

# BREAKING UP WITHOUT THE EARTHQUAKE

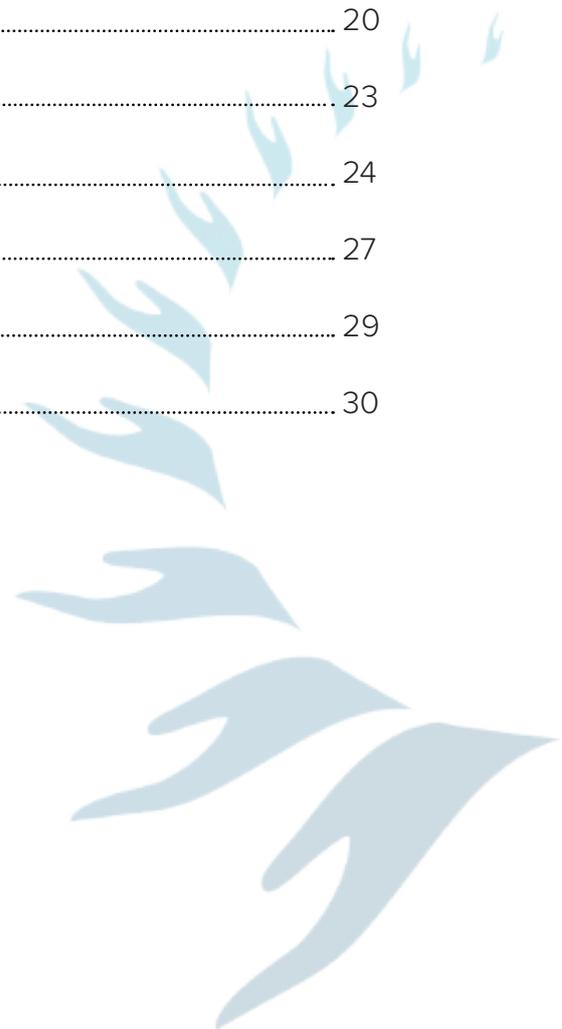
Preserving your health, your wealth and your family





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## Introduction

*“My friends told me I needed to see a lawyer as soon as my husband left. I went to see one they said would look after me and make sure my husband didn’t rip me off; I was worried about my businesses, and this lawyer was a ‘tough guy’. I paid a lot of money, even for the first meeting where he did all the talking and I couldn’t get a word in. He seemed to think he already knew all about me, and funnily enough, all about my ex! After a few letters went out and I could see it was going nowhere, and in fact was making things worse, I left that lawyer. I told him at the beginning that I didn’t want to go to court, but that’s what he talked about the whole time, even though he kept telling me he settles most of his cases. It certainly didn’t look like he was going to settle mine. When I decided to leave, there was yet another bill to pay. I paid \$9,500 all together and nothing had happened. It was such a waste of money, but I had no idea what else to do at the time.”*

**Rachelle, ex-wife, dentist, mother of two children.**

Separation is an emotional crisis, causing feelings of hurt, fear, anger, confusion, powerlessness, betrayal, loss and grief. We know which profession looks after those feelings, so why are the lawyers in charge of separation?

The purpose of this report is to show you that there is a better approach to separation and divorce than you may be aware of, and to give you guidance so you can avoid the pitfalls that many people who have gone before you have experienced.

By the time you have finished reading this report you will understand:

- Why you should reassess your thinking about seeing a traditional family lawyer as your first step in separation
- The problems with the traditional legal system and what alternatives are available
- That seeking the advice of a collaborative team is the first step you should take

### **Before we start, who are we and why listen to us?**

#### **Marguerite Picard, Collaborative Lawyer, says:**



I see my job as a lawyer differently from the way most of the profession sees its job. My aim is to be a facilitator and peacemaker, which comes out of years of adversarial work that I know to be harsh and expensive, and which never gets to the heart of disputes. Litigators hang out at the tip of the iceberg, and that is never enough. I made a decision some years ago to team up with psychologists and financial planners to help separating couples reach agreements, because I think that's the best way to look after the legal, emotional and financial needs of everyone in a separated family. I make it my business to stay out of Court, and instead to focus on what's below the surface, so people can finally put their differences behind them.

I am an Accredited Specialist Family Lawyer, and spent decades practising in a very traditional way. In the past, I went to Court with my clients, and when I wasn't actually there, I had the backing of Court as the ultimate card trick. I settled many of my cases, but I was only able to do that at times, because I had the possibility of court proceedings if things weren't going my client's way in settlement negotiations.

There were many things about that 'old' kind of work that didn't feel right for me or for my clients. Mostly that was about cost and delay, but eventually it was about the fact that every day was less about looking for common ground, and more about being caught up in conflict. Often the conflict itself took centre stage, and progress towards settlement was weighed down by it.

More often than I like to say, the levels of conflict I saw in my traditional practice were about one or both of the lawyers, or how they happened to relate to each other. I was increasingly disturbed at the legal costs, and the fact that money was being spent in a

way that was never going to help my clients or their children have a better or happier life. In the end, I tired of the bargaining and silly arguments, and wanted to find a way to help people have the real conversations they needed to have.

*Over time, psychologists, child psychologist and financial planners were integrated onto the team, which is now a well-established approach to helping families survive and thrive after divorce, and is known as inter disciplinary collaborative practice.*

In 2009, I made a decision to either leave law, or practice in a way that went back to the roots of law. That is, to be a helpful and peacemaking professional. I opted for the peacemaking path.

