

# FAMILY LAW REVIEW

Volume 5, Number 1

April 2015

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## ARTICLES – FOCUS ON COLLABORATIVE LAW

### **Appropriate dispute resolution in cases of family violence and the collaborative practice model – Katrina Markwick**

The preponderance of family violence in Australia has been widely acknowledged. One in three women is a victim of such violence in their lifetime, and one woman is killed every week by a partner or ex-partner. As such, many cases proceeding to the Family Court, or presenting to family mediation services, involve a history of family violence. Advocates for victims of family violence argue that these two forms of dispute resolution do not adequately protect victims and their children from the perpetrators of violence. This article argues that a collaborative practice model has the potential to provide a much more specialised, nuanced and ultimately more effective response to cases involving family violence. ....

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### **Collaborative practice in family law matters with coercive control-type family violence: Preliminary thoughts from the practitioner coalface – Patricia Easteal, Jessica Herbert and Jessica Kennedy**

Collaborative practice has been promoted as a method of dispute resolution in family law. It represents a shift away from litigation, towards a formally contracted negotiation process involving lawyers, relevant professionals and their clients. This article is particularly interested in whether collaborative practice might be appropriate in some matters involving the coercive control type of family violence. Overseas and Australian academic literature is examined to learn about the principles and processes of collaborative practice in general and how they apply to matters involving family violence. The article also looks at the experiential-based views of a small, targeted, sample of lawyers. The authors’ findings identify: the importance of screening and suitability criteria; how collaborative practice can be modified to deal most effectively with a power imbalance; and its potential benefits and risks. The authors conclude that with diligent, on-going assessment, management, monitoring and support by lawyers and other professionals trained in both collaborative practice and family violence, it may be a feasible option that could provide the victim with safety and a “voice”. ....

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## PROFESSIONAL INSIGHTS

### **Family dispute resolution: 12 steps for practitioners to minimise the risk of complaints – Mieke Brandon**

Managing family law disputes can be complex, challenging and rewarding for both the parties and the family dispute resolution practitioner (FDRP). No matter how experienced and talented FDRPs are, occasionally parties will be dissatisfied. Complaints about FDR typically derive from: a mismatch between client expectations and what actually happens; a lack of understanding on the part of one of the parties as to why they have become involved in the process; a perception that the process was not fair; a diminished sense of parties’ self-determination; a perception that the FDRP has “taken over” a process which is

supposed to have a significant input from the participants; or a feeling of being “bullied” into settlement. This article explores the interplay between the FDRP’s role, as facilitator of the process, and the potential unfulfilled expectations of the parties participating in family dispute resolution so that the risk of complaints being made can be minimised. .... 34

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