

# THE NEW 'ROCKSTAR' OF FAMILY LAW

INTERDISCIPLINARY COLLABORATIVE PRACTICE



Presented by:

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OUR FAMILY WIZARD WEBINAR  
October 2020



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## What LAW LAND looked like not that long ago.

- Disputing parties would typically be **headed to court**.
- Even amicable disputants could be drawn into the court process which **fostered resentment rather than healing**.
- Today, a growing majority of us are realising the benefits of **alternative dispute resolution (ADR)**.
- Knowing what **ADR options** are available is crucial.
- It's time to be **creative** when implementing ADR solutions.



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*"Ah, yes, DIVORCE... From the Latin word meaning to rip out a man's genitals through his wallet."*

- Robin Williams -



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## The Toll Family Law Can Take

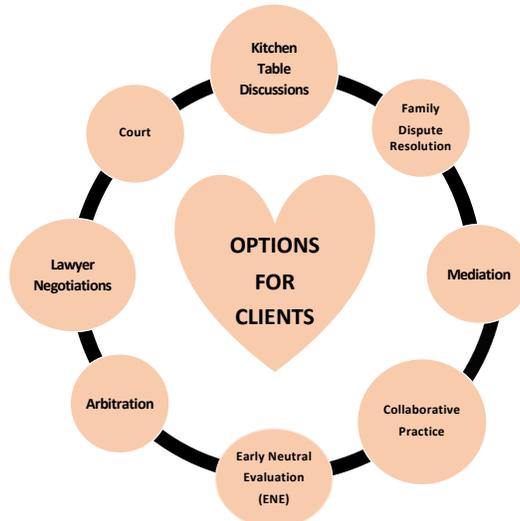
- Working in this environment takes its toll on the professionals involved.
- The disillusionment and burn-out are legend among Family Lawyers.
  - There is an appetite for a different way to practise Family law.
- The increase in alternate dispute resolution and the many different types of dispute resolution developed over the last 20 years speak for themselves.



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*“The Courts of this country should not be the places where resolution of disputes begin. They should be places where the disputes end after alternative methods of resolving disputes have been considered and tried.”*

- Sandra Day O'Connor-



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## Interesting Times In Family Law

Hon Alastair Nicholson  
October 2017



Former Chief Justice of the Family Court endorses Collaborative Practice!

***“I think we are looking at interesting times in family law. I’ve always thought a collaborative approach deserves more attention. I think a collaborative approach is very important and deserves more emphasis than it has been given”.***

<https://www.liv.asn.au/Staying-Informed/LI/LI/October-2017/Interesting-times-in-family-law;-the-Hon-Alastair->



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CHOOSE  
YOUR OWN  
ADVENTURE

## YOUR FAMILY LAW DISPUTE RESOLUTION MENU

KITCHEN TABLE	MEDIATION (FDR OR PRIVATE)	COLLABORATIVE PRACTICE	ARBITRATION	LITIGATION
? % SUCCESS	85% SUCCESS	85-96% SUCCESS	AWARD GIVEN	ARE THERE EVER ANY WINNERS?
Quick if parties agree	1 week – 3+months	3 - 6+ months	2 – 4 months	1.5 - 3+ years
Entirely client driven May be a power imbalance.	Client or professionally driven. Potential pressure to resolve matter. Can create win/lose outcomes. May be under the threat of litigation.	Client driven. Interest based. A series of 4/5 way meetings. Open sharing of information. No threat of litigation. Involvement of other non legal professionals. Win/win outcomes.	Client controls the process. Shorter timeframe than Court. Private. Can be used to resolve all or part of a dispute.	Lawyer/Court driven. Win/lose. High Fees. Creates division. Emotional toll. Lengthy timeframe. Negative impact on ongoing relationships.
\$ Minimal Cost	\$\$ \$2k- \$10k+ (subject to whether legally assisted)	\$\$\$ \$10k - \$30k+ (subject to the issues, meetings & professionals)	\$\$\$ \$10k- \$50+k (subject to the issues)	\$\$\$\$\$ ENDLESS

www.divorcedonedifferently.com.au

Phone: 0400045583

hello@divorcedonedifferently.com.au



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## Working together to plan a life apart

*"It is the long history of human kind (and animal kind too) that those who learn to collaborate and improvise most effectively have prevailed."*

- Charles Darwin -



*"We will strive to be honest, cooperative and respectful as we work in this process to achieve the future wellbeing of our families. We commit ourselves to the*

**COLLABORATIVE LAW PROCESS**

*and agree to seek a positive way to resolve our differences justly and equitably".*



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## Interdisciplinary Collaborative Practice

Respectful Resolutions

A bespoke process

Divorce without court

[https://youtu.be/nIplP2\\_MSLw](https://youtu.be/nIplP2_MSLw)

Thank you to the Collaborative Professionals (NSW) Inc for the video

*“Rather than warriors or hired guns, collaborative lawyers are more like legally-trained diplomats.”*

Interest based negotiations

Working towards a common goal

A team approach





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## What is Collaborative Practice?