Many years before I got to that point, Stu Webb, a lawyer from Minneapolis, had been there too. He developed 'collaborative practice' as a way of working around a table with other like-minded lawyers and their clients in an open, honest and civilised way to help people get to their agreements.

Over time, psychologists, child psychologist and financial planners were integrated onto the team, which is now a well-established approach to helping families survive and thrive after divorce, and is known as inter disciplinary collaborative practice. I am convinced that this is the gold standard for separating families, because it manages conflict, focuses on the future and lets people take charge of their own life, but with the proper support for all family members.

**Tricia Peters, Collaborative Financial planner says:**



Having witnessed the financial turmoil people go through when having a 'traditional' divorce, I knew they were not getting the help they needed on the financial planning side of things. Clients came to me after settlement, worn down by the negotiations with the other side, often without any idea about what their settlement meant for them. Many were shattered about the loss of the future they had dreamed of and planned for, with no picture of what their future would be like. I wanted to do something about this and give everyone the help and guidance they needed when making financial decisions that would affect the rest of their lives.

What I learned over the years is that fear of the financial future has stood in the way of people reaching agreements in a timely way. Even when an offer in a family law negotiation was 'within

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the range of expected outcomes' – perhaps at the top end of the range – without advice about whether there would be the right amount of money for housing, holidays, new cars, retirement, and everyday living expenses, people would argue for a larger percentage split. That still didn't tell them what they needed to know about how they could continue to run their businesses or to see their financial future, but it cost them a lot more in legal fees, stress and increased conflict with their spouse.

I couldn't believe how much money my clients had spent battling it out in the legal system. What I knew was that if they'd had any idea what their total bill would be when they started out, they would have looked for other ways to resolve their financial separation.

Most of my clients had first class legal advice and lawyers who were doing the best for their client, focusing on getting the best possible result. I work with many lawyers in Melbourne helping with superannuation advice and I know there are many great lawyers out there, but they have to work within the limitations of the traditional legal system, the shortfalls of which you will read about elsewhere in this paper.

### **Tina Sinclair, Psychologist says:**



Psychologists and counsellors are used to helping people at some of the worst times in their lives – and separation and divorce is definitely one of them. Mostly though, it is lawyers and the courts who people turn to when they are contemplating ending their spouse relationships, and there they rarely get the support or understanding of the depth of their emotional turmoil. They will not receive the time or information needed to gain insight and develop skills to manage the complex journey of separation.

I like to say that, instead of describing marital breakup as a legal event or process with emotional consequences, it is really an emotional and family crisis with legal implications. So I look to the priorities for my clients. They come to me in differing emotional states, depending on where they are in their separation decision and process. Have they just heard that their partner wants to end it? Or have they been thinking about this for years? Have they just discovered that their partner is having an affair? Or indeed have they

themselves met someone else and wish to leave their spouse?

If clients are parents, they are usually very upset and worried for the children. They need information and coaching about how to manage the separation decision with the other parent. They need to learn how to make sense of the children's behaviour and emotional outbursts.

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As a psychologist, I help people cope with the loss and grief of separation. I can give them strategies to assist them to have healthy conversations with their former spouse. These discussions can include: How did we get here? How can I/we let go, and how can we communicate in the future? I work with people both alone and with their former partner. I can also work with new partners and other family members.

Part of this work is to help people see the other's point of view – to 'stand in their shoes' and support them along the road to what hopefully can be acceptance. On a practical level, before negotiations, I assist both clients to be emotionally ready to face the other, and to be clear and realistic about what they really need. I help them understand their own emotional system, to find the self-regulation required to be ready for clear communication during negotiations.

For most people, the impact of separation will be felt on their wider family and friendship group, as well as on themselves and their children. The legal system does not give assistance with adjustments that might be needed in these interpersonal or family structure relationships. Change or loss of family or friend connections are not necessary outcomes of marital breakup. There is however, a much greater risk of this if couples 'go to war' with adversarial legal processes, or get polarized by unenlightened opinions of those who suggest combative tactics or encourage taking sides.

Couples and parents who are able to take advantage of highly qualified and informed psychological practice, do the very best for themselves and their families to create healthy new futures. This does not mean it is always an easy process, indeed it takes courage to face your own demons as well as the other person. I have been shown over and over during the many decades I have been doing this work, that staying out of court is the best way to navigate the turbulent emotional waters of separation.



## Separation and the legal system: an odd marriage?

**The legal system is civilisation's advance on pistol-duelling and other grisly ways of 'settling up'.**

The family law system was traditionally based on the preservation of wealth, and saw children and wives as possessions. Until the Family Law Act came into operation in Australia, divorce courts were focused on 'fault'. The supposedly blameless person was rewarded with the children and or the money and property.

*The consequence of the law being in charge is that you are faced with a system that hasn't been designed to protect your emotional wellbeing. It hasn't been designed to help you argue for, or plan a settlement, around your individual family's financial future.*

*But, you can decide to take charge and look for alternatives.*

The "No Fault" system has changed that for the better, but court cases are adversarial by nature, which means that your negotiations and arguments will automatically be more about your differences than what you have in common. Arguing is not the most helpful way to shepherd families through the crisis of separation.

Traditional law will see your separation as a legal problem, when it is first and foremost an emotional crisis for most people. That is because the legal system has come to 'own' family separation, and lawyers who work within that system don't have any choice except to fit your situation into a legal framework.

Because the law is in charge, you are faced with a system that hasn't been designed with your emotional wellbeing in mind. And nor has it been designed to help you advocate for, or plan a settlement, around your individual family's financial future.

You can decide to take charge and look for alternatives.



