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17 January 2007

Family Pathways Branch
Attorney-General's Department
Robert Garran Offices
National Circuit
BARTON ACT 2600

Dear Sir/Madam

Feedback on A New Accreditation System for Family Dispute Resolution Practitioners

The National Association of Community Legal Centres (NACLC) is the peak organisation representing Community Legal Centres (CLC's) in Australia. CLC's are independent, non-profit organisations which provide referral, advice and assistance to more than 350,000 people each year. There are currently 207 centres in Australia. Services are provided free of charge on legal issues which include family law and domestic violence. NACLC has participated in the development of the qualifications framework for Family Dispute Resolution Practitioners through representation on the Project Steering Committee for this work and by providing written input.

We write now only in response to the key questions that concern us – Issues 4-7, 9, 12 and 13 of the Consultation Paper. However, we note that there will be a further consultation period on the draft Accreditation Rules and we would be grateful for the opportunity to comment on the detail of the new accreditation system at that time.

Issue 4: How should the new Vocational Graduate Diploma in Family Dispute Resolution apply to existing and potential new entrants to the family dispute resolution profession? In particular, should the position of existing practitioners who meet the requirements of Regulation 83 as at 1 July 2007 be preserved ('grandfathered')?

In our view the new Vocational Graduate Diploma in Family Dispute Resolution should apply to existing and potential new entrants to the family dispute resolution (FDR) profession in the same way. All current and potential new FDR practitioners should be required to meet the requirements of the qualification (whether by recognition of current competence or by undertaking the necessary training and assessment) to ensure high consistent national standards. At the very least, the full qualification should be required of all potential new entrants, and recognition of current competence in the compulsory units should be required of all existing FDR practitioners by a certain date. We are opposed to the indefinite preservation of the position of existing practitioners by way of a 'grandfathering' clause.

Issue 5: Should the Accreditation Rules specify that a certain amount of supervised practice be required as a pre-requisite for *registration* as an accredited family dispute resolution practitioner?

Issue 6: If so, what is the appropriate level of supervised practice that is required?

We believe that the Accreditation Rules *should* specify a certain amount of supervised practice as a pre-requisite for registration as an accredited FDR Practitioner. We note the move away from requiring tertiary qualifications to be able to conduct FDR is being made partly on the basis that many people have significant amounts of practical experience without formal qualifications. We believe that this shift must be accompanied by appropriate means to ensure that people, particularly those without formal qualifications are actually conducting FDR using accepted/appropriate methods and that this is best achieved by a requirement for supervised practice. In our view a minimum of 30 hours supervised practice should be required for registration.

Issue 7: Are there any other requirements that family dispute resolution practitioners should meet (such as meeting a fit and proper person test) in order to be registered as an accredited practitioner?

NACLC supports the requirement that FDR practitioners should meet a fit and proper person test in order to be registered as an accredited practitioner. We believe that this is appropriate given the significant position of trust that an FDR practitioner holds in relation to parties to dispute resolution. There may well be other requirements that should apply to FDR practitioners undertaking specialist work – for example practitioners working directly with children should be required to have a ‘Working with Children check’. We suggest that as the proposed registration database is developed, that it could and should become more detailed to include accreditation to undertake specialist work. To use the example of working with children again – accreditation to do this would require the working with children check and could also require assessment of competence against the relevant ‘family relationship’ electives (CHCFAM802A Work within a child inclusive framework, etc) in the Vocational Graduate Diploma in Family Dispute Resolution.

Issue 9: Should family dispute resolution practitioners be obliged to meet any new requirements (for example, a certain number of hours of practice per annum) in order to remain accredited? If so, what should these requirements be?

FDR practitioners should be required to undertake at least 12 hours of continuing professional development training. We also believe that a requirement for undertaking a certain minimum number of hours of FDR practice within a specified time period should be imposed on FDR practitioners for them to remain accredited. In our view, the number of hours and relevant time period should be different for

experienced practitioners to recent entrants to the field. By way of example only - a practitioner with under 5 years experience could be required to undertake a minimum of 40 hours of practice per year, whilst a practitioner of 5-10 years experience could be required to undertake a minimum of 30 hours practice over a 2 year period. In fixing the relevant requirements we would emphasise that a balance needs to be found between ensuring that practitioners who take time out of work for family responsibilities are not unfairly disadvantaged, whilst still ensuring that practitioners have the necessary skill level to undertake family dispute resolution work. However, we would defer to our colleagues in the family dispute resolution field regarding what the precise requirements should be.

Issue 12: Is there a case for limiting the complaints that can be made about family dispute resolution practitioners to those concerning practices (such as duress, bias, breach of confidentiality, conflicts of interest) and excluding those relating to the outcome of the family dispute resolution (such as a disagreement regarding the kind of certificate that is issued under the Family Law Act)?

Issue 13: How should complaints about family dispute resolution practitioners be dealt with in the new accreditation system from 1 July 2007?

Clear, accessible complaints mechanisms must be available regarding experiences with *all* accredited family dispute resolution practitioners in order to ensure that there are some checks and balances on the proposed database registration system for accreditation. In our view, even if the body to which complaints are required to be made varies (eg FACSIA for Family Relationship Services Program providers, a law society for a lawyer) there must be consistent minimum standards against which such complaints are measured. There must also be a direct and speedy response in terms of cancelling accreditation of practitioners against whom serious complaints are upheld.

We agree that complaints should not generally be able to be made about the 'outcome' of family dispute resolution sessions. However, we do not consider that complaints about the kind of certificate that is issued under the *Family Law Act* by an FDR practitioner should necessarily be viewed as an 'outcome' of an FDR session and we believe that it will be important to have some way of disputing FDR practitioner's decisions about the issuing of these certificates. This does not have to be by way of a complaints process. However, the Act does not appear to provide any mechanism for disputing an FDR practitioner's view about whether a party has made a genuine effort to resolve the dispute. Unless some other mechanism is put in place, complaints *should* be able to address the issuing of certificates.

We also note in passing that it will often be very difficult to separate a complaint about the 'process' from the outcome – as the outcome of the FDR session may well be one of the clearest indicators that the process was problematic. For example a complaint about the way an FDR practitioner managed or failed to manage power imbalances between the parties (particularly where there has been

family violence) may well be best evidenced by the terms of the agreement actually reached.

FURTHER INFORMATION

If you require any further information, please contact Joanna Fletcher on 03 9642 0877.

Yours sincerely,

A handwritten signature in black ink that reads "K. J. Fletcher". The signature is written in a cursive style with a horizontal line at the end.

Joanna Fletcher on behalf of
National Association of Community Legal Centres