



AUSTRALIAN ASSOCIATION OF COLLABORATIVE PROFESSIONALS

Submission to the ALRC Enquiry into the Family Law System

Submitted By:

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The AACP continues to urge that true reform lies in a recognition of Collaborative Practice in the Family Law Act. The inclusion not only ensures the option is available to all but also provides a standard of practice is maintained.

This form of practice is flexible, multidisciplinary and seeks to enter positively into family work. It does not bring with it a divisive impact on a family.

As soon as the 2006 amendments to the Act altered the parenting landscape for separated families in Australia, adversarial process had to be detrimental to future parenting.

Collaborative Practice seeks to ensure respectful relationships are maintained and encouraged. Dignity and the resulting mental health benefits is central to the approach.

If reform seeks to embrace a move away from the costs both personal and financial of litigation, it must contemplate the advantages of Collaborative Practice.

In a typical Collaborative matter the “non-financial” spouse is encouraged to obtain financial advice about their future management of settlement funds.

This must compare favourably to the tradition pathway in which such a spouse over time exhausts capital and endures increasingly diminishing circumstances. The future demands on Centrelink funding have to be recognised. If the habitual inclusion of such advice alters that reliance, it offers much.

There is recognition that such additional support and advice is needed. Modelling of the impact of part time work on the longevity of capital is habitually included. Information about budgeting and money management is provided without judgement. The long term societal advantage of such an approach must be obvious.

Interest based negotiations enhance just and equitable outcomes.

Respectful process which accepts and accommodates for power imbalance and which includes a communication specialist permits parents to make decisions about future care supported with information about the developmental needs of children. No other process provides such supported decision making.

This submission invites you to actually consider the benefits to a family of using this model. It is not presented from the perspective of those engaged as service providers.

We refer again to our original submission as to the particular benefits for separating couples:

Question 26 In what ways could non-adjudicative dispute resolution processes, such as family dispute resolution and conciliation, be

developed or expanded to better support families to resolve disputes in a timely and cost-effective way?

- It is submitted by AACP that the primary way in which non-adjudicative dispute resolution processes can be developed or expanded to better support families to resolve disputes in a timely and cost-effective way, is by the adoption of Interdisciplinary Collaborative Practice as a primary source of family dispute resolution.
- We refer the Commission to the research papers, surveys and Australian Family Law Council Report to the Attorney General, summarised at page 14 and following of this paper, in relation to the illustrated advantages of Interdisciplinary Collaborative Practice as a primary method of family dispute resolution. In that regard, we quote again below the summary of the 2010 study of 933 cases undertaken by the IACP over a four-year period, those findings included:
 - 1.1 86% of the cases settled, although a high percentage were rated by practitioners as difficult or very difficult cases; and
 - 1.2 93% of the cases were completed in 18 months and most were finished within 9 months;
 - 1.3 AACP also respectfully recommends to the Commission the conclusions of the Family Law Council's recommendations to the Attorney General in 2007, at page 59 of that report, summarised below as follows:-
 - 10.1 Council believes collaborative practice to be a valuable addition to the range of dispute resolution options available, particularly in relation to property matters.
 - 10.2 Collaborative practitioners have been practising in the United States and Canada for at least 15 years, and there seems to be an acceptance of the practice in the judiciaries of those countries. In Australia, there is a growing body of enthusiastic practitioners, together with anecdotal reports of high client satisfaction. More research should be done to evaluate collaborative law as a dispute resolution option. *[The Commission is referred to the 2010 IACP report referenced earlier herein in relation to that further research which has now been undertaken].*

- 10.3 In the legal aid context, aspects of the collaborative model are already in place in the Legal Aid conferencing program, although this program has been developed independently of collaborative law. At present, it does not appear to Council that a fully articulated collaborative model can be applied in the Australian Legal Aid context. Council has recommended that National Legal Aid monitor developments in collaborative practice.
- 10.4 The collaborative practice model can be adapted to the individual requirements of parties in dispute. Independent experts including financial, relationship and child experts can be brought into the process in accordance with parties' requirements and means. This aspect of collaborative practice will make it an attractive option in many cases where parties have the means to engage such experts. Where parties have been able to access such services, it is appropriate in Council's view that this be taken into consideration in the event that collaboration fails and parties wish to commence litigation.
- 10.5 In cases where the collaborative process works well, it provides significant advantages to litigation. In common with other dispute resolution models such as mediation, it offers parties the opportunity to manage both the process and outcome of dispute resolution. It also offers parties the support of traditional legal advocacy, with the difference that legal advisers focus exclusively on a negotiated outcome.
- 10.6 Finally, Interdisciplinary Collaborative Practice fits well with the new direction in family law marked by the 2006 Family Law Reforms. In common with those reforms, it focuses on parties reaching their own solutions in an atmosphere which avoids the negative consequences of the adversarial court system. The legislative changes proposed in recommendations 3, 5, 6 and 7 are aimed at placing collaborative practice on an equal footing with other non-litigious dispute resolution processes.