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Pre-Action Procedure

Often people who have separated can reach an agreement about financial, property, and parenting matters. Sometimes, however, it is necessary to apply to the Court to make Orders about these issues.

If you are considering applying to the Federal Circuit and Family Court of Australia for financial or parenting orders, the [Court Rules](#) set out certain steps you must take before filing your Court Application.

These steps are referred to as 'pre-action procedures'.

The Court Rules are designed to engage the parties so that they *genuinely* try to resolve their dispute *before* filing an Application in Court.

What are the Rules?

Except for certain situations (unless an exemption applies), the Court Rules require all prospective parties to:

1. Give a copy of the Court's pre-action procedures brochure and the pre-action procedures to the other party to the proceeding;
 2. Invite the other party to participate in dispute resolution services (providing it is safe to do so) and if dispute resolution is agreed upon, participate in dispute resolution services;
 3. If dispute resolution is unsuccessful, or no dispute resolution is available, or a person refuses to or fails to participate in dispute resolution, write to the other party setting out:
 - a. The issues in dispute,
 - b. The orders to be sought if a case is started,
 - c. Make a genuine offer to resolve the dispute, and
 - d. Nominate a time (no less than 14 days) for which the other party must reply.
 4. Comply, as far as practicable, with their duty of disclosure by exchanging relevant documents.
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What are the Consequences if you do not Follow the Pre-Action Procedures?

Unless an exemption applies, if you do not follow the pre-action procedures, the Court may:

1. Order the non-compliant party to pay all or part of the costs of the other party or parties in the case; and/or
 2. Take compliance or non-compliance into account when making orders about how your case will progress through the Court. For example, the Court may:
 - a. Dispense with compliance or full compliance with the rules;
 - b. Dismiss all or part of the application;
 - c. Set aside a step taken or an order made;
 - d. Determine the proceeding as if it were undefended; and / or
 - e. Prohibit the party from taking a further step in the proceeding until the pre-action procedures are complied with.
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What are the Exemptions?

You can be exempt from having to comply with the pre-action procedures if you satisfy one of the following circumstances:

1. If your application is made for parenting orders – if there are allegations of child abuse or family violence or of a risk of child abuse or family violence,
2. If your application is made for financial orders – if there are allegations of family violence, or a risk of family violence,
3. For urgent applications,
4. If you would be prejudiced if required to comply with pre-action procedures,
5. If your application is made for parenting orders – where a party is unable to participate effectively in family dispute resolution (for example – due to an incapacity to do so or physical remoteness),
6. If a previous family law application has been filed by one of the parties in the last 12 months, or
7. If the proceeding involves a court's jurisdiction in bankruptcy under section 35 or 35B of the Bankruptcy Act 1966.

When filing your application to Court you will need to indicate which exemption is applicable in your Genuine Steps Certificate, which you must file at the same time you file either your Initiating Application (if you are the Applicant) or Response to Initiating Application (if you are the Respondent). You also need to address why the exemption applies in the Affidavit you must also file.

The Pre-Action Procedures



Article by Townsville Family Lawyer, [Jodi Dingwall](#)

October, 2022

Are the Rules Beneficial?

The pre-action procedures rules can work *very* well in bringing issues to a head and help both parties reach a good and reasonable agreement. They can also save people thousands of dollars in legal fees. Commencing a Court action and attending Court for the hearing is expensive, stressful and time-consuming for people. If you obtain a good outcome and avoid going to Court – you should.

Sometimes though, particularly when one of the parties is unreasonable, it can be frustrating for clients to comply with these procedures. Sometimes they feel that compliance with these rules, adds additional legal costs and stress. Unfortunately, there is nothing your lawyer can do about this. The Court Rules must be complied with.

O'Shea Dyer Townsville has experienced lawyers who practice exclusively in Family Law

Everyone's situation is unique.

We always recommend seeing an experienced family lawyer so you can discuss your situation and obtain customised advice about how this process specifically applies to you.

We offer first appointments with experienced family lawyers for \$220 - a low fixed fee so that everyone can afford to obtain advice about their situation.

We are here to help you.

Call us on 4772 5155 to make an appointment.