## Going to court: a stressful option

Have you ever been through a court battle? If you have, and it felt like being put through a shredder, you are not alone in that experience. You will also not be alone in wishing that somebody had warned you about it, or in wishing that it was somebody's job to put you back together again after it was all over. Certainly, you will have found that there was no such person in the court system.

*Think of a stressful life event from your past, and try to remember the difference between how you can describe that in words, compared with how it actually felt for you at the time. It's not possible is it? And the same goes for the reality of the court experience. Words can't do justice to the worry, fear, anger and absolute frustration of litigation.*

Most lawyers and other professionals who work in the family courts, including the judges, work hard at being understanding. Lawyers and judges are not psychologists though, and they have a highly technical job to focus on. Even though it is your case, you can feel like a bystander to the discussions and activity that happen in a courtroom. Not only is the court itself foreign to you, the court formalities and language are foreign too.

When you are in court you are not in control, and it is highly stressful to have other people in charge of your life, especially when you know the outcome will never matter as much to them as it does to you.

It is expensive in all ways. Many people feel that the loss of control is one of their biggest stresses, particularly losing the ability to stop the litigation train along the way. You simply can't do that unless everybody agrees, and the truth is that you won't know what you signed up for until it's all over. The best legal advice in the world won't predict the life experience that is litigation.



## Going to court: never a simple solution

‘Going to Court’ can sound like a simple solution, a way to get neat answers. Most people who think about going to court, or getting involved in adversarial negotiations, hope the judge or someone in authority is going to take their side. In fact there is rarely a clear ‘winner’ in a family law case. Usually one person wins some points and the other one wins some. Sometimes you don’t even get to argue about the things you thought were important. It is more likely that just getting to the end of it will be a victory. As for any other kind of ‘win’, that will be dulled by the pain and expense of what has gone before it.

*You might be like Pauline who found out about collaborative divorce too late. What she said was, “I wish this had been available when I got divorced twenty years ago. I’m still traumatised by having gone through the court system. It did so much damage to us and our kids. I felt like I went into a dark scary tunnel. I basically had no idea what was going on, and my lawyer was a really good one”.*

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Separation and divorce is a very tough life event. You can see that a court battle with your ex adds enormously to the distress of it. Making a decision to get involved in negotiations that can easily go off the rails and become nasty, or go to court, is rarely a good decision.



## You can beat the system, by not joining it

You won't be able to change the way the lawyers and the courts work. They've been doing it in a very similar way for hundreds of years.

There is a joke told about a doctor who came back to earth after 400 years. He went into a modern hospital and had no idea what was going on. Everything was new and foreign, and it was obvious it would take him years to understand modern medicine. Then a lawyer came back to earth after 400 years. He walked into a courtroom, looked a bit puzzled, but after a day he was able to pick up where he left off, because not much had changed.

*You can join the growing number of people who recognise that courts are now out of step with what people need when they are separating.*

You can join the growing number of people who recognise that courts are, more than ever, out of step with what people need when they are separating. You do not have to accept that the legal system is in charge of this major life event, knowing that there are more appropriate, healthy and supportive ways to get to the other side of separation.

Wouldn't it be interesting if our governments had said that when people separate they had to see the local psychologist, counsellor or financial planner to 'settle up'? That's not what your government has said, but remember it also didn't say you can't do so, and these professions are essential members of collaborative teams.

There have been big changes in the way you can stay out of court, and in the way we understand what separating families need. Later in this paper you will read about the gold standard alternatives of collaboration and quality mediation.



## Choosing your advisers wisely

Amongst the most challenging aspects of separation is confusion. That tends to be about almost everything, but definitely includes the question of who you should turn to for professional advice.

Most people think that their first step should be to seek the advice of a traditional lawyer, or even one with a reputation for being aggressive. However, that is actually about the worst way to address the challenges you face.

Later in this paper you will learn more about collaborative lawyers and non-legal advisers, such as financial planners, psychologists and counsellors who can help you with your separation dilemmas right from the start, and who can guide you towards the path that is most likely to help you.

*Most people think, when they are separating, that their first step should be to seek the advice of a traditional lawyer, or even one with a reputation for being aggressive. However, that is actually about the worst way to address the challenges you face.*

If you do plan to see a lawyer as your first port of call, take the time to find one who can help you achieve your goals without all the collateral damage. That means choosing a lawyer who will keep you out of court, and who has a track-record as a highly skilled listener and negotiator. Most likely that will mean they have training in mediation, collaboration, or in social science.

Tell the lawyer what **you value and what you want to preserve**, and ask if they can work with that.

## Tips for finding a peace-making lawyer

Ask the lawyer about their training in negotiation, mediation or collaboration.  
**If they have none, RUN**



Remember that hearing **tough talk from your lawyer can feel good**, but it causes war, and you have to live with the consequences, the lawyer doesn't.



Talk to the lawyer about what **you fear and what your goals are**, and see if they can talk to you about these things, not just "the law".



**Follow your "blink" instinct**

after the first meeting with the lawyer. If you didn't feel heard, or didn't like what you heard, you know what to do.



Be prepared to **see more than one lawyer** to decide on the best fit for you; the cost of that might be the best investment you ever make.



Ask the lawyer what they know about compromise; **when to hold and when to fold.**

If you suspect that sensible compromise isn't their thing, you know what to do.



Remember that there is no correlation between tough talk and an **outcome you are going to be able to live with.**



Ask the lawyer if **they like going to court. Ever.**

If the answer is "Yes", you might not be their ideal client.



