



Smart Choice Law

PROFESSIONAL LEGAL SERVICES

Collaborative Law Guide



When mediation or litigation are not the best options, collaborative practice may be the right choice.



Collaborative Law Guide

Societal stereotypes associated with separation and divorce in Australia are usually negative. The concept of a civil, amicable, and respectful divorce is not new, but you frequently hear in the media about the conflict-driven divorce.

The terms "collaborative practice" or "collaborative divorce" are still largely unheard of, even in the legal industry, let alone in the general public.

However, in reality, many families deal with the legal problems that result from the breakdown of a relationship without any significant intervention or assistance. Those families are the ones that you most likely won't hear much about.

There are many families that would benefit from the help that a collaborative process can offer, that are uninformed of the existence of such a process and find themselves in more adversarial models early in their separation.

Being divorced from a spouse is never easy, and a protracted legal battle can make it even more challenging. By removing many of the variables that make divorce such a difficult period, collaborative practice is perfectly suited to helping families going through separation that wish to have an ongoing good relationship after their separation.

An alternative to going to court is collaborative practice. Collaboratively trained practitioners provide participants with legal, financial, and emotional support, enabling them to find appropriate solutions while preserving their crucial relationships.

Both sides must agree to stay out of court in order for the collaborative process to start. Issues are resolved via open and respectful discussions, with the assistance of each party's lawyer. This atmosphere of openness encourages effective communication and is conducive to amicable conflict resolution. By doing this, the likelihood of misunderstandings or mistrust between the parties is reduced. Furthermore, compared to conventional litigation, the process is typically quicker and less expensive.



Collaborative Law Guide

Several practitioners with collaborative training may be involved in the process in addition to legal professionals. Financial consultants can help parties make financial decisions and plan for the future. Child consultants help parents identify methods to lessen the effects of separation on their children by bringing their knowledge of child development to the table. Coaches can help parties who find it difficult to advocate for themselves by fostering communication, assisting with stress management, and offering support.

How does the collaborative process work?

In order to resolve their differences amicably and without going to court, the parties and their lawyers enter into a contract (the Participation Agreement).

According to the Participation Agreement, the lawyers must resign if a court application is made. This clause effectively directs everyone involved in the negotiation to concentrate their efforts on finding a resolution. It strengthens the commitment of the clients and their lawyers to cooperate in order to achieve the parties' settlement objectives by removing the temptation for either party to posture and/or initiate litigation.

When necessary, the parties, their lawyers and neutral experts must participate in structured meetings to make open, honest, and transparent decisions. In these meetings, which are typically between three and seven, all of the negotiations take place.

The parties and their lawyers prepare the agenda for each meeting in advance. The parties, their lawyers, and other necessary experts collaborate between meetings to make sure that all the information pertinent to each agenda is available before the sessions.

Additionally, the lawyers prepare each client individually for each meeting, and then they follow up with a debriefing. Likewise, before each meeting and after each meeting, the lawyers confer with one another to discuss the process and debrief.



Collaborative Law Guide

Why is the collaborative process a wise choice?

Taking ownership of their issues and finding solutions is one of the advantages for the parties. They continue to be in control of the content of the matter, including the duration and cost of the process. Parties are assisted during private, confidential negotiations in reaching an agreement that, to the extent possible, satisfies their goals and priorities, including their ability to function in future family, business, or professional relationships.

The parties are able to put the legal issues into context while also understanding all of the consequences of the situation and weighing up the options for a practical resolution. Additionally, they might gain insight and skills to conduct negotiations themselves in the future.

Parties are aware of the work their particular lawyers conducted for the time they are billed because the majority of the work is completed during meetings.



Collaboration





Collaborative Law Guide

The most frequently asked questions about collaborative practice are answered here.

What is collaborative practice?

By using collaborative practice, disputes can be resolved without going to court. It uses a team of professionals (which may include lawyers, financial advisors, child consultants, and psychologists) to determine the best course of action for all parties concerned and to come to the best solution for all parties involved. Collaborative practice helps you and your partner to resolve issues in a non-adversarial setting, rather than treating separation as a conflict.

How can you benefit from collaborative practice? How can it benefit the children?

By using collaborative practice, disputes can be resolved without going to court. It uses a team of professionals (which may include lawyers, financial advisors, child consultants, and psychologists) to determine the best course of action for all parties concerned and to come to the best solution for all parties involved. Collaborative practice helps you and your partner to resolve issues in a non-adversarial setting, rather than treating separation as a conflict.

How is a mediation different from collaborative practice?

A neutral third party (the mediator) assists in settlement negotiations when a dispute between partners is brought to mediation. The mediator is unable to offer legal advice. On the other hand both parties are assisted by lawyers and other professionals when issues are resolved through collaborative practice. The Coach in collaborative practice is also able to generate options and have input into the matter, unlike a mediator.



Collaborative Law Guide

How can you be certain that the matter won't simply end up in court?

When you and your spouse decide to resolve conflicts through collaborative practice, you both sign a contract stating that you won't take the matter to court. As a result, neither party can threaten the other with legal action. The lawyers must leave the case if you are unable to come to an agreement and elect to go to court, which ends the collaborative practice.

Is my matter suitable to collaborative practice?

Collaborative Law is appropriate in situations when both partners are committed to resolving the disagreement in a way that minimises conflict and where both parties are able to openly express their needs. Collaborative practice, however, may not be appropriate in all circumstances. Collaborative practice should not be used if one party refuses to provide information or if they try to use the process to force the other side to adhere to their terms. Collaborative practice might not be appropriate, if domestic abuse or family violence have been prevalent in the matter.

How to find a collaborative practitioner?

Collaborative lawyers are members of local practice groups through which they participate in ongoing professional development. Collaborative practitioners throughout New South Wales can be located through the website of Collaborative Professionals (NSW) Inc.

More questions?

Kerstin Thode of our office is also a collaboratively trained lawyer. If you need more information about collaborative practice, please contact our office:

 02 6656 1555

 info@smartchoicelaw.com.au