FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA

Duty of disclosure

Thisbrochure provides informationabout the duty of disclosure responsibilities of parties in all cases,whether financial orparenting,in the Federal Circuit and Family Courtof Australia. It includes information about:

- full and frank disclosure - and what that might mean in financial and parenting cases
- written undertakings that must be given to the Court
- documents to be disclosed, and
- penalties for failure to disclose or for filing false undertakings.

Disclosure is a complex area of law. The information here is an overview only of the requirements.You must carefully read 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. A lawyer will help you understand your legal rights and responsibilities, including:

- your duties and obligations about disclosure, including full and frank disclosure
- the effect of the undertaking as to disclosure, and
- the terms used in this brochure.

What is duty of disclosure?

Duty of disclosure requires all partiesto a family law disputeto provide to each other party all informationrelevant to an issue in the case. This includes information recorded in a paper document or stored by some other means such as a computer storage device and also includes documents that the other parties maynot know about. This duty starts with the pre-action procedure before the case starts and continuesuntil the case is finalised.

As a party, you must continue to providesuchinformation as circumstances change ormore documents are created or come into your possession, power or control. For more information, see Rule 6.01 of the Rules.

Full and frank disclosure in financial cases

In addition to general disclosure requirements, there are specific rules about full and frank disclosurein financial cases (see Rule 6.06). Disclosure must be of the party'stotal direct and indirect financial circumstances.

It requires disclosing all sources of earnings, interest, income, property (vested or contingent interests)and other financial resources. This applies whether the property, financial resources

and earnings are owned by or come to the party directly, or go to some other person or beneficiary (for example, the party's child or de facto partner) or are held in corporations, trusts, company or other such structures.

Also required to be disclosed is information about any property disposal (whether by sale, transfer, assignment or gift) that was made in the year immediately before the separation of the parties or since the final separation and that may affect, defeat or deplete a claim.

What forms are used?

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 particulars.

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

Certain applications have additional requirements, for instance:

> If you are a party to a maintenance application, Rule 6.06(9) sets out the documents you must take with you on the first court date.
> If you are a party to a property application, certain documents must be exchanged before the first court date (see Rule 6.06(8)).

Full and frank disclosure in parenting cases

Rule 6.05 requires parties to make full and frank disclosure of all information relevant to a parenting case, at all stages in a case. The relevant information and documents will be case specific. For example, they may include medical reports about a child or parent, school reports, letters and drawings by the child, photographs, a diary.

Rule 7.14 requires a party who has obtained an expert's report for a parenting case to give a copy of the report to the other parties and the independent children's lawyer (if appointed).

Disclosure of documents

Chapter 6 of the Rules details a number of ways in which you may be required to comply with your duty of disclosure to the other parties and the Court. These include:

> production and inspection of documents (Part 6.2)
> list of documents (Rule 6.09)
> orders for disclosure (Division 6.2.3), and
> answers to specific questions (Part 6.3).

Undertakings about disclosure

Rule6.02requiresallparties(exceptforan independent children's lawyer) to file an undertaking stating that you:

- have read 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.

This undertaking must be filed before the first court date.

If you have any legal questions about your duty to disclose documents, you should get legal advice. Court staff can help you with questions about court forms and the court process, but cannot give you legal advice.

Penalties

If you fail to disclose 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 your case
- stay or dismiss all or part of your case
- order costs against you
- fine you or imprison you on being found guilty of contempt of court for not, or disclosing the document or for breaching your undertaking.

More information

For moreinformation,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.fcfcoa.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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