Stu Webb  
The Godfather of  
Collaborative practice



- The collaborative process is a shared commitment to resolve a dispute without resorting to court action.
- It focuses on the future of the family.
- The parties, their lawyers and any other professional advisors such as financial experts (“the collaborative team”) commit to resolving the issues in dispute without going to court.
- The premise of the collaborative team is that the parties and their chosen professionals act as a problem solving team rather than adversaries.
- Parties and their advisors are expected to show respect, compassion, understanding and act co-operatively during the process.
- The focus is on the parties identifying their underlying interests rather than positional bargaining.
- An important aspect is that at the beginning of the collaborative process the parties and their lawyers are required to sign a Participation Agreement and agree that if their dispute is not resolved and one of them chooses to take the matter to court then each party must retain new lawyers.
- It is a ‘bespoke service’.
- The parties direct the process. This means there is a vastly reduced prospect of recrimination or lingering ill will between the parties.







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## How does the collaborative process work?

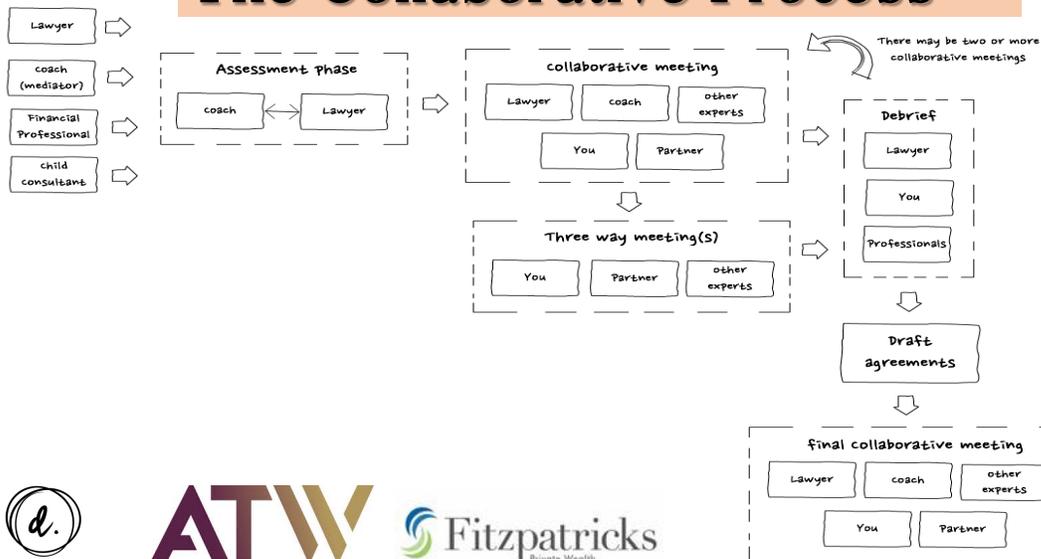
- The process consists of a series of informal discussions and joint meetings with a view to settling all issues amicably.
- Each meeting is minuted and any action required for future meetings is agreed upon.
- Homework can be set.
- Where appropriate, specialist advisors such as financial neutrals, child specialists, mediators and even senior counsel can assist with issues which may arise.
- Once a settlement is reached, settlement documents are drafted.
- It is an interest based negotiation.



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## The Collaborative Process



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Thank you to Southern Sydney Collaborative Professionals for this pictorial, especially Fiona Kirkman.

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## The Benefits of the Collaborative Process

1. You are able to resolve a family law dispute without destroying a family.
2. It is a private process that enables people to deal with sensitive issues rather than airing them in an open court.
3. Parties can set their own time frame within which to settle their dispute.
4. It provides the best opportunity to craft a resolution that is best suited to the interests and needs of each party (especially any children involved).
5. It will spare all involved from the emotional damage that litigation can cause.



