



18 December 2019

The Hon Kevin Andrews MP  
Chair, Joint Select Committee on Australia's Family Law System  
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Canberra ACT 2600

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Dear Chair

Divorce Partners and its consortium present the following submission and recommendations to the Joint Select Committee for consideration.

## **1. Preview**

1. Our proposal is to create a system for separating couples to achieve rapid resolution of financial disputes.
2. It is targeted primarily at the 92% of separating couples who do not go to court, yet at least half of whom have protracted disputes about their financial settlements.
3. It would enable couples to achieve resolution of their disputes within 90 days.
4. It would operate externally to the court system but would not prevent any parties from commencing cases if they wish.
5. Based on a purpose-built online portal, it would run at no cost to government.

## **2. Who are we?**

Divorce Partners Pty Ltd is a mediation business that specialises in solving financial disputes for separating couples who cannot afford lawyers (that is 62% of the population), using low cost electronic data sets and a clearly defined process.

Our technology partner, Integral Technologies is a leading IT company headquartered in Brisbane who is an accredited provider to Federal and State governments.

Our proposal is to build a web portal to assist the narrowing and resolution of financial disputes.

### **3. A New Approach**

We propose reform for separating middle class couples whose wealth is less than \$2 million in which they would be obliged to narrow their dispute via an online portal and to mediate any residual differences.

This resolves financial disputes in a financially rational manner, quickly.

Rather than large expenditure by government, we offer to build the system at no cost to government and deliver it as a service (Software as a Service: SaaS) directly to the public.

### **4. Key Insights**

- The vast majority of separating couples do not go to court yet experience considerable and unnecessary stress.
- ***The complete absence of any clear rules for resolution of financial disputes outside the court system causes uncertainty, delay, gamesmanship and poor social outcomes.***
- Introducing a clear, sensible process will change the economic incentives to encourage couples to cooperate and achieve financial settlements promptly and inexpensively.

### **5. Demographic**

The system is proposed to be made available for couples with less than \$2 million of net wealth. They represent 80% of Australians who cannot afford lawyers or courts and do not qualify for government assistance.

### **6. The Proposed Solution**

The core of this technology- and mediation-driven approach is an obligation for separating spouses to release to each other, early, the portions of their wealth that are not in dispute. Couples are then obliged to complete a process which delivers an outcome for the residual sums (but not blocking them from then entering the court system if they wish).

The approach will shrink the dispute and change the economic incentives, so that for 90% of separating people, early settlement of their financial disputes is attained within 90 days.

## 6.1 Overview of the Steps to Early Settlement

1. A separating person can commence the process by opening a case on an electronic portal. They disclose their view of the couple's financial position and the system issues a notice to the other spouse requiring they also engage with the system. Disclosure and valuation obligations are imposed on both parties.
2. Each spouse is immediately allocated 35% of their joint wealth. This *shrinks* the sums in potential dispute to no more than 30% in the first instance. In our experience, this reduces the tension between the couple.
3. The less financially advantaged partner is then allocated at least half of the remaining 30% i.e. 15%, thereby reducing the amount rationally in dispute. By constraining ambit claims and creating normalised parameters for wealth distribution early in the process, we have been able to shrink over 90% of disputes to a smaller gap of around 5 % of the wealth pool.
4. There is then a mandatory requirement to mediate or otherwise negotiate the remaining gap within a prescribed timeframe.
5. If the matter is not resolved, then the remaining disputed portion of wealth is to be placed in a joint bank account, stymying the economic incentives of delay.
6. Participants do not lose their right to commence court action against each other, but in practice few will.

## 6.2 Early Settlement in Detail

The system consists of a prescribed set of steps by which disputing couples must disclose their wealth promptly, follow set steps to mediate or resolve remaining disputes and then reach a decision.

The system moves the compliance burden to individuals and away from the state. It requires each spouse to make wealth distribution between them within normalised ranges. It places the onus on them to show why they should *not* pay, rather than wait 2 to 3 years for a court direction to pay at all.

1. Citizens engage with the system via a self-serve online platform. Steps and forms are prescribed and mandatory compliance timeframes are automatically generated. Incentives for compliance are in-built.
2. Each spouse is presumed to receive at least 35% of the total wealth. There is a defined narrow range of exceptions that permit exemption. Examples are:
  - a. There has been a short marriage/relationship of under 3 years.
  - b. A lawyer's opinion indicates the division of wealth should be outside this range due to e.g. gifts or significant health issues.
  - c. There are proceeds of crime, or fraud.

This initial division of wealth is consistent with the Government's own statistics which show that in 98% of marriages, a separating couple's total wealth is split with at least 35% being allocated to each party. Ambit claims are simply not permitted.

3. It is then presumed that if there are children in the relationship, the female is the more economically disadvantaged spouse. On this basis, the system allocates her *half* of the residual 30%. Again, there are a number of acceptable scenarios in which this presumption does not apply, examples being:
  - a. The male has been the 'stay at home' parent for at least 3 years.
  - b. A party has a terminal illness.
  - c. A lawyer lodges a written opinion that the wife would receive less than half in court.

Why is this approach used? Because the Government's own statistics show that in 19 of every 20 divorces, the wife earns less, spends more time caring for the children and lives longer than her male counterpart. These are all factors which produce a high statistical probability that the wife will end up with at least 50% of the wealth pool. This holds true for both court judgements and out-of-court settlements. Accordingly, moving the compliance burden better achieves outcomes for most people.

