

Disclosure in family law matters

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Disclosure is a term used in family law proceedings that essentially means providing all relevant information and documents to the other party. It is sometimes referred to as 'full and frank disclosure', and parties have an obligation to provide disclosure in both financial and parenting matters.

This obligation exists even before parties go to Court and is ongoing as your circumstances change or more documents are created or come into your possession, power and control.

Family law reforms – changes to disclosure obligations from June 2025

While the duty of disclosure was previously set out only in the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*, it was codified in the *Family Law Act* in June 2025. Disclosure obligations are set out in sections 71B (spouses) and 90RI (de facto relationships) of the *Family Law Act.* The additions include the following:

- Each party has a duty to the Court and to each other to give full and frank disclosure of all documents relevant to:
  - The issues in the proceeding that relate to financial or property matters of the marriage; and
  - Matters that might become the subject of proceedings.
- A party does not need to disclose a document or part of a document if they reasonably assert that it would disclose information that is likely to cause harm to a party or child.

The duty to disclose is not limited to prescribed information and documents. It may be necessary for parties to disclose other information and documents under the Court Rules when preparing for the proceeding. It is also required that full and frank disclosure occur in a timely manner.

The duty of disclosure has been uplifted from the Rules and codified in an effort to "encourage the early resolution of disputes [and to] strengthen the arbitration regime". The inclusion of the duty of disclosure in the *Family Law Act* also promotes compliance with disclosure, thus safeguarding the right to a fair hearing if the matter proceeds to Court.

While it may be too early to determine the impact of these changes, the inclusion of the duty of disclosure in the *Family Law Act* safeguards transparency and fair hearings, and promotes resolution.

What do I have to disclose in parenting proceedings?

In parenting matters, parties have a duty to provide documents that are relevant to the matter, including, but not limited to the following:

- A party's criminal records;
- Documents filed in Intervention Order proceedings (family violence matters) concerning a party;
- Medical reports about a child or party;
- Photographs;
- Letters and drawings done by the child; and/or
- School reports.

The types of documents that need to be disclosed will be case-specific based on your unique circumstances. We recommend you seek advice from an experienced family lawyer to make sure both you and all other parties are properly complying with your obligations to make disclosure.

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What do I have to disclose in financial proceedings?

Each party to a financial family law matter (property settlement) has a duty to provide full and frank disclosure about their assets and liabilities. Hidden or undisclosed assets can usually be traced by family lawyers, and there may be very serious consequences of failing to disclose assets.

In financial proceedings, parties have a duty to provide documents that are relevant to the matter, including, but not limited to, the following:

- Your last three tax returns;

- Your three most recent pay slips;
- Any other details of your income/earning capacity;
- Your most recent superannuation statement;
- If you are a member of a self-managed superannuation fund, a copy of the trust Deed and financial statements for the last three years;
- Your bank statements for the last three years;
- Any interest you have in property (whether fully or jointly owned, such as real estate, cars or personal belongings of significant value);
- Any other financial resources (for example, if you have an interest in a deceased estate/inheritance);
- Details of any shareholding in a public company;
- If you have an interest in a trust, documents relating to the trust;
- If you have an interest in a private company, documents relating to the company;
- If you have an interest in a partnership, documents relating to the partnership;
- If you have disposed of any property within the 12 months before separation or since separation, full details of the sale/disposal;
- A list and supporting documents for any liabilities in your sole or joint name (for example, credit card debts, personal loans or mortgages); and
- If there has been an increase in any liabilities since separation, an explanation and supporting documents to explain the increase.

Depending on the date of separation and other issues in dispute, parties may be required to provide these documents from a larger time period. The three-year timeline is just a starting point.

Generally speaking, anything that points to your financial position must be disclosed. Sometimes, documents from a third party (for example, a new de facto partner or assets held in corporations, companies and trusts) must also be disclosed. We recommend you seek advice from an experienced family lawyer to make sure both you and all other parties are properly complying with your obligations to make disclosure.

Undertaking to disclose

Before commencing proceedings, parties are required to complete and file an undertaking (a promise to the Court) that they have read the relevant family law rules relating to disclosure and are aware of their duty to disclose to both the Court and the other parties in a timely manner.

You must undertake that you have complied with your duty of disclosure to the best of your knowledge and ability and acknowledge that breaching the undertaking may be contempt of court (disobeying or disrespecting the Court). Penalties apply if you are found guilty of contempt of court (see below).

What happens if a party fails to comply with their duty to disclose?

If parties fail to disclose a relevant document, or falsely file an Undertaking as to Disclosure with the Court, there are a number of penalties the Court may impose. These penalties include, but are not limited to, the following:

- Take the non-compliance into account in a property settlement;
- Order the party that failed to disclose to pay the costs of the other party;
- Order the party that failed to disclose to produce the documents or information;
- Stay (put on hold) or dismiss all or part of your case;
- Fine you or imprison you for being guilty of contempt of court for not disclosing the documents or information.

If there is a Court Order for you to disclose documents, failing to follow the Court Order may result in other consequences. For more information on compliance with family law Orders, you can visit our previous blogs:

- Compliance with Parenting Orders
- Compliance with Family Law Financial Orders

If another party fails to disclose documents relevant to the dispute, you may still be able to obtain that information through other means – such as through a subpoena (a Court Order that compels a third party, such as a bank or medical practitioner, to produce specific documents). You can read more about subpoenas in our blog "Your guide to subpoenas in family law".

How a family lawyer can help

Smith Family Law can advise you as to your duty of disclosure and discuss potential options to resolve your matter. We recommend getting professional advice early to make sure you have all the information you need to negotiate a fair outcome.

This article was written by solicitor Jane Holford. Research for the August 2025 updates was undertaken by Legal Assistant Piper Ford.

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