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## FIRST INTERVIEW WITH A FAMILY LAW CLIENT

### A TRADITIONAL INTERVIEW

- Names, dates of birth and occupation of the client
- Best contact details
- Names and dates of birth of children
- Date of Cohabitation
- Date of Marriage
- Date of separation (if applicable)
- Date of Divorce (if applicable)
- Assets and liabilities
- Initial contributions
- Contributions during the relationship
- Post separation contributions
- History of the relationship
- Employment/Income earning capacity of each party

### THINKING OUTSIDE THE BOX

- Confirm their appointment by email attaching information about ADR
- What is the most important thing/s we can talk about today?
- What is keeping you up at night?
- What do you consider would be a good outcome for you in your situation?
- How have you and your former partner resolved disagreements in the past?
- Have you considered how you would like to resolve your family law issues?
- If yes, have you considered:
  - Mediation
  - Collaborative Practice
- If not, would you like some information on these methods of resolving your dispute?
- Watch their body language, their mood, what information they freely give and what they hold back.
- Have you already received legal advice about your situation? If so, from whom?



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## CONVERTING YOUR CLIENT

- **LISTEN** to their needs. How do they want their separation/divorce to look like?
- Address their **FEARS**.
- Ask **WHY**?
- **EDUCATE** and **INFORM** them of their options.
- Discuss their **CONCERNS**:
  - How can I be assured of transparency?
  - What if I don't agree with what is being said?
  - Can I choose the other team members?
  - What if I want out of the Collaborative Process?
- Get them to speak to the coach

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FAMILY LAW

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**d.**  
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## The 'Paradigm Shift'?

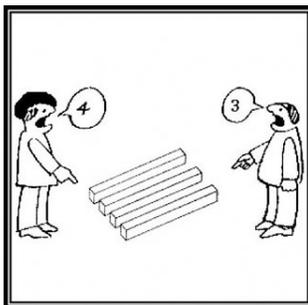
As professionals we need to...

**LEAVE BEHIND:**

- Directing clients
- Knee jerk reactions
- Taking control
- Bargaining
- Competition
- Advocacy

**LEARN:**

- Client direction
- Working as a team
- Sharing responsibility
- Communication
- Transparency
- Needs/Concerns



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**COMMUNICATION 101**

*The collaborative process will require you to become an expert in communication. You will need to communicate with:*

1. Your client
2. The other lawyer
3. The other client
4. All team members.



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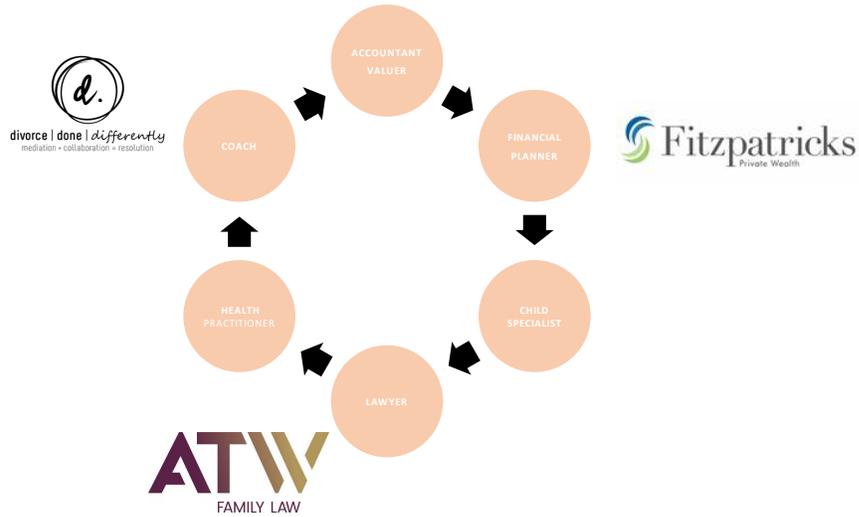
**THE INTERDISCIPLINARY COLLABORATIVE TEAM**



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# What professionals can become involved in Collaborative Practice?