## Negative impacts of the traditional legal path of separation

If you follow a traditional legal path of adversarial negotiation or going to court, there is a grave risk that you will experience some or all of the following:

- **Delays:** You might be surprised to know that you can be held up in the court system for years. That can be hard to manage when you want everything to be over, because it is hard to get on with your life when negotiations or a court case are hanging over you. The situation is so fraught that our newspapers regularly report that the family courts are ‘in crisis’.
- **Expense:** You will be sure to pay much more than you expect. Your lawyer must tell you their hourly rate, and give you a broad estimate of the costs of each stage of negotiation or litigation. They cannot be precise, because there are so many variables that they don’t control. Paying your lawyer by the hour for negotiations with another lawyer that you don’t control is a gamble. These kind of negotiations can go on for years. If you go to court, you could easily spend several hundred thousand dollars. Nobody, including your lawyer, knows at the beginning how much you will end up spending, and once you start down that road, it is very difficult to stop.

**See example of a real legal bill on next page.**



## Family Lawyers

*Helping families in tough times*

### INVOICE # 182658

1. Taking instructions, written advice and advising and correspondence to firm Family Lawyers	\$2,475
2. Reading response from firm Family Lawyers, and email to you	\$68750
3. Telephone attendance on you	\$412.50
4. In conference with you	\$825
5. In reading and reviewing disclosure documents provided by you	\$1,650
6. In telephone attendance on firm	\$275
7. In correspondence to firm Family Lawyers providing disclosure	\$1100
8. Email to firm	\$220
9. Reading email from firm Family Lawyers	\$220
10. Email to you	\$275
11. Reading email reply from you	\$100
12. Telephone attendance on you	\$275
13. Telephone attendance on firm Family Lawyers	\$100
14. Et, etc, etc for six months, total cost at that point	\$51,600
15. Reading disclosure from firm Family Lawyers	\$2,750
16. Brief to counsel for opinion	\$2,475
17. Conference with Counsel	\$1,375
18. Preparation of draft Application, Affidavit and Statement of Financial Circumstances	\$6,050
19. Conference with you	\$1,100
20. Settling Application, Affidavit, Statement of Financial Circumstances	\$1,650
21. Conference with you to attend to execution of Application, Affidavit, Statement of Financial Circumstances	\$1,100
22. Attending to filing and serving Application	\$300
23. Conference with you	\$550
24. In writing to firm Family Lawyers	\$366
25. In drawing, drafting and serving notice on firm Family Lawyers	\$1,050
26. In conference with counsel	\$550
27. In attendance at court to instruct Counsel	\$3,300
28. Counsel's appearance fee plus preparation	\$5,040
<b>29. Total costs to eleven months</b>	<b>\$79,256</b>

This case resulted in a total of 17 court events over a period of three years and eight months. This client paid legal costs, barristers fees and disbursements to accountants and other experts totalling \$613,000 in that time. The difference between what she had wanted at the beginning, and what she got at the end was \$275,000. She paid \$613,000 to get \$275,000, and had to sell her investment property to pay her legal costs.

- **Loss of control:** Before seeing a lawyer, you are likely to have some idea about the outcome you want or what you think is fair. You may even think you are close to an agreement with your former spouse. What you are quite likely to find out is that your lawyer will have different ideas, because yours don't fit with their legal advice. Once you get to court, you can feel like a bystander to your own divorce, and you will lose control of the decision making and the outcome, because that rests with the judge.
- **Loss of privacy:** Your separation and divorce is very personal and court is a public place. If you end up in court, your negotiations and private information won't be private.



- **Negative impact on your children:** Everyone wants to make sure their children are OK. A legal battle almost guarantees a negative impact on your children. Try as you might, it is actually impossible to hide that there is a war going on between parents. Even if your children don't know exactly what is happening, they will know there is conflict and angst, and it might be what they imagine is happening that distresses them most. Litigation increases tension and conflict between parents, which is known to have a negative impact on children's adjustment to separation.
- **Negative impact on your health:** The stress of divorce and separation places both men and women at risk of psychological health problems. It is also a time when many people experience problems with their physical health. Planning to stay out of court from the beginning could be some of the best health advice you will ever be given.



- **You may win, you may lose:** Even if you think you are right, litigation is a huge gamble. If your lawyer does not ‘win’ during negotiations or court, you lose. Your ex faces exactly the same risk. Wouldn’t you rather not take a 50:50 gamble on your kids and your money?
- **Increased conflict:** Many people start off thinking their case is simple and they will be able to come to an amicable agreement. This is so often not the case in the mainstream legal system, because it is built on the idea of winning and losing. It actively ignores the positives, and really invites you to look for the negatives.
- **“I settle all my cases”:** You will hear almost every lawyer in town say this, but beware the claim. What is not said is that this kind of settlement is about getting you as close to what your lawyer thinks a judge would decide. They are ignoring the fact that you might want a settlement that is very different from what a court might decide for you, and you might want one that is about more than the ‘legal rights’ of you or your ex. Often families who run businesses have long term ideas for intergenerational wealth planning, which may be in conflict with the legal advice for one party, for example.
- **Stalemate:** The crucial point about lawyer-to-lawyer negotiations is that they are based on arguments about facts and how the law should be applied in the opinion of the two lawyers. When these negotiations reach a stalemate, remember that the only rule then is that someone will threaten to go to court, or do so.

- **When business owners go to court:** Attempting to run a family business while in the midst of separation is challenging. The law has some ways of managing interim issues in businesses, but they can be heavy handed and not always in the interests of the long-term growth and management of a business.

