

Parts 6.1 and 6.2 of the Family Law Rules 2021

Part 6.1—Duty of disclosure

Division 6.1.1—General duty of disclosure

6.01 General duty of disclosure

- (1) Subject to subrule (4), each party to a proceeding has a duty to the court and to each other party to give full and frank disclosure of all information relevant to the proceeding, in a timely manner.

Note: The proceedings to which the duty of disclosure applies include both parenting proceedings and financial proceedings. Failure to comply with the duty may result in the court excluding evidence that is not disclosed or imposing a consequence, including punishment for contempt of court.

- (2) The duty of disclosure applies from the start of the proceeding and continues until the proceeding is finalised.

Note: Parties are also expected to comply with the duty of disclosure when complying with the pre action procedures.

- (3) The duty of disclosure also applies to a litigation guardian appointed under Part 3.5.
- (4) This rule does not apply to a respondent to an application alleging contravention or contempt.

6.02 Undertaking by party

- (1) A party (but not an independent children's lawyer) must file a written notice:
 - (a) stating that the party:
 - (i) has read Parts 6.1 and 6.2 of these Rules; and
 - (ii) is aware of the party's 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 proceeding, in a timely manner; and
 - (b) undertaking to the court that, to the best of the party's knowledge and ability, the party has complied with, and will continue to comply with, the duty of disclosure; and
 - (c) acknowledging that a breach of the undertaking may be a contempt of court.
- (2) A party commits an offence if the party makes a statement or signs an undertaking the party knows, or should reasonably have known, is false or misleading in a material particular.

Penalty: 50 penalty units.

Note: Subrule (2) is in addition to the court's powers under section 112AP of the Family Law Act relating to contempt and the court's power to make an order for costs.

- (3) If the court makes an order against a party under section 112AP of the Family Law Act in respect of a false or misleading statement referred to in subrule (2), the party must not be charged with an offence against subrule (2) in respect of that statement.
- (4) A notice under subrule (1) must be in accordance with the approved form and must be filed before the first court date, unless the court otherwise orders.

6.03 Duty of disclosure—documents

The duty of disclosure applies to each document that:

- (a) is or has been in the possession, or under the control, of the party disclosing the document; and
- (b) is relevant to an issue in the proceeding.

Note: In particular types of proceedings, practice directions may specify the documents that must be disclosed in those proceedings. See also rules 6.05 and 6.06.

6.04 Use of documents

- (1) A person who inspects or copies a document, in relation to a proceeding, under these Rules or an order:
 - (a) must use the document for the purpose of the proceeding only; and
 - (b) must not otherwise disclose the contents of the document, or give a copy of it, to any other person without the court's permission.
- (2) However:
 - (a) a solicitor may disclose the contents of the document or give a copy of the document to the solicitor's client or counsel; and
 - (b) a client may disclose the contents of the document or give a copy of the document to the client's solicitor or counsel; and
 - (c) this rule does not affect the right of a party to use a document or to disclose its contents if that party has a common interest in the document with the party who has possession or control of the document.

Division 6.1.2—Duty of disclosure in specific types of proceedings

6.05 Duty of disclosure—parenting proceedings

- (1) The duty of disclosure applies to a parenting proceeding.
- (2) Documents that may contain information relevant to a parenting proceeding may include, among other documents:
 - (a) criminal records of a party; and
 - (b) documents filed in intervention order proceedings concerning a party; and
 - (c) medical reports about a child or party; and
 - (d) school reports.

