestyle if sell it? Jack says they probably can have the similar lifestyle benefits in another house.

*Agreement: use \$3m value of the family home for the purposes of the collaboration process. Arrange sworn valuation of the factory.*

## NEXT STEPS

- Jill would like the factory to be valued because of the huge uncertainty in value. Lots of variation. Not as concerned about valuing Carnegie or Wangaratta.
- Jack would like the factory to be a legacy for the children and not for the factory to be sold. He is concerned that the valuation is an indication that the factory would be sold.
- How the distribution happens later on will depend on what the circumstances are at that point in time.
- Depending on how the distribution will be realised may affect how Jill looks at it in the property pool.
- Options in the process include:
  - o Leave the factory aside as going to the children
  - o Sell because the money is required now
  - o Taken into account when working out the family law settlement. Doesn't necessitate a sale of the asset if Jack doesn't want to sell it and a reasonable family law settlement can take place without it.
- Questions of timing are relevant. A watertight agreement does not necessarily require everything to happen straight away. As long as the long term plan is clear and everyone is financially supported, timing can be more flexible.

## NEXT STEPS

### Homework

- Valuation of the factory – lawyers to coordinate to choose a valuer and appoint them jointly.
- Jill and Jack to continue to look at their budgets with Cara. Jill and Jack to work together in relation to costs of the children.
- Sarah will email Jill and Jack with a child specialist details and help to set the parties up with that. Then she will assist re the co-parenting plans.
- Jill will email Jack a proposal for time with the children over the school holidays and copy Sarah in. Jack agrees to respond to that email about what will work for him. Then can discuss with the children.
- Jill and Jack to talk to Lester at the school regarding the upfront payment of the school fees.
- Jill to organise phones for the children.
- Cara will email the tax returns to the lawyers.
- Jack (with Jill) to pack his personal belongings in the house prior to the end of December.
- Jack and Jill to pack Jack's belongings from the garage before the end of January.

#### Next meeting

- Next meeting on 6 February 2018 from 10am to 2pm

# SCHEDULE 5

## MINUTES OF SECOND COLLABORATION MEETING ON 6 FEBRUARY 2018 JACK AND JILL BLOGGS

Present: Jill Bloggs  
Jack Bloggs  
Simon Smith, Lawyer  
Mary Jones, Lawyer  
Sarah Wilson, Psychologist  
Cara Evans, Financial Planner

Sarah introduced the Agenda:

- Welcome
- Parenting Update
- Finances – valuations, school fees, asset pool, income
- Settlement Options

### Parenting

Agreed: Jack to have dinner every Wednesday night from after school till 8.30pm; alternate weekends from lunch on Saturday until 5.00pm on Sunday.

### Finances

Education fees agreed with the school: \$270,000 to be paid now and balance of \$80,000 in 2024. If a child does not complete year 12, this can be revised.

Joint Fund is \$315,000 now.

Balance will be \$45,000.

This covers fees only, not the extras.

AMP Super for Jack is \$54,799.

Factory valuation is \$5,670,000; Jack's half is \$2,835,000.

### Major Assets

Home in Box Hill, agreed \$3,000,000

Carnegie (\$1.2m - \$1.5m divide by 2) \$675,000  
(consider whether this is accurate and whether to value later)



Wangaratta? \$200,000  
(Jack says \$200,000 total value. Jill says 3-4 times as much. This is divided by 2. This may need to be valued.)

Factory (half) \$2,835,000  
Cash \$45,000

Jack debt to sister (\$150,000)

#### Miscellaneous Assets

Jill's car \$100,000

Jack's car \$60,000

Jill's business stock \$20,000

Jack's Trust – factory P & E \$60,000

'Jack's' caravan \$55,000

Retained earnings in company \$490,000

#### Discussion

Cara – we need to consider now how to divide this up and what each household needs to live on. Perhaps Carnegie could be downsized to free-up cash.

Jack – Sister and I agreed Aunt can stay in house till she dies or moves out. Aunt is a self-funded retiree and also has a property at Mornington. She is fit (when I saw her 3-4 years ago). This is what our Dad wanted. We are not certain if she is still there.

A long time ago Jill agreed factory, Carnegie and Wangaratta would not be in the asset pool – they would be kept for the children.

Jill – We both want things for the children, the same things.

Simon – No one needs to be forced to sell anything if you can afford to keep it.

Jack – The agent (Leo) says it wouldn't be too hard to get another tenant if we needed to (if the current tenant left). Regardless of what happens, I won't sell the factory.

Jill – We have to do something.

Jack – Both of us probably need to get a job.

Sarah – Jill, a question is how can you financially look after the kids?

Jill – I need some source of income. I am working really hard on that.

Jill – The concern I have re the factory is if I remain intertwined with Jack and sister over the years. If sister found out I still had a claim on it or was getting rent from it this would not be good.

Jack – I agree with that.

### Superannuation

Total is \$262,088.

Jack AMP is \$54,799 as at 9 January 2018.

Jack MLC is \$125,134 as at 1 July 2017.

Jill MLC is \$82,155 as at 1 July 2017.