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## The Team Players



THE LAWYER



THE COACH



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THE FINANCIAL NEUTRAL



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# THE LAWYER

<https://www.bing.com/videos/search?q=youtube+george+clooney+negotiation+scene&docid=607998VIRE946478326993&mid=781AC808A46C46D65C9A781AC808A46C46D65C9A&view=detail&FORM=>

**Collaborating** with lawyers has to be better, yeah??



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## Getting started



Assess



Professional 3-way



Participation Agreement



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# Whole Team Meetings

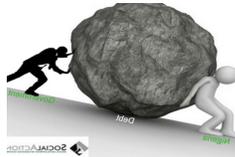
- Agenda
- Prepare client
- The Meeting
- Debrief with client
- Professional debrief
- Minutes



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# Bringing it all together

**Interests, needs and concerns**



**Legal Advice**



**Options**



**Documentation**



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# THE ROLE OF THE COACH

Opening Statement

Parenting

Communication  
Conflict Coaching

Keeper of the process  
A watchful eye on

Interests, Needs &  
Concerns

Option generation

*d.*  
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Keeper of the process

*d.*  
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## IS THERE ALWAYS A COACH? DIFFERENT MODELS



No Coach



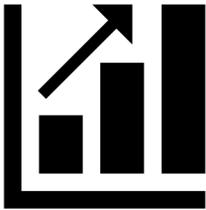
1x Coach



2 x Coaches



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## THE FINANCIAL NEUTRAL

- Financial information, education and guidance.
- Neutral support to both parties (and the team).
- Assist parties with exercises not traditionally covered (living expense budgets across separate households).
- Help the team generate practical options and to test them.
- Answer to the burning question “Are we going to be financially OK, now and in the future”?
- Production of life-long cash flows (brings balance sheet to life).
- Voice of financial reason.

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## THE FINANCIAL NEUTRAL

- **Common objection** "We have our own Financial Planner or Accountant"!
- Can consult with these professionals but should not be opted into the process unless appropriately qualified (training and CP experience).
- Consider the conflict of interest issue:
  - Often have a primary relationship with one client – usually the breadwinner, the business owner etc.
  - In many cases these professional people will follow the primary relationship into the future.
- A FN should be independent of the clients, with no former history of having worked with them. This makes it easier for the FN to remain in a neutral position.



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## 10 reasons why it works

1. The professionals involved in Collaborative practice are experienced, highly trained and receive ongoing specialist training;
2. Support is available within the process from your Collaborative team members, including coaches and financial specialists who undergo similar training;
3. The clients make a commitment to open and honest disclosure of their financial documentation;
4. The clients undertake to prioritise the children of their relationship;
5. Experts are usually instructed on a joint basis;
6. The process focuses on mutual interests rather than legal entitlements, providing opportunities for more flexible agreements;
7. Protracted and often inflammatory correspondence between the lawyers is avoided;
8. Negotiations typically take place face to face in joint meetings or in Covid times, by zoom;
9. A written agreement is signed providing for the professionals to be excluded if either client decides to litigate – everyone has some 'skin in the game'; and
10. Collaborative practice is likely to be more efficient and cost effective than the adversarial approach used in litigation or arbitration.

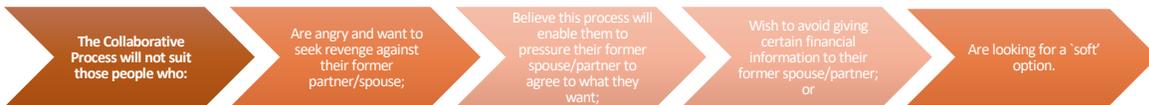




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# Collaborative Practice won't suit everyone!



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# How does Collaborative Practice differ from litigation?

	Collaborative Law	Litigation
<b>Control</b>	You and your spouse control the process and make final decisions	Judge controls process and makes final decisions
<b>Adversity</b>	Both contractually pledge mutual respect and openness	Court process is based on an adversarial system
<b>Cost</b>	Costs are manageable, usually less expensive than litigation; team model is financially efficient in use of experts	Costs are unpredictable and can escalate rapidly including frequency of post-judgment litigation
<b>Timetable</b>	Both create the timetable	Judge sets the timetable; often delays given crowded court calendars
<b>Outside Experts</b>	Jointly retained specialists provide information and guidance toward mutually beneficial solutions	Separate experts are hired to support the litigants' positions, often at great expense to each
<b>Privacy</b>	The process and discussion or negotiation details are kept private	Disputes are matter of public record and, sometimes, media attention
<b>Voluntary vs. Mandatory</b>	Voluntary	Mandatory if no agreement
<b>Communication</b>	Both communicate directly with the assistance of members of your team	Both negotiate through your lawyers
<b>Court Involvement</b>	Outside court	Court-based



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## Is Collaborative Practice applicable to all areas of law?



