



Chairperson: Associate Prof Helen Rhoades

Members: Ms Nicky Davies
Mr Clive Price
Federal Magistrate Kevin Laphorn
Justice Garry Watts
Dr Rae Kaspiew
Ms Alison Playford

Family Law Council

12 October 2010

The Hon Robert McClelland MP
Attorney-General
Parliament House
Canberra ACT 2600

Dear Attorney-General

Family Law Council Advice on confidentiality and inadmissibility in the Family Law Act

The National Alternative Dispute Resolution Advisory Council (NADRAC) invited the Family Law Council (the Council) to provide a submission in relation to NADRAC's reference of 1 December 2009 from you, concerning the integrity of Alternative Dispute Resolution process. In particular, the Council was asked to comment on NADRAC's Issues Paper of July 2010 that addresses '*Confidentiality, Admissibility, Practitioner Immunity and Conduct Obligations in ADR Processes.*' Mr Clive Price has also had extensive involvement in this process both as a member of Council and in his capacity as a member of the NADRAC Integrity Committee.

The Council provided its submission to NADRAC on 17 September 2010 with a particular focus on confidentiality and inadmissibility in family dispute resolution (FDR) under the *Family Law Act 1975* (**Attachment A**). We understand that NADRAC is due to report at the end of November 2010.

The Council provides you with this letter of advice, by its own motion, on the basis that the Council feels that the issue of broader information sharing and integration across the family law system requires particular attention in order to deal with the issue of family violence and child abuse.

The Council highlighted in its December 2009 Report on '*Improving responses to family violence in the family law system: An advice on the intersection of family violence and family law issues*' ('the 2009 Report'), the increasing emergence of allegations of family violence and child abuse, which are becoming the core business of the federal family courts. Increased communication, co-operation and information sharing between the federal family courts and

agencies dealing with family violence and child protection issues is necessary to minimise situations where the federal family courts are making critical decisions without adequate information.

Professor Richard Chisholm also highlighted in his report '*Family Courts Violence Review*' the court's ability to conduct a risk assessment process and its capacity to protect children and families that come before it, would almost certainly be enhanced if it had access to relevant information held by external agencies, including dispute resolution agencies.

We consider that the problem of the courts not being able to access important information obtained during the FDR process lies with the inadmissibility provisions contained in the Family Law Act rather than the confidentiality provisions given the limited exceptions in which evidence can be presented to the court. Such evidence may be critical for court processes in order to protect victims (including children) from further harm from family violence and/or child abuse. On this basis, the Council recommended to NADRAC that the exceptions to the inadmissibility provision should be amended along similar lines but not identical lines to those exceptions specified for confidentiality in the Family Law Act.

We consider that FDR practitioners should be able to provide additional information to the courts to assist with the courts' case management and risk assessment in subsequent litigation. The Council notes the importance of the implementation of suitable safety measures to ensure that victims and their children are not exposed to further harm.

The Council suggests that a process is required to ensure that the court is able to identify when an FDR practitioner has specific information about child abuse or serious family violence in a particular case. We recommend exploring with the courts, a way to specifically develop a part of the existing Commonwealth Law Courts portal to enable FDR practitioners to input this information in the portal. This would allow appropriate authorities such as the police, state child protection authorities and domestic violence services to access the portal to check whether an FDR practitioner has flagged information that could potentially be made available. This would be an effective mechanism through which the courts and other appropriate bodies could receive crucial information. The ability to draw on such information should also allow for the appropriate sharing of that information across the sector.

We consider that the information gathered on the portal should be confined to child abuse or 'serious' family violence so that a 'drag net' effect is not created. As to what constitutes 'serious' family violence would be a matter of discretion for the FDR practitioner within prescribed guidelines. The Council also suggests that in cases where a victim is at further risk of child abuse or serious family violence because a disclosure has been made and it is possible that the perpetrator has acquired this information, a second flag could be included in the portal so that this information would only be available to a judicial officer.

We are yet to consider the level of information that is required but suggest if this approach is implemented it would be done in consultation with the courts and other stakeholders.

Our proposal is an important initiative and is one which would greatly assist in the Government's commitment to reduce violence against women and children. The information collected on the portal would also assist in further research in addressing any gap in what happens to the group of people who are issued with section 60I certificates because family violence/child abuse has rendered FDR inappropriate but have not taken their matter to court.

The Council considers that the proposal would require development of the portal, training and consultation. For this reason, we recommend that appropriate funding be provided to support this initiative.

We are happy to further discuss our initiative with you, or representatives of your Department.

Yours sincerely

A handwritten signature in cursive script, appearing to read "H. M. Rhoades".

Associate Professor Helen Rhoades
Chairperson