



This brochure provides information about the 'duty of disclosure' responsibilities of parties in all cases, whether financial or parenting, in the Family Court. 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 13 of the *Family Law Rules 2004* 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 parties to provide the Court and each other party all information relevant to an issue in the case. This includes information and documents that the other parties may not know about. This duty starts with the pre-action procedure before the case starts and continues until the case is finalised.

As a party, you must continue to provide information and documents as circumstances change or more documents are created or come into your possession, power or control. For more information, see Rule 13.01 of the Family Law Rules.

Full and frank disclosure in financial cases

In addition to general disclosure requirements, there are specific rules about full and frank disclosure in financial cases (Rules 13.04 and 12.02 - you should obtain copies). Disclosure must be of the party's total 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 spouse) 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.

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 Family Law Courts cannot provide legal advice.

What forms are used?

You must file a Financial Statement (Form 13). 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 an amended statement seven days before any of the following:

- conciliation conference
- pre-trial conference, and
- trial

or when you seek consent orders.

Certain applications have additional requirements, for instance:

- If you are a party to a maintenance or child support application, Rule 4.15 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:
 - ~ a case assessment conference (see Rule 12.02)
 - ~ a conciliation conference (see Rule 12.05).

Full and frank disclosure in parenting cases

Rule 13.01 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 15.55 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 13 of the Family Law 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 of documents (Part 13.2)
- inspection of documents (Part 13.2)
- copying of documents (Part 13.2)
- list of documents (Rule 13.20)
- orders for disclosure (Rule 13.22), and
- answers to specific questions (Part 13.3).

Undertakings about disclosure

Rule 13.15 requires all parties (except for an independent children's lawyer) to file an undertaking stating that you:

- have read Parts 13.1 (disclosure between parties) and 13.2 (duty of disclosure - documents) of the Family Law 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 either:

- seven days before the pre-trial conference, or
- if no pre-trial conference is held, seven days before a trial or hearing.

The form Notice and Undertaking is available from www.familylawcourts.gov.au, by calling 1300 352 000 or at your nearest family law registry.

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.