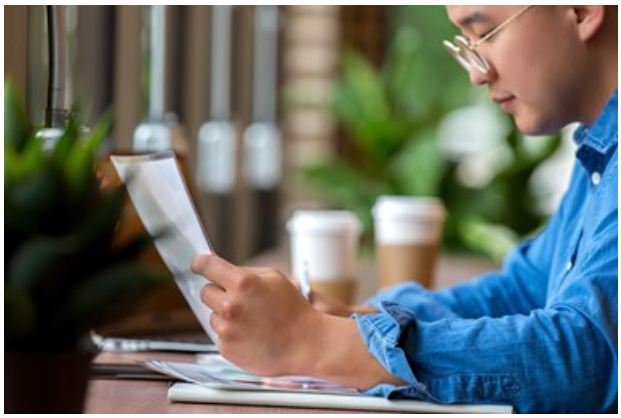


Pre-action procedures before filing in the Federal Court and Family Court of Australia

Date: Monday September 4, 2023

Before taking your parenting or property issue to court, you must fulfil certain family law requirements known as the “pre-action procedures”. The court requires parties to make a “genuine effort” in resolving a dispute before going to court.

This includes:

- whether disclosure obligations were met;
- if you have participated in dispute resolution; and
- if you let the other party know you intended to take the matter to court (by sending a Written Notice to Issue Proceedings).

Dispute resolution in family law matters

In many cases, to fulfil the requirements of making a genuine effort in resolving a dispute before filing court proceedings, parties will participate in some form of dispute resolution. This includes attending a family counsellor, participating in mediation with a suitably qualified mediator, or negotiating privately or with legal assistance.

If your issue concerns a parenting matter, there is a requirement that parties attend mediation/Family Dispute Resolution. The court requires you to obtain a Certificate from a Family Dispute Resolution practitioner with respect to mediation.

In some cases, this will not be possible or appropriate. The Certificate will depend on your circumstances and will certify that:

1. one of the parties refused to attend mediation; or
2. the dispute resolution practitioner considered it inappropriate for the parties to attend mediation; or

3. the parties attended mediation and made a genuine effort to resolve the dispute; or

4. Both parties attended mediation, however, one or both of the parties did not make genuine efforts to resolve the dispute.

You can find your closest accredited Family Dispute Resolution practitioner here.

Exemptions to participating in dispute resolution

In some cases, an exemption will apply, and you will not be required to participate in dispute resolution or obtain this certificate.

Dispute resolution exemptions include:

- If your matter is urgent. For example, where there are concerns for a child's well-being and/or safety or a party has taken steps to dispose of marital assets without the other party's consent.
- If the court is satisfied that there has been child abuse or family violence perpetrated by a party.
- There is risk of family violence if there is a delay in having the matter heard by a court.
- If a party cannot participate in dispute resolution due to incapacity or physical remoteness.
- If your application is in relation to a contravention of an existing court order made within 12 months, and the party who has allegedly contravened the order is behaving in a manner that shows serious disregard for their obligations under the order.

You can read more about contravening court orders in our earlier blogs:

- Compliance with parenting orders
- Compliance with family law financial orders related to property

To apply for an exemption from participating in dispute resolution, you must file an affidavit with the court. If you think an exemption applies, we encourage you to seek legal advice.

Call us for a free initial consult: 03 8625 8957

Disclosure in family law matters

Both parties will need to exchange all relevant information and documents, which is a process known as disclosure. Disclosure includes documents like bank statements, medical reports, photographs, school reports and other relevant material.

Disclosure helps you reach an agreement in a fair and transparent manner and reduces the likelihood of legal action. This process will also assist your lawyer and the judge in determining how best to resolve the issues in dispute.

For financial matters (related to property), under the Family Law Rules, parties must disclose the following:

- A schedule of assets, income and liabilities.

- Documents in your possession that are relevant to the dispute (deeds, bank statements, tax returns, inheritance, or trust statements etc.)
- A copy of any document required by the other party that would be considered relevant to disclosure.

For parenting matters, parties should determine whether they possess any relevant information to the issue in dispute, such as photographs, text messages, emails, medical records, or school reports.

Written notice of any intention to start proceedings

If dispute resolution is unsuccessful or unavailable, you must notify the other party that you are considering applying to the court to resolve your dispute. In this letter you must include:

- issues in dispute;
- the orders you are seeking from the court;
- a genuine offer to resolve the issues; and
- a nominated time (normally 14 days after the date of the letter) by which the other person must reply.

For further information regarding pre-action procedures, please see material published by the Federal Circuit and Family Court of Australia:

- Before you file - pre-action procedure for financial cases brochure (fcfcoa.gov.au)
- Before you file - pre-action procedure for parenting cases brochure (fcfcoa.gov.au)

Family violence and child abuse

The court understands that family violence impacts many families seeking legal assistance. Your safety and the safety of any children involved is a paramount concern to both the court and lawyers.

If family violence from one party, or the risk of child abuse, is something you are experiencing you may be exempt from the pre-action procedures. If you are seeking an exemption on the grounds of child abuse or family violence, the court may need to be satisfied that you have access to information that could assist you. You can access this confidential service by calling 1800 050 321 .

If you have ongoing concerns about accessing legal services, we encourage you to contact the Family Violence Law Help crisis line on 1800 737 732.

If you are concerned about the immediate safety of yourself or others, you should call police on 000 in an emergency.

How a family lawyer can help

Smith Family Law has experience in assisting parties at all stages of the family law process and can offer guidance to ensure your matter is resolved as quickly and efficiently as possible.

The court recommends seeking legal representation if you believe you will need to go to court. If you would like to discuss your matter with one of our lawyers, we offer a free initial appointment.

Contacting Smith Family Law

03 8625 8957

info@smithfamilylaw.com.au

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.