Income: Factory income post tax is understood by Jack to be \$7,000 per month

Expenditure: Children's extra-curricular costs and Jill running household costs total \$7,190 per month (excluding school fees)

Jack himself needs Est \$4,500 per month (no mortgage) to live on.

### Business and Trust analysis

Cara, Mary and Simon rang Arthur the (junior) accountant, on behalf of Michael Smith, to clarify the trust figures.

Cara reported: You can distribute an extra amount, tax-free, being depreciation (shown in the trust accounts) amounting to \$4,666 per month. This is Jack's half of the depreciation amount.

Also, the profit available to Jack from the trust in 2017 was actually \$275,327, half of which was available to Jack, being \$137,663.50, not \$120,000.

Jack owes \$716,000 to the trust (extra drawings taken out by him for the family over the years): so the debt to sister, being half this, is effectively \$358,000.

I cannot calculate total value of the pool of assets due to wide divergence of values for Wangaratta and Carnegie.

Jack – Bloggs Pty Ltd owns factory, Wangaratta and Carnegie. Land at Wangaratta backs on to State forest, the two blocks are separated. Whole property is in NSW.

Mary will do Title search. Simon will apply for planning certificate.

Jack will then get real estate appraisal of value of Wangaratta property.

Jill will get drive-by appraisal of value for Carnegie.

Arthur said retained earnings of \$490,000 in trust is not “real money”. It is not available for distribution.

#### Summary for Jill

Simon said Jill’s thoughts are along the lines of a 50/50 overall division of assets being appropriate. That would look like:

50/50 super split

#### Assets

House	\$3,000,000
Carnegie (say)	\$ 750,000
Wangaratta (say)	\$ 250,000
Factory	\$2,835,000
Cash	<u>\$ 45,000</u>
	\$6,880,000

Debt: Trust                      \$ 358,000

Balance                              \$6,522,000 which is divided by 2

Jill gets                                \$3,261,000

Jack takes all the other items above under Major Assets, to be adjusted up or down when valuations are checked.

As to the Miscellaneous Assets listed above these should remain with the person they are with now. The retained earnings are not of value. The business stock and plant and

equipment are likely to be much overvalued. If we disregard these items accordingly, the other assets are close to equal in value so no adjustment for their value needs to be made.

\$3,261,000 to Jill is close to the whole value of the home. When house is sold and values of Carnegie and Wangaratta are checked we adjust the division accordingly to make it 50/50.

Jack will think on this.

Provision for the \$80,000 payable to the school in 2024 also needs to be considered.

Ongoing child support needs to be agreed.

### Agreements

Jack will consider sale of home and speak to Mary as to when we can start the process of putting the house on the market for sale and Jill can choose the selling agent.

Jack will pay the school \$270,000 now.

Jack will see the children tomorrow night.

Ongoing financial arrangements between Jack and Jill stay the same till next meeting.

Jack will get real estate appraisal of value of Wangaratta property.

Jill will get drive-by appraisal of value for Carnegie.

Sarah has appointment with Jack and Jill on 26 February 2018 at 10.00am.

Next meeting: Monday 26 February 2018 at 1pm – 5pm

## SCHEDULE 6

### MINUTES OF THIRD COLLABORATION MEETING ON 26 FEBRUARY 2018 JACK AND JILL BLOGGS

Present: Jill Bloggs  
Jack Bloggs  
Simon Smith, Lawyer  
Mary Jones, Lawyer  
Sarah Wilson, Psychologist  
Cara Evans, Financial Planner

Sarah introduced the Agenda:

- Welcome
- Parenting Update
- Finances – valuations, school fees, asset pool, income
- Settlement Options

#### Update

\$450,000 – \$500,000 appraisal value for Wangaratta has just been received:

Carnegie appraisal is \$1,100,000 – \$1,200,000.

Sarah: summarised parenting discussions with Ilana this morning and interim arrangements are in place.

Jill: house will be on market in a week. It's with Woodards. Won't go to auction. Agent's commission is 1.3%. Advertising cost is \$6,000 - \$8,000.

Jack and Jill both think \$3,000,000 or more should be the sale price.

Agreed to put Jack's interest in Carnegie @ \$575,000 for discussions  
Wangaratta \$237,500

House is	\$3,000,000
School fund, cash balance is	\$24,000
Jack's business debt	<u>(\$358,000)</u>
TOTAL	\$6,316,500

\$80,000 is owed to school for fees (due for payment by 2024).

Jill notes there is \$10,000 credit card debt.

Cara says true super total is \$269,056.

Jill needs at least \$1,800,000 to buy a 5 bedroom house in same area.

*We broke to hold separate meetings....and reconvened.*

Jack proposes to settle as follows:

Sell Box Hill, give:

Jill \$1,800,000 to buy house

Jack \$1,000,000 to buy house

Pay school \$80,000

He keeps Carnegie and Wangaratta.

Factory will be sold for children to buy houses when they are of age.

\$40,000 debt re Jill's business is cancelled against caravan etc., 2/3 to Jill, 1/3 to Jack from factory income, for 2 years, then adjusted. He would allow \$80,000 to be invested now alternatively rather than paid immediately.