*"Oh, and my lawyer said to say 'hi' to your lawyer."*

COLLABORATIVE PRACTICE

Family Law

Partnership/Business  
disputes

Internal Business  
Disputes &  
Restructuring

Probate, Wills, Trust  
& Estate Contests

Healthcare Conflicts

Employment  
Disputes

Construction Claims







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## “Show Me The Money”

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### What does Collaborative Practice cost and is it a more efficient way to resolve disputes?

- Costs are generally cheaper than the conventional adversarial path.
- The professional fees of the lawyers are usually met by the individual parties.
- The cost of the Collaborative Coach and any other expert engaged are generally shared.
- The costs are generally determined by the party's readiness to settle.







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# Is Collaborative Practice the Golden Ticket?

Collaborative law is not a panacea, nothing is.

**It is not for every client and it is not for every lawyer.**

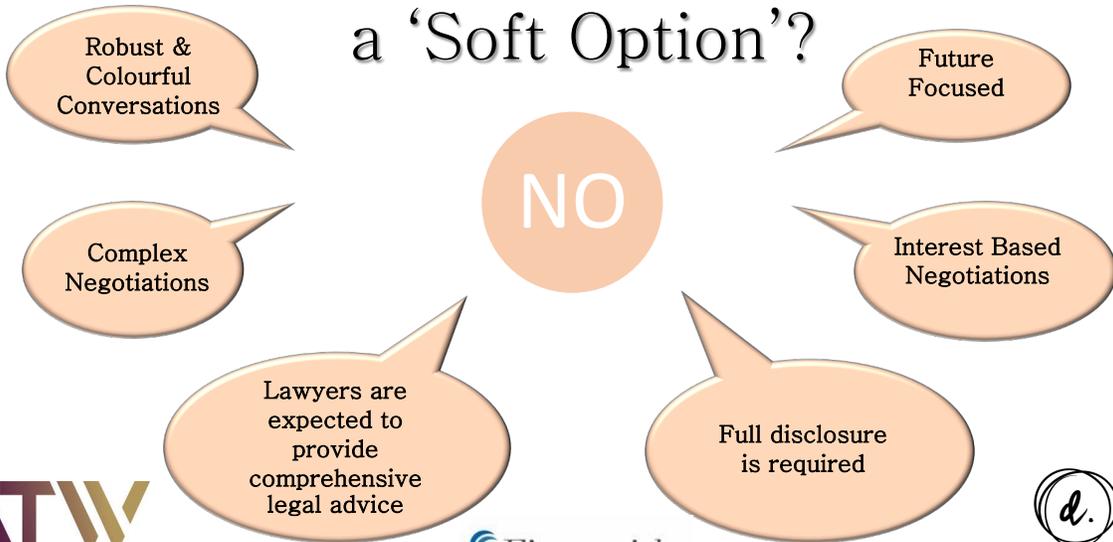
There will always be clients who need to take their cases to court and there will always be lawyers ready and willing to assist them.

**For those lawyers who worry about the damage done to clients, their families, their lawyers and our communities from unthinking, unavoidable adversarial conflict in divorce, collaborative law is a model worth learning about.**



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# Is Collaborative Practice a 'Soft Option'?



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# Training to become a 'Collaborative Professional'

Josephine Blogs  
LLM  
The Best in the business  
*Collaborative Lawyer*

- Collaborative Professionals (NSW) Inc - <http://collabprofessionalsnsw.org.au>
- Australian Association of Collaborative Professionals – [www.collaborativeaustralia.com.au](http://www.collaborativeaustralia.com.au)
- Collaborative Resolution NZ – [www.collaborativesolution.org.nz](http://www.collaborativesolution.org.nz)
- International Academy of Collaborative Professionals - <https://www.collaborativepractice.com>
- Queensland Association of Collaborative Professionals <https://qacp.org.au/>
- Victorian Association of Collaborative Professionals – [www.vacp.com.au](http://www.vacp.com.au)



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## Where to from here?

1. Think about your style of practice.

2. Consider doing the training.

Next online training in Australia starts on 16 October 2020

[www.happylawyerhappylife.com/introductory-collaborative-practice-training/](http://www.happylawyerhappylife.com/introductory-collaborative-practice-training/)

Next online training in Australia on 21 November 2020

<https://form.jotform.com/202587960912866>

3. Join a Practice group.

*Think a little differently when it comes to resolving your matters.*



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*Take home message:*

***“There has to be a better way to help our clients and their children through a separation and/or divorce.”***



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QUESTIONS?



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