

Disclosure in Family Law

A practical guide to full and frank disclosure

What is the duty of disclosure?

Parties in Australian family-law matters must provide full and frank disclosure of information and documents relevant to the issues in their case. The duty applies in financial and property cases and in parenting cases, although the material required will differ.

Disclosure is intended to ensure that each party and the Court can understand the relevant facts, narrow disputed issues and make informed decisions or orders.

When does the duty apply?

- During required pre-action procedures, before court proceedings begin.
- Throughout negotiations, dispute resolution and court proceedings.
- Whenever relevant circumstances or documents change.
- Until the matter is finalised by agreement, final orders or another lawful conclusion.

An ongoing obligation

Disclosure is not a one-time exchange. New bank statements, valuations, tax information, employment changes or other relevant material may need to be provided as the case progresses. Each party should actively review and update their disclosure.

Financial and property disclosure

What may need to be disclosed?

Financial disclosure extends beyond assets held in a person's sole name. It can include direct and indirect interests, financial resources, liabilities, income, transactions and interests held through companies, trusts or other structures.

- Recent tax returns, notices of assessment and taxation correspondence.
- Bank, credit card, loan and mortgage statements.
- Payslips, employment contracts and evidence of bonuses or other income.
- Superannuation statements and information required to value or split an interest.
- Title searches, contracts, valuations and documents concerning real property.
- Share, investment, cryptocurrency and managed-fund records.
- Company, partnership, business and trust accounts, returns and governing documents.
- Details of debts, guarantees, contingent liabilities and significant transactions.
- Information about property disposed of or transferred where relevant to the case.

Control and access

The obligation can cover documents in a party's possession or control. Difficulty obtaining a document should be addressed early with a solicitor rather than ignored.

Parenting disclosure and document exchange

Relevant parenting material

In parenting matters, disclosure focuses on information relevant to the child's best interests and the issues genuinely in dispute. The required material depends on the allegations and circumstances.

- Medical, psychological or allied-health reports relevant to a disputed issue.
- School, childcare and developmental records.
- Documents from criminal, child-protection or family-violence proceedings.
- Relevant communications, letters, photographs, recordings or drawings.
- Information concerning risk, safety, care arrangements and a child's needs.
- Expert reports and other documents relied upon in the proceedings.

Privilege, privacy and sensitive records

Not every document must be produced. Legal professional privilege and other protections may apply. Subpoenaed, medical, child-protection and confidential records can also involve access restrictions and privacy obligations. Obtain advice before withholding, redacting, copying or sharing sensitive material.

Practical organisation

- Keep original documents and create a secure chronological copy set.
- Use clear file names and an index showing the date, source and description.
- Avoid altering documents or deleting messages once a dispute is anticipated.
- Record what was provided, to whom, when and by what secure method.

Compliance, consequences and preparation

Undertakings and accuracy

The Court may require a written undertaking confirming that disclosure has been made and acknowledging the consequences of a false undertaking. Read any undertaking carefully and correct omissions before signing or filing it.

Possible consequences of non-disclosure

- Orders compelling production, inspections, subpoenas or further evidence.
- Adjournment, delay and an order to pay another party's legal costs.
- Exclusion of evidence or restrictions on relying on an undisclosed document.
- Contempt findings or other penalties in serious cases.
- Existing orders or agreements being challenged or set aside where non-disclosure caused a miscarriage of justice.

Preparing for your appointment

- Bring court documents, prior agreements and any disclosure requests received.
- Prepare a list of assets, liabilities, income, superannuation and financial interests.
- Identify missing documents and explain who may hold them.
- Provide a timeline of major transactions and relevant parenting events.
- Tell your solicitor about overseas assets, digital assets, trusts, companies and recent transfers.

Key sources

- Family Law Act 1975 (Cth), including the statutory duty of disclosure provisions.
- Federal Circuit and Family Court of Australia (Family Law) Rules 2021.
- FCFCOA Duty of Disclosure brochure and applicable practice directions.

Complete disclosure supports fair and durable outcomes

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