6.06 Duty of disclosure—financial proceedings

- (1) The duty of disclosure applies to a financial proceeding.
- (2) Subrules (3) to (9) do not apply to a party to a property proceeding who is not a party to the marriage or de facto relationship to which the application relates, except to the extent that the party's financial circumstances are relevant to the issues in dispute.
- (3) Without limiting subrule (1), a party to a financial proceeding must make full and frank disclosure of the party's financial circumstances, including the following:
 - (a) the party's earnings, including income that is paid or assigned to another party, person or legal entity;
 - (b) any vested or contingent interest in property;
 - (c) any vested or contingent interest in property owned by a legal entity that is fully or partially owned or controlled by a party;
 - (d) any income earned by a legal entity fully or partially owned or controlled by a party, including income that is paid or assigned to any other party, person or legal entity;
 - (e) the party's other financial resources;
 - (f) any trust:
 - (i) of which the party is the appointor or trustee; or
 - (ii) of which the party, the party's child, spouse or de facto spouse is an eligible beneficiary as to capital or income; or
 - (iii) of which a corporation is an eligible beneficiary as to capital or income if the party, or the party's child, spouse or de facto spouse is a shareholder or director of the corporation; or
 - (iv) over which the party has any direct or indirect power or control; or
 - (v) of which the party has the direct or indirect power to remove or appoint a trustee; or
 - (vi) of which the party has the power (whether subject to the concurrence of another person or not) to amend the terms; or
 - (vii) of which the party has the power to disapprove a proposed amendment of the terms or the appointment or removal of a trustee; or
 - (viii) over which a corporation has a power referred to in any of subparagraphs (iv) to (vii), if the party, the party's child, spouse or de facto spouse is a director or shareholder of the corporation;
 - (g) any disposal of property (whether by sale, transfer, assignment or gift) made by the party, a legal entity referred to in paragraph (c), a corporation or a trust referred to in paragraph (f) that may affect, defeat or deplete a claim:
 - (i) in the 12 months immediately before the separation of the parties; or
 - (ii) since the final separation of the parties;
 - (h) liabilities and contingent liabilities.

- (4) Paragraph (3)(g) does not apply to a disposal of property made:
 - (a) with the consent or knowledge of the other party; or
 - (b) in the ordinary course of business.
- (5) A party starting, or filing a response or reply to, a financial proceeding (other than by an Application for Consent Orders) must file, at the same time:
 - (a) a Financial Statement; and
 - (b) a financial questionnaire in the form approved by the Chief Executive Officer.
- (6) If a party is aware that the completion of a Financial Statement will not fully discharge the duty to make full and frank disclosure, the party must also file an affidavit giving further particulars.
- (7) If a party's financial circumstances have changed significantly from the information set out in the Financial Statement or an affidavit filed under subrule (6), the party must, within 21 days after the change of circumstances, file:
 - (a) a new Financial Statement; or
 - (b) if the changes can be set out clearly in 300 words or less—an affidavit containing details about the party's changed financial circumstances.
- (8) Without limiting subrule (1), unless the court otherwise orders, a party (the first party) who is required by this rule to file a Financial Statement (other than a respondent to an application for maintenance only) must, before the first court date, serve on each other party who has an address for service in the proceeding the following documents:
 - (a) a copy of the party's 3 most recent taxation returns;
 - (b) a copy of the party's 3 most recent taxation assessments;
 - (c) if the first party is a member of a superannuation plan:
 - (i) the completed superannuation information form for any superannuation interest of the party (unless it has already been filed or exchanged); and
 - (ii) for a self managed superannuation fund—the trust deed and a copy of the 3 most recent financial statements for the fund;
 - (d) if the party has an Australian Business Number—a copy of the last 4 business activity statements lodged;
 - (e) if there is a partnership, trust or company (other than a public company) in which the party has an interest—a copy of the 3 most recent financial statements and the last 4 business activity statements lodged by the partnership, trust or company.
- (9) Without limiting subrule (1), a respondent to an application for maintenance only must bring to the court on the first court date the following documents:
 - (a) a copy of the respondent's taxation return for the most recent financial year;
 - (b) a copy of the respondent's taxation assessment for the most recent financial year;

- (c) copies of the respondent's bank records for the 12 months immediately before the date when the application was filed;
 - (d) the respondent's most recent pay slip;
 - (e) if the respondent has an Australian Business Number—a copy of the last 4 business activity statements lodged;
 - (f) any document in the respondent's possession, custody or control that may assist the court in determining the income, needs and financial resources of the respondent.
- (10) This rule does not require a party to be served with a document that has already been provided to the party.

