



Pre-action procedures in family law - what do they mean for you?

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Before taking a family law dispute to court, separated couples are required to make a genuine effort to resolve parenting and/or property disputes by following certain steps known as the pre-action procedures (**PAPs**). The PAPs are designed to assist parties in reaching an agreement outside of the Federal Circuit and Family Court of Australia (**FCFCOA**). They encourage dispute resolution and [promote amicable settlements](#).

In this article, we will discuss:

- the compulsory steps you are required to take before making an application in the FCFCOA;
- situations in which you may be exempt from complying with the PAPs; and
- consequences for failing to comply with the PAPs.

The PAPs brochures can be downloaded from the Court website:

- Before you file – [pre-action procedure for parenting cases](#)
- Before you file – [pre-action procedure for financial cases](#)

Even if you are not considering starting court proceedings, these are helpful brochures because they set out the steps we generally follow when negotiating [property settlement](#) or [parenting matters](#) out of court. The benefit of the pre-action procedures is that taking these steps will help resolve or at least narrow the issues in your dispute.

What are the pre-action procedures in family law matters?

The PAPs can be broken down into five steps. The steps are slightly different depending on whether you intend to start court proceedings in respect of your parenting or financial matter or both.

Pre-action procedures – steps for parenting matters

Step 1: Participate in dispute resolution

If you are considering applying to the FCFCOA in respect of your parenting matter, it is compulsory for you to participate in or attempt to participate in [Family Dispute Resolution](#) (FDR). This is a form of [mediation](#) conducted by a Family Dispute Resolution Practitioner (FDRP).

This is because you are generally required to obtain a certificate issued by the FDRP **before** you start court proceedings in respect of your parenting matter. This is called a section 60i certificate.

The FDRP will issue the 60i certificate to you if:

- the other party refused to attend FDR;
- the FDRP was of the view that it was not appropriate to conduct FDR;
- FDR began, but the FDRP determined that it was not appropriate to continue;
- both parties attended FDR and made a genuine attempt to resolve their dispute; or
- both parties attended FDR, but one party did not make a genuine attempt to resolve their dispute.

Step 2: If your case is resolved, enter into a parenting plan or apply for consent orders

If an agreement is reached at FDR in relation to care arrangements for your child or children, you should formalise your agreement by way of a parenting plan or consent order. You should read our earlier article, [“Parenting Plan or Consent Order – what’s best for me?”](#) to determine the best option for you.

Step 3: If your case is not resolved, give written notice of the issues in dispute and your intention to commence court proceedings

This is called a Notice of Intention and is usually in the form of a letter. The Notice should outline the issues that remain in dispute, the orders you will seek if court proceedings become necessary and should contain a genuine offer to resolve your matter on a final basis. The Notice should set out a timeframe in which you expect to receive a response (usually 14 days).

It is important to remember that if you and the other party are unable to reach an agreement at dispute resolution, there are other options you may explore before resorting to court proceedings,

including engaging a lawyer to negotiate on your behalf.

It is a good idea to seek legal advice before sending a Notice of Intention to ensure that this is the appropriate next step.

[FREE ADVICE FROM A FAMILY LAWYER: 03 9006 8907](#)

Step 4: Reply to the Notice of Intention

If you receive a Notice of Intention from your former partner, you must either accept or reject their offer in writing within the specified timeframe.

If you reject their offer, you are required to outline the issues that remain in dispute, the orders you will seek if court proceedings are issued and provide a genuine counteroffer.

If you do not respond, the other party may decide to issue court proceedings.

Step 5: If your case remains unresolved, take court action

If you and your former partner cannot reach an agreement at this stage, then it may be appropriate to start court proceedings.

Pre-action procedures - steps for financial/property settlement matters

Throughout this process, you and the other party have a duty to exchange financial disclosure documents, referred to as a [duty of disclosure](#).

The PAPs brochure for financial cases provides a helpful list of documents and information to be exchanged. Complying with this duty prior to participating in dispute resolution will increase your chances of resolving your matter. If your former partner refuses to comply with this duty, you may be exempt from steps 1 and 2 below.

Step 1: Invite the other party to participate in dispute resolution

If you are considering applying to the FCFCOA in respect of your financial matter (property settlement and/or spousal maintenance etc), you must invite the other party to participate in dispute resolution. This can be by way of a [FDR Service or a private mediation](#) with or without lawyers. For more information about mediation, read our earlier article, “How does mediation work?”

Step 2: Agree on a dispute resolution service and attend the service

You and the other party should agree on an appropriate dispute resolution service and make a genuine attempt to resolve your financial matter when participating in dispute resolution.

If an agreement is reached in relation to your financial matter, you should formalise your agreement by way of a consent order or a financial agreement. You should read our earlier article, [“Consent Orders or a Financial Agreement”](#), to determine the best option for you.

Step 3: If your case is not resolved, give written notice of the issues in dispute and your intention to commence court proceedings

Refer to “parenting steps” above, step 3.

Step 4: Reply to the Notice of Intention

Refer to “parenting steps” above, step 4.

Step 5: If your case remains unresolved: take court action

Refer to “parenting steps” above, step 5.

Can I apply for an exemption from the pre-action procedures?

Both pre-action procedures brochures (parenting and financial matters) set out circumstances in which you may be exempt from complying with the PAPs.

Exemptions to complying with pre-action procedures – parenting matters

For parenting cases, you may be exempt from complying with the PAPs and providing a section 60i certificate if:

- your matter is urgent (for example, if the other party is withholding your child or children from you without a reasonable excuse);
- where there has been or where there is a risk of child abuse or [family violence](#); or
- if your application relates to a contravention of an existing parenting order made in the last 12 months.

Exemptions to complying with pre-action procedures – financial/property settlement matters

For property matters, you may be exempt from complying with the PAPs if:

- the application is urgent (for example, if the other party is disposing of assets without your consent);

- you would be unduly prejudiced if you were required to comply with the PAPs (for example, if the other party failed to comply with their duty of financial disclosure); or
- your application relates to a contravention of an existing financial order made in the last 12 months.

If you are seeking to rely on any of the above exemptions, the appropriate exemption should be specified when completing your [Genuine Steps Certificate](#) and an explanation provided in the [Affidavit](#) filed in support of your [Initiating Application](#).

Consequences for failing to comply with pre-action procedures

There are serious consequences for failing to comply with the PAPs.

If the FCFCOA determine that you have failed to comply with the PAPs without a reasonable excuse, it may make an order for you to pay the other party's costs and take your non-compliance into account when making orders as to how your matter should progress.

In some cases, the court may dismiss all or part of the proceedings altogether. It is important, therefore, that you obtain financial advice prior to starting court proceedings.

Get help from a family lawyer

If you are considering starting court proceedings or if you need assistance progressing your parenting or financial matter following a separation, please do not hesitate to contact us to arrange a free consultation. It costs you nothing to find out where you stand.

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.