The court system is a very expensive place to clarify what is going on in a business, and is one of the leading causes of costs blowouts. It can also take the operator away from the business for many hours and days. There are better ways to manage the exchange of information and ultimate ownership of a business, whilst looking after each person's rights, and minimising the impact of separation on the business.



- **Children:** Every parent who is faced with separation worries about their children, and everyone wants to protect their children from the fallout of separation. When parents go to court to argue about their children, those arguments are most often about their own damaged relationship, and not really about their children at all. The court can't help with the relationship repair, and arguing in the court system will make it worse.

In courts, child psychologists are involved in making recommendations to a judge. Most child psychologists will say that by then it is too late to protect the children from the harm of separation, which is largely about the conflict between the parents. In 'the system', child psychologists meet with the family well into the proceedings, rather than at the start when they have a chance of helping the family. By working collaboratively and avoiding the court system, families can engage with child psychologists to help with parent education, speaking to children about separation, and protecting children from conflict, which is what is really best for children, according to all the research.

- **Who's looking out for the adult children?** In the traditional system, the answer is, "Nobody". Once children are 18, the law doesn't want anything to do with them. But parents know that children are their children forever, and even as adults, they need to be considered too.

Parents of young children have to grapple with where the kids live and how their expenses are covered.

Parents of adult children need to think more about staying in touch, grandchildren, business succession, estate planning, and often the ongoing roles of family members in businesses and trusts. There is no recognition of this in the legal system, and no support for ongoing adult family relationships. This is seen as a private concern, and traditional legal practice doesn't encompass thinking and training about it.

Whole families and their business and financial interests need support during separation, which you need to find outside the court system.





## Interested in a civilised divorce?

You don't have to suffer the impact of the old system if you are open and willing to take a different approach, which is tried and true, and will give you all the legal certainty you no doubt value.

Although there has been a revolution in the family court system with the change to no-fault divorce, in reality there has not been enough change in the client's experience of the family court. It was high time someone took a different approach to separation and divorce, and so we have developed a system for people to discover and clarify all of their issues and goals, to understand assets, liabilities and budgets and to reach agreements with the support of a skilled team.

### The two best alternatives: mediation and collaboration

#### Mediation

For people of modest means, or with relatively simple issues to resolve, mediation is an alternative that is worth considering. It can work well when there is low conflict and the asset pool is relatively straightforward.

The essence of mediation is to have a supported discussion, with the aim of finding out what you agree on, what you disagree about, and resolving the differences.

Sometimes mediation is as simple as two people and one mediator working together. However, in our experience, it is most often helpful to add in the expertise of co-operative lawyers, financial planners, child psychologists or counselling psychologists at some or all points of mediation.

## The limitations of mediation

- It can be difficult for a mediator to stay neutral at all times, and it can be difficult to deal with power imbalances and different conflict styles of a couple
- If one person is more knowledgeable about the finances or is more dominant, it will be difficult for a couple to reach an informed agreement that feels right for both people after the dust has settled
- Mediators can't give legal, parenting or financial advice
- Mediation about children and parenting plans does not always include the voices of the children
- In most low-cost mediations you will probably not have a lawyer at your side to guide you and help you reach a fair settlement
- You will need lawyers at the end of your mediation to write up the agreements in legally binding documents. People tend to forget this when talking about mediation as a low cost alternative; it will take you some, but not all of the way
- Even after you reach a mediated agreement, lawyers will often have to unpick your agreement in the process of writing it into legal documents

## Collaboration

Interdisciplinary collaboration is for those who want a civilised separation. It is for people who are looking for integrated advice and who want to take up the opportunities to preserve family relationships and assets.

A collaborative team will guide you and your former spouse to agreements that you design, with psychological, financial and legal expertise.

### **Collaboration is the ideal solution if you value the idea of working with a team which will:**

1. Provide a safe environment to negotiate your settlement
2. Listen to you and understand the things that are important to you
3. Give you the power and support to negotiate your settlement
4. Help your former spouse to see your point of view so that you can move beyond the conflict
5. Take care of your children
6. Help you make informed decisions about your finances

7. Help you to manage business transitions and transfers, “divorcing the company”
8. Help you to achieve a fair financial outcome that preserves family wealth
9. Make sure you are emotionally ready to negotiate
10. Prepare your legal documents

### **Your collaborative team**

The professionals on a collaborative team will see your separation as firstly an emotional crisis, with legal and financial consequences, rather than the other way around. They will see your family as a system, and know that everyone has to be looked after for anyone to be looked after.



When you work with a collaborative team, you will have the benefit of working with professionals who are experts in a specialised area, each being a vital part of the team you need.

The experience of separation can be rather like a medical crisis. In a medical crisis, there is usually a team to address all of your needs. For example, if you broke your leg, you would want a diagnosis, pain relief, an x-ray, a surgeon, a nurse, crutches, and finally, rehab. After separation, you will want your needs met in a similar way, by a team, with the right expert doing their job at the right time, and knowing that someone is case managing your care.

You will have your own lawyer, who is specially trained and will look after your interests without going on the attack.

There will be a psychologist or counsellor on the team, to give emotional support and

to help improve the couple communication, so you can be at your best for negotiation meetings.

You will work with a neutral financial planner who will collate your financial information, help with budgets and option development, as well as provide education about money and the assets.

If you are parents of younger children, a child psychologist is there to make sure that your desire for your children to be ok can be met.

If your children are older, or adults, the collaborative team is there for them too.