Part 6.2—Disclosure procedures

Division 6.2.1—Introduction

6.07 Application of Part 6.2

This Part does not apply to the following applications:

- (a) an application for an order that a marriage is a nullity;
- (b) an application for a declaration as to the validity of a marriage;
- (c) an application for a declaration as to the validity of a divorce or annulment of marriage.

Division 6.2.2—Processes of disclosure, production and inspection

6.08 Application of Division 6.2.2

This Division does not affect:

- (a) the right of a party to inspect a document, if the party has a common interest in the document with the party who has possession or control of the document; or
- (b) any other right of access to a document other than under this Division; or
- (c) an agreement between the parties for disclosure by a procedure that is not described in this Division.

6.09 Disclosure by list of documents

- (1) After a proceeding has been allocated a first court date, a party (the requesting party) may, by written notice, ask another party (the disclosing party) to give the requesting party a list of documents to which the duty of disclosure applies.
- (2) The disclosing party must, within 21 days after receiving the notice, serve on the requesting party a list of documents identifying:
 - (a) the documents to which the duty of disclosure applies; and
 - (b) the documents (if any) no longer in the disclosing party's possession or control to which the duty would otherwise apply (with a brief statement about the circumstances in which the documents left the party's possession or control); and

- (c) the documents (if any) for which privilege from production is claimed.
- (3) If a document that must be disclosed is located by, or comes into the possession or control of, a disclosing party after service of the list under subrule (2), the party must disclose the document within 7 days after it is located or comes into the party's possession or control.

6.10 Request for disclosed document

- (1) This rule applies to a document disclosed under rule 6.09.
- (2) The requesting party may, by written notice, ask the disclosing party to:
 - (a) provide a copy of the document in accordance with rule 6.13; or
 - (b) produce the document for inspection in accordance with rule 6.14.

6.11 Request for other identified document

- (1) This rule applies to a document referred to:
 - (a) in a document filed or served by a party on another party or on an independent children's lawyer; or
 - (b) in correspondence prepared and sent by or to another party or to an independent children's lawyer.
- (2) A party may, by written notice, require another party to:
 - (a) provide a copy of the document in accordance with rule 6.13; or
 - (b) produce the document for inspection in accordance with rule 6.14.

6.12 Request to inspect original document

- (1) A party may, by written notice, require another party to produce for inspection an original document if the document is a document that must be produced under the duty of disclosure.
- (2) If a party receives a notice under subrule (1), the party must produce the document for inspection in accordance with rule 6.14.

6.13 Provision of copies of documents

- (1) Subject to subrule (2) and rule 6.15, a party must provide copies of documents to the party requesting the copies:
 - (a) within 21 days after receiving a notice under paragraph 6.10(2)(a) or 6.11(2)(a); and
 - (b) at the expense of the party requesting the copies; and
 - (c) if practicable, in an electronic format.
- (2) If it is not convenient for a disclosing party to provide copies of documents under subrule (1) because of the number and size of the documents, the disclosing party must produce the documents for inspection in accordance with rule 6.14.

6.14 Production of documents for inspection

- (1) A party must produce documents for inspection in accordance with this rule if the party:

- (a) receives a notice under paragraph 6.10(2)(b); or
 - (b) receives a notice under paragraph 6.11(2)(b); or
 - (c) receives a notice under paragraph 6.10(2)(a) or 6.11(2)(a) and subrule 6.13(2) applies; or
 - (d) receives a notice under subrule 6.12(1).
- (2) Subject to rule 6.15, a party must, within 14 days after receiving a notice referred to in subrule (1):
- (a) notify, in writing, the party requesting the document of a convenient place and time to inspect the document; and
 - (b) produce the document for inspection at that place and time; and
 - (c) allow copies of the document to be made, at the expense of the party requesting it.
- (3) The time fixed under paragraph (2)(a) must be within 21 days after the party receives the notice referred to in subrule (1) or as otherwise agreed.
- (4) A party who fails to inspect a document after receiving a notice under subrule (2) may not later do so unless the party tenders an amount for the reasonable costs of providing another opportunity for inspection.

