



Pre-action procedures before commencing proceedings in the Family Court

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After separation, some parties will be in dispute about, for example, [parenting arrangements](#) or [property settlement](#). When they can't come to an agreement, they may seek to have the Family Court (in states and territories other than WA, this is the Federal Circuit and Family Court of Australia and in WA, the Family Court of Western Australia) determine the matter for them.

However, before your matter goes to court, you must fulfil certain “pre-action procedures” to show the courts you have made a genuine effort to resolve your dispute before commencing proceedings.

Pre-action procedures – Family Court of Western Australia

In Western Australia, the Family Law Rules 2021 (‘the Rules’) mandate the pre-action procedures for both parenting and property matters.

The aim of the pre-action procedures is to explore areas of dispute resolution prior to initiating Court proceedings. Where a dispute cannot be resolved, pre-action procedures should help to narrow the issues that require a Court decision.

Schedule 1 of the Rules sets out the pre-action procedures for financial matters, both property and maintenance and parenting matters. This includes parties’ disclosure obligations and participation in dispute resolution.

The introduction of pre-action procedures in 2021

In September 2021, the ‘Federal Circuit Court of Australia’ and ‘Family Court of Australia’ amalgamated into one single court, the [Federal Circuit and Family Court of Australia](#) (‘the Court’). With this new court came a new uniform set of Family Law Rules and Central Practice Direction for family law matters in all states and territories except WA. All of this was designed with the overarching

purpose of providing more efficient and just outcomes to litigants.

The new direction of the Court includes a greater push for dispute resolution and a court-mandated requirement for parties to take genuine steps to attempt to resolve their dispute. The Court will assess and enforce compliance with these pre-action procedures at the first Court date.

Dispute resolution is a requirement before proceeding to court

The Family Law Rules require parties in both parenting and property disputes to make genuine attempts to resolve their dispute before initiating court proceedings.

This is done by participating in at least one form of dispute resolution, for example:

attending family counselling;

participating in negotiations (with or without lawyers); or

attending a [form of mediation](#).

Dispute resolution in parenting disputes

If your matter relates to a parenting dispute, you are required to attend [Family Dispute Resolution](#) (FDR), a type of mediation, and obtain a certificate from the practitioner.

The certificate you receive will depend on your circumstances and will certify that:

one of the parties refused to attend mediation; or

the Family Dispute Resolution practitioner considered it inappropriate for the parties to attend mediation; or

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

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

Dispute resolution related to property settlement

If your matter relates to property settlement, you are also required to have made a genuine effort to resolve the dispute prior to filing proceedings in the court. Evidence of attempts to resolve your matter include:

having made reasonable offer(s) to settle with your former partner, which have failed; and/or

attending mediation; and/or

filing an Affidavit detailing the efforts you have made, which may also include why you have been unable to reach agreement or mediate your matter.

For property disputes, there is no issuing of a certificate by a Family Dispute Resolution practitioner. However, if you fail to make a genuine effort to resolve your dispute prior to going to court, the consequences can be significant, including having [costs awarded against you](#).

If the parties resolve their parenting or property dispute at the dispute resolution stage, their agreement can be formalised through an Application for Consent Orders (for parenting matters) or a Binding Financial Agreement (for property matters) without the need to attend court. Parties may elect to keep their parenting arrangements informal, for example, using a [parenting plan rather than Consent Orders](#).

Exemptions to participating in dispute resolution

There are several exemptions where parties will not be required to attend dispute resolution or obtain a certificate. These include:

If your matter is urgent, for example, there are grave concerns for a child's safety or wellbeing, or if a party has begun disposing of marital assets without consent;

If the court is satisfied that there has been [family violence](#) perpetrated by a party;

There is a risk of family violence if the matter is delayed any longer;

If a party cannot participate in dispute resolution due to incapacity;

If the matter relates to a [contravention of an existing order](#) made within the last 12 months and the contravening party shows serious disregard for their obligations under the order.

Filing a Genuine Steps Certificate with the court – all states and territories except WA

In states and territories other than WA, parties are required to file a Genuine Steps Certificate if they file an application in the Court.

The Genuine Steps Certificate specifies the degree to which both parties have complied with the pre-action procedures, including their participation in dispute resolution.

The court examines these certificates thoroughly and can award costs to a party as a consequence of non-compliance with pre-action procedure obligations.

Written notice of intention to start court proceedings

If the matter doesn't resolve at FDR, any party who wishes to initiate court proceedings must provide the other party with written a 'Notice of Intention to Start a Proceeding' ("the Notice").

Pursuant to the Family Law Rules, the Notice must set out the following:

The issues in dispute; and

The Orders to be sought if proceedings are started; and

A genuine offer to resolve the issues; and

A nominated time by which the other party must reply (usually 14 days).

If the offer is not accepted, an application with the court may then be filed.

Pre-action disclosure

Parties to family law proceedings have a duty to make timely, [full and frank disclosure](#) of all the information relevant to the issues in

dispute. What you are required to disclose will depend on the nature of your matter, whether it regards parenting or property settlement.

The extent to which parties have exchanged copies of relevant documents is also recorded on the Genuine Steps Certificate.

Disclosure obligations for property disputes

For a property settlement, parties must disclose the following:

Schedule of assets, income and liabilities;

Documents in your possession relevant to the dispute (bank statements, tax returns, inheritance, trust deeds, superannuation statements etc.);

A copy of any document requested by the other party that would be considered relevant to the disclosure.

Your obligation to disclose exists before court proceedings commence and should happen for the purpose of any pre-action negotiations or dispute resolution. If you fail to disclose your financial position properly and accurately, you risk:

the court dismissing all or part of your case;

costs being ordered against you;

finances and/or imprisonment; and

any agreement being set aside in the future if non-disclosure is discovered.

Disclosure obligations for parenting disputes

For a parenting matter, the parties will determine whether they possess any relevant information to the issue in dispute. Generally, disclosure obligations in parenting disputes can include the sharing of information like photographs, text messages, emails, medical

records, school reports, and drawings.

How can a family lawyer help?

The focus on dispute resolution is aimed at reducing the costs and emotional stress for family law litigants. It is critically important that, before you participate in any pre-action negotiation or dispute resolution, you seek legal advice from an experienced family lawyer.

At Meillon and Bright, we can assist parties at any stage of the family law process and can offer guidance to ensure your matter is resolved as quickly and efficiently as possible.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.