



Collaborative

Collaborative Practice is a non-adversarial method of dispute resolution whereby the parties and their lawyers contract to settle a matter without resorting to litigation. Parties who engage in the collaborative process must each retain their own lawyer and be prepared to participate in open negotiations actively and in good faith.

Law

Collaborative Law has been practised in some overseas jurisdictions including the USA and Canada for several years. In Australia there are a growing number of practitioners being trained in the collaborative process. Collaborative Practice in Australia has been used primarily in the area of Family Law.

The features that distinguish Collaborative Practice from other methods of dispute resolution include the following:

A Collaborative Contract, also known as a Participation Agreement, is signed by the parties and their lawyers. The contract prohibits the parties from threatening or commencing court proceedings during the collaborative process. In addition, the contract provides that both lawyers are precluded from representing their clients in the event that the collaborative process fails and litigation is commenced.

Other features of the collaborative contract include an agreement by the parties to:

- Provide full and honest disclosure of all relevant information;
- Actively participate in developing the practical and mutually beneficial options;
- Endeavour to minimise the negative emotional, social and financial consequences of the dispute.

The collaborative process involves a series of face-to-face discussions known as "four-way meetings" involving the parties and their lawyers working together. Information is exchanged openly and settlement options are developed, evaluated and discussed. The parties are assisted in communicating with each other in a non-confrontational way. By being present throughout the negotiations, the parties retain direct input and the scope for misunderstandings is reduced.

Collaborative practice is flexible and can be adapted to the individual requirements of the particular matter. In some cases, independent experts may, if agreed, be involved in the four-way meetings. For example, a child

specialist may be involved to assist in developing parenting arrangements. In financial matters, advice from an accountant or financial planner may be required.

The collaborative process is focused on the parties' respective interests rather than what a court might determine if the matter was litigated. In traditional settlement negotiations, the parties commonly use positional bargaining. However, in interest-based negotiations the focus is on the parties' needs and interests and the parties are encouraged to create solutions that best meet both of their needs.

Whilst Collaborative Practice is appropriate for a wide range of matters, it is not suitable for all disputes, for example, cases involving family violence or substance abuse.

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More information

For more information about Collaborative Practice in Victoria contact us.