4. The couple are provided Government statistics showing normalised wealth allocation outcomes. These include the average result in which a female spouse, with children, receives on average 56% of the couple's wealth. With reference to that mid-point and the normalised statistical range for standard fact patterns, each spouse is asked to position their family and propose an allocation by reference to the factors Parliament has specified. In our experience at this point:
  - a. Approximately half of couples will settle on the average 56% to the wife or one of the other normalised outcomes for a fact pattern that closely matches their own.
  - b. The rest are generally no more than 5% apart after their self-assessment and bids.

Insight: most couples are not seeking unreasonable or rare outcomes. Once they know what is "normal" for Australian couples with a similar fact pattern to their own, many will "self-solve".

5. Couples who have made bids that reduce the gap are obliged to honour their incremental offers – so the improved bids are "locked in" and the residual diminishes further, at which point the disputed amount has shrunk even further.
6. Any spouses with remaining gaps are then obliged to either:
  - a. Mediate, by default by phone (subject to domestic violence safe harbours), or
  - b. Submit "online bids", or
  - c. Offer arbitration- where they don't want to meet.

These rational, constructive steps progressively move the couple towards a resolution – one they can construct themselves or have decided for them quickly at low cost. The process is not optional – the obligation to participate is not dependent on a court ordering compliance.

7. If either party fails to comply with or participate in the process, the claim of the compliant spouse prevails. This is the equivalent of an automatic interim order of the court in a case where nothing is done by one spouse.

There must be consequences for inaction otherwise delays will inevitably ensue.

8. The system produces a defined outcome within 90 days. Parties still retain their rights to pursue their case via the court system. But in practice, very few will. Their prospects of achieving a materially better economic outcome from prolonged litigation in the court system are in almost all cases going to be close to nil.

## **7. In Summary**

We propose a clearly defined system, with mandatory compliance enabling logical progression through steps that will lead to outcomes. A summary of the proposed solution is as follows:



## **8. Success Elsewhere**

1. “Community property” countries, with narrowing rules, spend far fewer public resources resolving financial matters and hence more time and resources are available to focus on children. For example, 54% of the Australian Family Court queue includes financial disputes, versus only 4% of the NZ Family Court queue involves monetary issues.

2. Treasurers Paul Keating and Peter Costello paved the way with technology-driven income tax self- assessment. This substantially improved compliance while reducing government expenditure.
3. Creating a mandatory process that places compliance responsibility on citizens works well, as Chief Justice Rogers did in NSW with civil disputes in courts in the 1980s. Significant construction payment reforms delivered recently used the same core compliance concept. If you can be required to pay your plumber on time, you should be obliged to share wealth with your former spouse within 90 days.
4. Divorce Partners have assisted over 2,000 families to reach resolutions with an average time of 3 weeks to settlement.

Compulsion is, however, the key. Without a law requiring a narrowing and mediation on the gap, one spouse is always economically incentivised to delay. Those delays come at great cost to society, the couple's children, and the goals of the 1975 Act.

## **9. Context**

- Hundreds of thousands of separating couples face protracted disputes over financial issues.
- But only ~8% of couples use the court system to attempt to resolve financial disputes. At \$50,000 to \$150,000 in legal fees per person, most separating people simply cannot afford court (unless on legal aid, which mostly funds only parenting related cases).
- Unsurprisingly, the average wealth of Federal Circuit Court litigants is \$2.6m and in the Family Court it is higher. The Courts generally service wealthy or subsidised people, not the 2,600 middle-class Australians in each electorate who separate in every electoral cycle.
- The ~50% of separating couples with financial disputes who cannot afford court find that there are no enforceable rules – legislated or otherwise – to guide/manage the prompt and effective resolution of their disputes.
- Allowing couples to stumble around in an unregulated limbo produces unacceptable societal outcomes. These include extreme financial stress, indefensible delays and lack of liquidity. These problems also amplify other issues including domestic violence - issues this inquiry has been established to address.
- Until now, family law reform has focussed primarily on reform of the court system.
- The current family law system provides no rules or mechanisms to enable couples to achieve quick resolution outside of court.
- Introducing our clear, simple and user-pays system would bring substantial relief to tens of thousands of separating couples and their families.

## **10. Implementation Considerations**

The proposal does not change any policy settings for family law outcomes. Instead, it creates a system to allow separating couples to self-solve their financial disputes in a structured and efficiently managed process at a cost lower than obtaining a divorce certificate.

The proposal does not impact upon any initiatives for reform of Court processes. It is thus likely compatible with most other proposals the Committee may receive.

Our Consortium has prepared detailed workflows, online portal specifications and draft legislation to enable this proposed system to be implemented.

The proposed method can be operational within 90 days.

Our consortium offers to implement the system at no cost to government.

## **11. Conclusion**

Our proposal does not seek to solve every family law issue. Nor does it seek to solve every property dispute.

What it will do is create an efficient means to process and resolve the vast majority of cases where the parties cannot afford or justify using the court system. That frees up public sector resources to be better used elsewhere – such as making children a priority.

As such, the proposal is complementary to all other reforms aimed at improving court processes.

We would welcome the opportunity for a face-to-face presentation and discussion of our proposal, in order for us to answer any questions the Committee may have.