Your whole collaborative team will help with different and creative ideas about how you can reach a settlement. All members of the team will be looking for common ground and looking for solutions, when there are differences of opinion. They are there to guide and support both people. They commit not to go to court.

### **Keeping it coordinated**

During separation most people will end up meeting with a number of different professionals along the way, such as a lawyer, counsellor, financial adviser, accountant, or a child psychologist, for example.

Some of these people may speak to each other, but usually they work quite separately, each doing their job independently without knowledge of what the others are doing. An integrated collaborative team will assist you with every aspect of your separation and settlement in a seamless coordinated way, because they are a team and not working in isolation from each other.

### **A safe environment for negotiations**

Your first step towards a collaborative divorce is for you and your spouse to have an Information Session with a collaborative professional who will listen to you. Ideally you would attend that meeting together. The point of an Information Session is for your concerns to be understood, and for you to see how collaboration will help you negotiate with minimal conflict, to preserve the health and wealth of your whole family.

If your spouse isn't ready to hear about this yet, a collaborative professional will be able to provide you with information for your spouse.

Once you decide on a collaborative approach, know that you will be negotiating in an environment of trust and transparency that is safe for your emotional health, and delivers all the same rigour as you would expect in any legal process.

## Listening and understanding the things that are important to you

You will get to know your collaborative team at a Discovery Session, where you will spend time with a psychologist as communication coach, a financial planner and your own specially trained lawyer. This gives you the opportunity to talk about the things that are important to you and what you would like to achieve from your settlement. It helps you to understand what is involved in negotiations and to ask questions.

A Discovery Session helps your team to understand what is important to you, your goals and how complex your situation is. You can then receive a tailored and integrated offer for all of the work, at a fixed price. This is only done in collaborative divorce, and provides the blueprint for your separation and settlement.

## Building the foundations and empowering you to negotiate your settlement

### Preparation, preparation

In any negotiation, you need to do preparation work. In the case of a separating couple, this will mean:

- communication work
- financial preparation
- working with your lawyer
- parenting work
- doing that work collaboratively gives greater value to you both

### Communication: can you and your ex see each other's point of view?

You will receive coaching to help communication with your former spouse, so you can both hear what the other has to say, and how they are thinking and feeling. This is facilitated by the psychologist/counsellor on the team, and will be conducted in a way that is emotionally safe and respectful. Typically, this allows at least some reduction in conflict, and helps to ensure effective negotiations.

You will learn new ways of communicating so that your settlement negotiations are not derailed by old communication patterns. You may learn new things about your partner's perspective that help throw light on how you got to the point of separation. This can be helpful in letting go of the past and moving towards a more calm and independent future life. This is so different from other legal processes, where there is no place for listening to each other and where all the old hurts and communication patterns are not understood and are further entrenched, to the detriment of future wellbeing.

## **Making informed decisions about your finances**

In the foundational work you do for a collaboration, the financial planner will help in many ways.

They will undertake collection of the financial information. The information is collected in a neutral way, by the financial professional. In traditional lawyer-to-lawyer negotiations, it is at this stage that conflict often increases. Lawyers may start to fire accusatory letters about alleged omissions or manipulations in the financial data. They don't need to do that in collaboration, because the neutral financial planner has the role of collecting the data, and can look objectively at the honesty and completeness of it.

The financial professional is doing much more than just collecting data though; they will help you to understand the financial information and what it means for you. For many people not involved in investment and business decisions, the legal structures that are created to hold family wealth can be confusing. Any questions or misunderstandings about the financial information can be ironed out with the financial professional, who is there to help you and your spouse understand your assets and liabilities and the various legal structures. Financial professionals are accustomed to working with client's accountants, who will have an intimate knowledge of your business and finances.

The Financial Planner, along with the rest of the team, has a focus on the future and how financial resources can be shared to meet your family's lifestyle, housing, business and investment needs. There will be budgets for your children so you will know what financial resources are needed to ensure your dreams and aspirations for them can be met.

## **Working with your independent lawyer**

Your lawyer will prepare you for your negotiations by helping you identify your goals. They will give legal information as required, verify the validity of the financial information, and work with you to make sure that what you say and do in the negotiations is consistent with achieving your goals. By focusing on your interests and looking afresh at any fixed ideas, your lawyer will help you to decide what you want to spend your time and energy on in negotiations.

Your collaborative lawyer will be with you at all negotiation meetings. They are your independent ally and advisor. They will draw up your legal documents in the same way as any other lawyer would do.

## **Parenting plans**

All parents want to protect their children, but separation usually brings conflict between parents who may not necessarily be aware of the harm that can cause to children. Most children do well after divorce, and collaboration can ensure your children will be in that group.

In a collaborative divorce, a child specialist psychologist is involved early on, helping you understand the needs of your children at their various ages and stages. The child specialist is able to help you focus on what's best for your children so you can work together as parents, even across two households. With the right advice and support, most parents are able to shift focus from their own pain to make good decisions for their children. Collaborative professionals strongly believe that in most cases, parents are the best ones to make those decisions. They allow you to retain that ability, with help and guidance.

Collaborative child specialists work on the team, because they know that by the time people get to see them in the court system, there is much less that they can do to help a family. That is a great cost to children, who are the real losers in court battles.

### **Child support**

For many separating parents, child support is a real battle ground. Sometimes they resort to using the formula approach of the Child Support Agency, because they don't know what else to do. If you can avoid having the Child Support Agency in your life, it is best to do so. It is a very bureaucratic organisation and once you are a client the ongoing volume of communication can be stifling and most people don't understand a lot of what they receive from the agency. Payer parents often feel accused and both parents can feel unheard. It is rarely a good relationship for either party.

