



**ATTORNEY-GENERAL**

**HON ROBERT MCCLELLAND MP**

**LAUNCH OF LAW COUNCIL OF AUSTRALIA'S  
COLLABORATIVE PRACTICE GUIDELINES FOR LAWYERS**

**SENATE ALCOVE, PARLIAMENT HOUSE, CANBERRA**

**THURSDAY EVENING, 24 MARCH 2011**

## CHECK AGAINST DELIVERY

First, may I acknowledge the traditional owners of the land we meet on – and pay my respects to their elders, both past and present.

Mr Alexander Ward, President of the Law Council of Australia

Ms Cathy Gale, Chair of the Collaborative Practice Committee

Ladies and gentlemen,

It's my great pleasure to be here this evening to launch the Law Council of Australia's *Collaborative Practice Guidelines for Lawyers* and supporting *Collaborative Practice Standards for Training and Trainers*.

I fully support the focus in collaborative practice on cooperation and principled negotiation rather than confrontation in dispute resolution.

In a collaborative environment the upfront aim is the resolution of the dispute without resort to litigation.

Collaborative lawyers sign a contract that says neither they, nor anyone from their firm, can represent the parties if they subsequently go to court.

This initiative helps to instil clients with confidence – in the lawyers' desire to resolve the conflict, and in their own prospects of reaching a mutually agreeable solution.

By way of history, collaborative law was pioneered by Stu Webb, a disgruntled divorce attorney from the United States.

Webb's view was that court imposed outcomes frequently made it extremely difficult for separated couples to deal with each other in a reasonable and rational way.

After 20 years of practice and severe litigation fatigue, he was on the verge of giving up the practice of law.

Then he started working collaboratively with a judge of the Supreme Court and some like-minded colleagues, and the process called 'collaborative law' was born.

At the end of his first 12 months as a collaborative lawyer, Webb had completed approximately 99 cases, and settled 95 of them.

The process caught on through the United States, Canada, the United Kingdom and parts of Europe.

It leapt across to Australia in 2005, when a group of 25 lawyers, mediators, therapists and others attended training run by Webb.

Since then, practice groups have been established in New South Wales, Victoria, Queensland, Western Australia and here in the ACT.

And so collaborative practice is already well known in the family law field, particularly following the Family Law Council's 2006 Report on *Collaborative Practice in Family Law*.

Collaborative practice is also a key element of the Family Relationship Centre legal assistance partnership program, which enables Family Relationship Centres to partner with legal service organisations so that legal information, advice and assistance may be provided to clients of the Centres at an early stage.

I will talk a bit more about the significance of that later.

But I am very pleased to see the Law Council's commitment to developing the broader practice of collaborative law.

The establishment of the Law Council's Collaborative Practice Committee, websites with links to collaborative practitioners, and the development of these Guidelines and Training Standards are to be commended.

### **Strategic Framework for Access to Justice**

The continued development of collaborative law sits neatly with the Australian Government's commitment to encouraging people to resolve disputes early and at the lowest possible level.

It is consistent with the Government's *Strategic Framework for Access to Justice in the Federal Civil Justice System*.

The Strategic Framework was adopted by the Australian Government in September 2009 and by all State and Territory Attorneys-General in November 2009.

It provides governments with a point of reference to shape reforms affecting access to justice, and comprises five principles:

- Accessibility
- Appropriateness
- Equity
- Efficiency, and
- Effectiveness.

The practice of collaborative law has great potential to fulfil all of these principles.

And the Government's Access to Justice report highlighted that resolving disputes early is central to overcoming barriers to access to justice.

## **Australian Government initiatives**

The Australian Government has developed a range of initiatives to encourage early dispute resolution, consistent with this Framework, of which I will mention just a couple here.

### *Dispute management in Australian Government agencies*

I advocate and promote early dispute resolution across Australian Government agencies.

The Legal Services Directions require Australian Government agencies to:

- avoid litigation where possible, and
- consider the use of ADR before commencing litigation, and during the course of proceedings.

I am also encouraging the adoption of better dispute management strategies within Australian Government agencies, which (amongst other things) should deal with when ADR might be used.

The National Alternative Dispute Resolution Advisory Council has developed a guide to *Managing Disputes in Federal Government Agencies* and an accompanying toolkit, to support Government agencies in implementing their dispute management strategies.

It is my view that the adoption of a more strategic approach towards dispute management by Commonwealth agencies will result in the better management of those disputes, reduce costs, and importantly, increase access to justice for the broader community.

### *Legally assisted family dispute resolution in Family Relationship Centres*

I mentioned earlier the Family Relationship Centre legal assistance partnership program.

The program is supported by a change in policy I announced in 2009 to allow lawyers to be present at Family Relationship Centres.

64 Centres and 77 legal assistance bodies have been working in partnerships to provide clarity and support for separated and separating families.

The provision of these services is based on collaborative practice.

The Australian Institute of Family Studies has completed an evaluation of these Legal Assistance Partnerships and found that the majority of partnerships are functioning well with high levels of collaboration and enthusiasm amongst staff from FRCs, Community Legal Centres and Legal Aid Commissions alike.

By providing separating couples with legal information at an early stage, there is an improved likelihood that they will agree to lasting arrangements. This in turn will reduce the number of couples proceeding to court to settle their dispute.

### **Collaborative law and the Guidelines**

As I have said before, access to justice is no longer just about access to a court or a lawyer: it is about providing practical, affordable and readily available information and options to help people to prevent or resolve their disputes; it is about empowerment.

The practice of collaborative law not only encourages early dispute resolution, but does so in an environment where the client has more control over what happens during the process and how it is resolved.

This aligns well with my idea of what access to justice is all about: empowerment to solve a dispute early with access to a range of appropriate tools.

In collaborative law, the clients are an active part of the settlement team –

- their needs are voiced
- their views are heard
- and by participating in the process, they not only feel respected, but instrumental in the outcome.

The Guidelines being launched today usefully explain the collaborative process, the role of participants in that process, and competency requirements for practitioners.

They are well supported by the Collaborative Practice Standards for Training and Trainers, which will assist to ensure the quality and integrity of the collaborative process.

While the impetus for collaborative law arose in the family law arena, the Guidelines recognise that collaborative practice can be applied across a broad range of disputes, and I encourage this.

## **Conclusion**

I commend the Law Council of Australia for developing these Collaborative Practice Guidelines.

I have no doubt that they will make an important contribution to the promotion, awareness and effective practice of collaborative law in Australia, and this can only be a good thing.

And I strongly support the Law Council's commitment to assisting effect a cultural shift away from the traditional adversarial approach.

I encourage the Law Council to keep up the good work in promoting collaborative practice, and I recommend the Guidelines to you.

Thank you.