



Duty of disclosure

This brochure provides information about the duty of disclosure that all parties must comply with in cases in the Federal Circuit and Family Court of Australia (the Court). The duty of disclosure applies in both financial or property and parenting cases.

The brochure includes information about:

- the requirement of full and frank disclosure (and what that means) in both financial or property and parenting cases
- written undertakings that must be given to the Court
- the types of documents that must be disclosed, and
- consequences for failure to disclose or for filing false undertakings.

Disclosure is a complex area of law. The information here is an overview only. You must carefully read section 71B or 90RI of the *Family Law Act 1975* (Cth) (for financial and property matters) and Chapter 6 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (the Rules) to understand your full obligations. If you are unsure about any of your obligations, you should get legal advice.

What is the duty of disclosure?

The duty of disclosure requires all parties to a family law dispute to provide all information relevant to an issue in the case to each other party. This includes information in a paper document or stored by other means such as on a computer or electronically. It also includes documents that the other parties may not know about. This duty starts before the case starts (known as pre-action procedures) and continues until the case is finalised.

Full and frank disclosure in financial or property cases

In addition to general duty of disclosure, there are specific rules about 'full and frank' disclosure in financial or property cases (see section 71B or section 90RI of the Family Law Act and Rule 6.06 of the Rules). A party must disclose all their direct and indirect financial circumstances.

A party is required to disclose all sources of earnings, interest, income, property (vested or contingent interests) and other financial resources. This disclosure is required whether the property, financial resources and earnings are owned by or paid to the party directly, are held by or paid to some other person (such as a child or partner), or are held in corporations, companies or trusts.

A party must also disclose information about any disposal of property that was made in the year immediately before the separation of the parties or since the final separation if such disposal may affect a claim. Disposal includes disposal by the sale, transfer, assignment or gifting of property.

What forms are used?

If you are a party to the marriage or de facto relationship you must file a *Financial Statement*. If that does not fully meet your duty of disclosure, you also need to file an affidavit giving further information.

If your financial circumstances change after you file the Financial Statement, you must file an amended Financial Statement within 21 days of the change of circumstances. Or, if the changes can be set out clearly in 300 words or less, you may file an affidavit containing details about your changed financial circumstances.

Full and frank disclosure in parenting cases

In parenting cases, each party must make full and frank disclosure of all relevant information at all stages in a case. The types of information and documents that must be disclosed will depend on the issues raised in the case. However, they may include medical reports about a child or parent, criminal records of a party, school reports, letters and drawings by the child, photographs and diaries. The Court may make an order that a document or part of a document not be produced because it would disclose sensitive information (i.e. a protected confidence).

Undertakings about disclosure

Before the first court date, you must file an [*undertaking as to disclosure*](#) stating that you:

- have read section 71B or section 90RI of the Family Law Act (for financial or property proceedings), Parts 6.1 (disclosure between parties) and 6.2 (disclosure procedures) of the Rules, and
- are aware of your duty to the Court and each other party (including any independent children's lawyer) to give full and frank disclosure of all information relevant to the issues in the case, in a timely manner.

You must:

- undertake that, to the best of your knowledge and ability, you have complied with the duty of disclosure, and
- acknowledge that breach of the undertaking may be contempt of court.

You must not make a statement or sign an undertaking if you know, or should reasonably know, that it is false or misleading.

Consequences for failure to disclose or filing a false undertaking

If you fail to disclose information or file an undertaking or file a false undertaking, the Court may:

- refuse to allow you to use that information or document as evidence in the case
- stay or dismiss all or part of your case
- order you to pay the other party's costs
- fine or imprison you if you are found guilty of contempt of court for not disclosing the document or for breaching an undertaking.

More information

For more information, including access to the *Family Law Act 1975*, the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*, and any of the forms or publications listed in this brochure:

- Go to www.fcfcga.gov.au
- Live Chat on the website
- Call 1300 352 000, or
- Visit a family law registry near you.

This brochure provides general information only and is not provided as legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to the Court. The Federal Circuit and Family Court of Australia cannot provide legal advice.

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