6.15 Documents that need not be produced

- (1) A party must disclose, but need not provide a copy of nor produce to the party requesting it:
- (a) a document for which there is a claim of privilege from production; or
 - (b) a document that is no longer in the disclosing party's possession or control; or
 - (c) a document a copy of which has already been provided, if the copy contains no change, obliteration or other mark or feature that is likely to affect the outcome of the proceeding.
- (2) Subrule (1) does not affect the operation of rule 7.14.

Note: Rule 7.14 requires the disclosure of an expert's report in a parenting proceeding.

Division 6.2.3—Objecting to production

6.16 Objection to production

- (1) This rule applies if:
- (a) a party claims:
 - (i) privilege from production of a document; or
 - (ii) that the party is unable to produce a document; and
 - (b) another party, by written notice, challenges the claim.
- (2) The party making the claim must, within 7 days after the other party challenges the claim, file an affidavit setting out details of the claim.

- (3) The court may inspect the document for the purpose of determining whether the claim is valid.

Division 6.2.4—Orders in relation to disclosure

6.17 Consequences of non disclosure

If a party does not disclose a document as required by these Rules:

- (a) the party:
 - (i) must not offer the document, or present evidence of its contents, at a hearing or trial without the other party's consent or the court's permission; and
 - (ii) may be guilty of contempt for not disclosing the document; and
 - (iii) may be ordered to pay costs; and
- (b) the court may stay or dismiss all or part of the party's case.

Note 1: A party who discloses a document under this Part must produce the document at the trial if a notice to produce has been given (see rule 6.42).

Note 2: Section 112AP of the Family Law Act sets out the court's powers in relation to a contempt of court.

6.18 Application for order for disclosure, production or inspection

- (1) A party (the **first party**) may seek an order that:
 - (a) another party comply with a request for a list of documents in accordance with rule 6.09; or
 - (b) another party provide an affidavit of documents; or
 - (c) another party disclose a specified document, or class of documents, by providing a copy of the document, or each document in the class; or
 - (d) another party produce a document for inspection; or
 - (e) another party file an affidavit stating:
 - (i) that a specified document, or class of documents, does not exist or has never existed; or
 - (ii) the circumstances in which a specified document or class of documents ceased to exist or passed out of the possession or control of that party; or
 - (f) the first party be partly or fully relieved of the duty of disclosure.
- (2) A party making an application under subrule (1) must satisfy the court that the order is appropriate in the interests of the administration of justice.
- (3) The court may make an order of a kind referred to in subrule (1) on its own initiative if it is satisfied that the order is appropriate in the interests of the administration of justice.
- (4) In making an order under subrule (1) or (3), the court may consider:
 - (a) whether the disclosure sought is relevant to an issue in dispute; and
 - (b) the relative importance of the issue to which the document or class of documents relates; and

- (c) the likely time, cost and inconvenience involved in disclosing a document or class of documents, taking into account the amount of the property, or complexity of the corporate, trust or partnership interests (if any), involved in the proceeding; and
 - (d) the likely effect on the outcome of the proceeding of disclosing, or not disclosing, the document or class of documents.
- (5) If the disclosure of a document is necessary for the purpose of resolving a proceeding at a dispute resolution event, a party (the **requesting party**) may, on the first court date, seek an order that another party:
- (a) provide a copy of the document to the requesting party; or
 - (b) produce the document to the requesting party for inspection and copying.
- (6) The court may make an order under subrule (5) only in exceptional circumstances.
- (7) The court may inspect a document to decide:
- (a) an application made under this rule; or
 - (b) whether to make an order under subrule (3).

6.19 Costs of compliance

If the cost of complying with the duty of disclosure would be oppressive to a party, the court may order another party to:

- (a) pay the costs; or
- (b) contribute to the costs; or
- (c) give security for costs.

6.20 Electronic disclosure

The court may make an order directing electronic disclosure of documents.