Jill put a counterproposal for settlement

On the basis that 40% of the total pool of assets including the factory comes to \$2,500,000 (and this % is the minimum Jill would get on a very bad day in Court), Jill will take \$2,500,000 from the sale of the family home. The balance goes to Jack. However, any excess above \$1,000,000 to Jack from the house is divided 50/50.

Furthermore, the profit from the factory is to be divided 2/3 to Jill 1/3 to Jack for 5 years. In 2017 numbers this would give Jill approximately \$101,000 and Jack approximately \$51,000 per year. Going forward the amount payable to Jill would be 2/3 or, if the profit drops, a minimum number to be calculated. Jill would agree to split the \$80,000 ongoing debt to the school so that she will pay her half when the time comes and Jack is to pay his half.

After the 5 years of factory income expires, Jack would continue to pay \$60,000 per annum plus CPI as child support at the rate of \$15,000 per annum per child.

Jack rejected this offer.

Conclusion

Mary will be meeting with Jack after our collaborative meeting and will give us a response as to whether Jack is willing to give any movement from his position. Mary will communicate Jack's further response by 6 March 2018 so Jill knows where things stand.

## SCHEDULE 7

### **The financial planner's role in collaborations: comments from JULIE GRAY and CLARE RIXON**

Separating couples experience a significant shift in their financial situation.

Without assistance, the changes that occur can be a tipping point relative to their financial wellbeing. It is essential to understand the impact of financial decisions in both the short and long-term, as they pertain to separating couples' lifestyles, especially at a time when emotions can lead to irrational decisions with long term consequences.

Collaboratively trained financial professionals play an integral role in the collaborative process. They are neutral and work in a cost-efficient manner (charge an hourly fee) to bring to the table key financial information, including a summary of financial position detailed budgeting which assists to provide greater clarity for the clients, collaborative lawyers and family consultants.

The collecting of financial information is gathered between meetings using a systematic and individual data collection process. This is structured to encourage disclosure of information relevant to all joint/individual assets and liabilities. The asset and liability confirmation process is based upon client provided information, asset and value verification, copies of bank, superannuation and financial statements. All values and positions are presumed factual and are then verified by the financial independent using various general market investigation processes. Any market assumptions included in the financial position report are firstly discussed and agreed to by each member of the separating couple and are also clearly identified in all process documents. This process ensures continued understanding and transparency.

If required, general financial education is provided on an individual basis to ensure financial awareness is observed during the collaborative process.

This assists each collaborative meeting to be far more productive with clients feeling more engaged and better equipped to proceed towards their collaborative discussions and ultimate outcome.

Further assistance to support and ensure understanding during collaborative meetings often sees the financial independent utilising a whiteboard and/or large wall monitor as additional visual aids.

Using such visual aids facilitate the opportunity to input and track discussed options and see directed changes as they arise enabling an ongoing 'what if' scenario which supports the collaborative process that the clients are engaged in.

The financial independent provides a general budget tool and encourages separating couples to each prepare a detailed budget demonstrating their combined factual 'present' cashflow plus their own projected 'future' individual cash flow. Children's future expenses are gathered and reported separately to ensure clear and focused discussions are addressed to this area.

When cash flow gaps are identified the financial independent assists the party/s to understand through education, for example, exploring the ASIC Money Smart website.



Lifting the financial veil can be empowering for a client who has a lesser understanding of the financial position of the household and at times can expose problem areas, for example, excessive spending, burgeoning debt, business financial strain. Issues can be brought to the table in a neutral way for the team to help problem solve.

Throughout the process the financial independent assists the team and the clients to explore possible options for property settlement and clearly present their financial impact (including general tax and retirement planning consequences).

The financial independent actively introduces and refers to various financial tools specific to personal financial awareness and future financial strategy and planning.

The importance and success of the financial independent's role within the family law collaborative process is due to the continued impartial and 'non-advice' professional position that we assume.

Personal Financial Advice is not provided at any time but as we, as collaborative financial independents, will make ourselves available (if authorised) to communicate with the clients' personal financial professionals to discuss financial facts and data for the benefit of each of the separating couple.

A financial independent helps to level the playing field by reality checking outcomes so each client is empowered to see potential solutions from each other's perspective.

Separating couples receive comprehensive factual financial information that guides them to a reasonable, practical and workable outcome so they can both move forward with confidence.

Clients have enthused about the value of the team approach, including a financial neutral.

By way of example from client feedback:

'I was worried about what would happen to my businesses when I got divorced – that had held me back from leaving for a long time. My wife was never involved in the businesses, and MELCA helped her understand how it all worked. We were then able to work out a settlement that kept the businesses intact and we both had the assets and income we needed.'

– Patrick, architect and business owner

Client A - Director of multinational company regarding assistance during divorce proceedings and reaching a financial settlement with both he and his wife's family lawyers:

"Thank you for your email and help. Yes it has been a difficult time but we appear to have got through it the best we could have expected. I have no doubt the help you gave "C" (in particular) and I during the process helped us reach a relatively quick solution."

*Extract from email 17 February 2014.*