Parents who work in collaboration have a much more informed approach about what their children actually need, because the financial planner will have helped them with children's budgets, and there will be transparency about what resources are available. This makes for agreements that fit your family, not a government-imposed formula, which is rarely the right number. For these reasons it is rare that child support is one of the big issues in collaborative negotiations.

### **Ready to negotiate**

Once you have finished the Foundational Work, you will be ready to negotiate. There are two important ways you can proceed from there, either to mediation or collaboration. The best option for you will depend on how complex your situation is and how different your views are about settlement options, as well as your level of conflict.

In more complex cases, a collaborative team is likely to offer the best support. In a collaborative divorce, negotiations take place in a couple of round table negotiation meetings, in which you are supported by your own lawyer and have the assistance of the financial professional and communication coach. These meetings are structured, purposeful, respectful and business-like, with an agreed agenda that covers the business to be discussed.

It is important to know that preparation for your negotiation meetings will be thorough, so the meetings themselves will be smooth, without surprises and focused on your agenda.

### **Legal documents**

Once agreements are reached, they are written up in legally binding documents. This is the same in all legal processes. At the end of a collaboration, people are usually very familiar and comfortable with the content of the documents, because they have had a real say in it. Nothing has been imposed, or agreed to under duress, or at the door of a court.

Collaborative clients usually sign the documents at a meeting together with their lawyers, and are most often able to express good wishes to each other for the future, as another bonus of the collaborative option.



By working with your collaborative team and **staying in touch** with your plans about school, children's expenses and housing

# How can a child specialist help our kids?



By helping you to plan how you will speak to your children **together** about your separation



By sharing their experience with you to **help you make the best Parenting Plan**, and knowing that you can start slowly and develop your Plan over time

By helping you to separate your Parenting Plan from **negative feelings about your partner**




By helping you to keep your own conflict, worry and distress **away from your children**



By giving you information about what **your children are likely to need**, and what reactions are "normal" at different ages and stages



By helping you to remember that the aim of the game is to make sure that your children have a healthy relationship with both of you; **that's what they need the most**



By reassuring you that **most kids do well after separation**, and making sure that includes your kids



By working with your young adult children who **need support and reassurance too**



## Settlement options assessment

There are **five main options** when it comes to divorce:

- Resolving matters directly between yourselves
- Lawyer negotiations
- Lawyer litigation
- Mediation
- Collaboration

Which method you choose will have a big impact on what you will experience in regard to the level of conflict, level of control and self-determination, level of support and empathy, and total cost incurred. We simplify in the table below:

	Do it yourself	Lawyer: Negotiation	Lawyer: Litigation	Mediation	Collaboration
<b>Level of Conflict</b>	Low	High	Very High	Medium	Low
<b>Level of Control</b>	Very High	Low	Very Low	High	Very High
<b>Level of Support</b>					
- Legal	None	High	Very High	Low-None	High
- Emotional	None	None	None	Low-None	High
- Children	None	None	None	Low	High
- Financial	None	None	None	None	High
<b>Cost \$</b>	Low	High	Very High	Low	Medium

## **Negotiating a property settlement**

- Who do I want to make decisions about my settlement?
- How will I know what I am entitled to?
- Who will make sure that I only agree to what is fair for me?

## **Emotion and separation**

- Am I ready to negotiate?
- How can I negotiate if I'm feeling overwhelmed/sad/afraid/angry?
- Who will help me deal with the stress?
- Will I be heard and listened to about the issues that are important to me/my family?

## **Children and separation**

- How can I reduce any harm to my children and/or my relationships with extended family and friends?
- Who do I want to make decisions about my children?
- How can disagreements about the children be resolved?
- How do I know if my kids are OK and what will be best for them?

