

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

Chapter 6 Disclosure and subpoenas

Part 6.1 Duty of disclosure

Division 6.1.2 Duty of disclosure in specific types of proceedings

Rule 6.06

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.