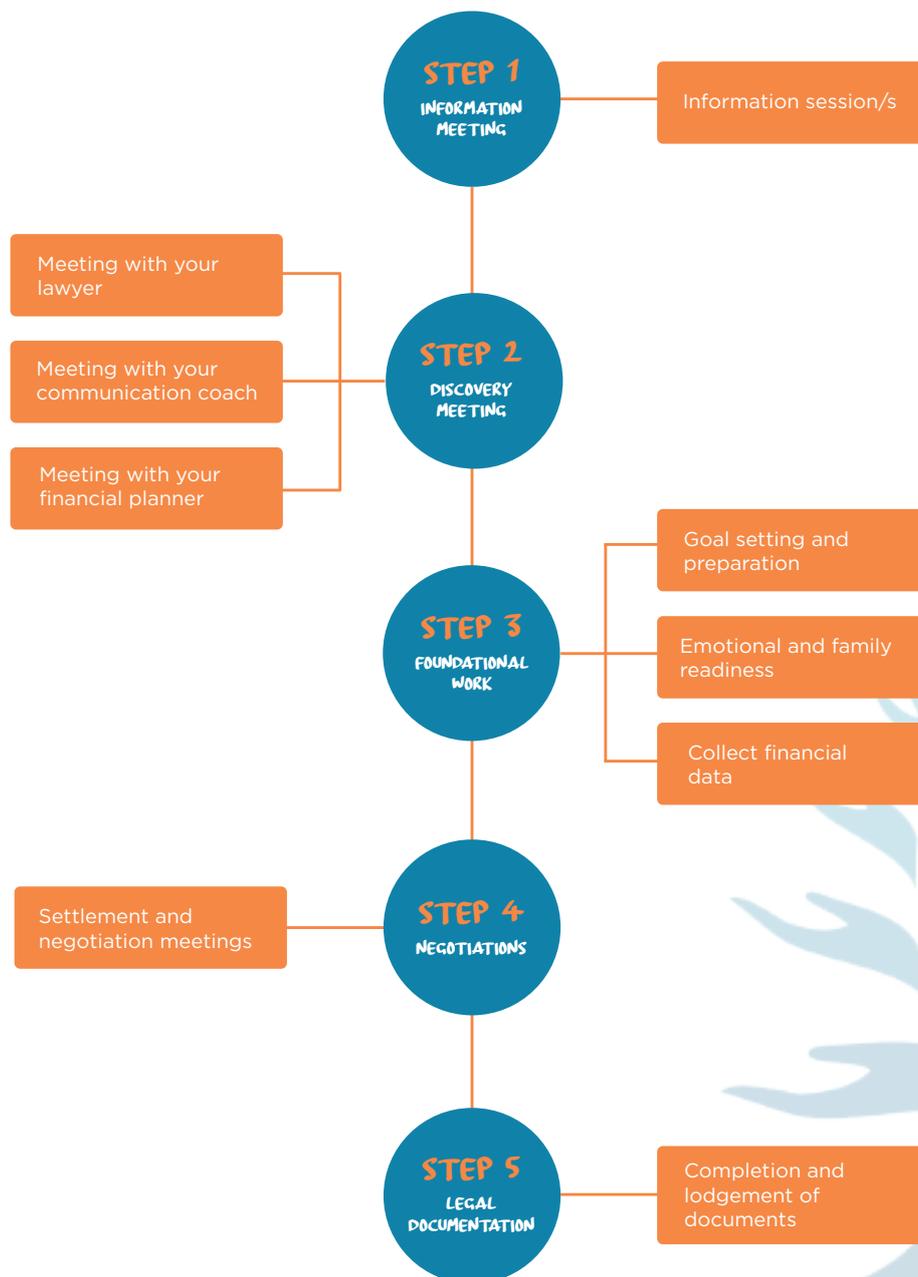
## **Money and separation**

- How will I know what my financial future will be like?
  - What do I need to look after myself and my family in the future?
  - Where will my income come from?
  - How will my children's expenses be met?
- Will I be able to rebuild my wealth?



## Collaborative process map

Learn more about the MELCA collaborative method below.



For a full breakdown of our collaborative process and what is involved in each step, please visit our website.

[www.melca.com.au](http://www.melca.com.au)

## What our clients say

*'I knew we needed to separate but I had no idea how to do it. I thought it meant getting a lawyer and fighting it out. It has worked out better than I could have hoped. The key was the involvement of the collaborative divorce practice MELCA. People think we are still friends; it's functional and it works for the kids.'*

— Christine, working mum

*'You were such a wonderful team to deal with for the both of us. For me, I never once felt judged. I was terrified of exposing myself as stupid and (worse) pitied. The respect you have all shown me, I'll never forget and I can't thank you enough. What you do is so admirable. It takes genuine compassion and empathy to do what you all do so well. I hope you take pride in the difference you must make to so many families.'*

— Mandy, reluctant to separate

*'I'm a typical Aussie male, and I thought I could handle this but I was so angry with my wife for spending so much money, and I wanted her to be punished. We would never have gotten this far without the team, and I love the way my lawyer listens to me and helps me take my message into the meetings, and it is all kept under control. I realize there are some things I just have to accept, and I am so grateful that we got to an agreement. I am amazed.'*

— Kevin, small business man and dog lover

*'We couldn't have gotten through this without you. We still have some things to organise to put our agreement in place but, thanks to your help, we are confident we can do what we need to do. We are now able to put the past behind us and stop regretting past mistakes.'*

— Penny, stay at home mum

*'I never thought I could work with her to reach settlement, things were so bad. But MELCA made it happen.'*

— Stephen, builder

*'I was worried about what would happen to my businesses when I got divorced – that had held me back from leaving for a long time. My wife was never involved in the businesses, and MELCA helped her understand how it all worked. We were then able to work out a settlement that kept the businesses intact and we both had the assets and income we needed.'*

— Patrick, architect and business owner

*'We approached MELCA to sort our separation. They suggested we speak to their Child Specialist to start, because we had different ideas about how and when to talk to the kids about our separation. We got a lot of useful information which was reassuring and made it easier for us to tell the kids that we were separating. This was a good place to start.'*

— Gerard, business man and devoted dad

*Dear Team,*

*I wanted to send this email to say THANK YOU THANK YOU THANK YOU for your amazing work and support in achieving an excellent result yesterday with (husband).*

*I think I am still in mixed emotions of shock, relief and excitement.*

*The relief to be able to achieve settlement (out of court) and negotiate something that both (husband) and I feel ok with is great.*

*You all have been AMAZING and WONDERFUL and I cannot express more my gratitude to the MELCA team for getting us through this. I have felt fully supported, and cared for during this process and everything I have experienced has absolutely cemented what a great thing MELCA is and the benefits of a collaborative process (even though my case was a little more challenging).*

— Tania, full time employed mother of young children

*Good morning ,*

*I've woken up reflecting about the last 6 months and I just wanted to thank you again for your assistance since we first met, even though I'm a difficult client to deal with, with my own thoughts of how things should be done, but your guiding hand and your worthy advice yesterday allowed us to be able to reach a settlement, it was greatly appreciated.*

— David, self-employed father of older children

**MELCA offers information sessions at a fixed fee with no obligation, so you can discuss your options and determine whether mediation or collaboration is the best path for you.**

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