

AMENDED RESPONSE TO INITIATING APPLICATION

(Family Law)

Filed in:

- Federal Circuit and Family Court of Australia
- Family Court of Western Australia
- Other (specify):



Note: The *Response to Initiating Application* should be eFiled through the Commonwealth Courts Portal www.comcourts.gov.au.

COURT USE ONLY

Client ID

File Number

Filed at

Filed on

Court location

61 Bolton Street,
Newcastle, NSW 2300

Next Court date

Part A: The parties

1. Full name of applicant(s) Stephen Christopher Cooke

2. Full name of respondent(s) Heather Anne Cooke

Part B: The orders sought by you the respondent

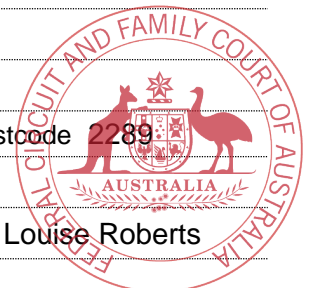
3. Type of orders sought (mark all boxes that apply). Only complete this part if you are seeking orders in a new subject matter to that sought by the applicant. An applicant should respond to these orders by filing a *Reply*.

- Parenting Financial (property and/or maintenance)
- Other (specify): _____

Please refer to the relevant Practice Direction with respect to each type of proceedings marked above.

Note: You must complete and file a *Genuine Steps Certificate* with this response.

Filed on behalf of: the respondent

Prepared by Anna Louise RobertsLawyer's Code ROB5334090Name of law firm Delaney Roberts Family LawyersAddress for service in Australia 274 Brunner RoadADAMSTOWNState NSW Postcode 2289Email aroberts@delaneyroberts.com.auTel 02 4952 3901Attention Anna Louise Roberts

Final orders sought by you the Respondent Mother

4a. State the paragraph numbers of the final orders sought in the *Initiating Application* (at Part A) with which you agree. Give each order the same paragraph number from the *Initiating Application* eg. 3, 4, 6, 10.

1.

4b. State precisely and briefly any other final orders sought by you, the respondent. Please give a number to each order sought.

Parenting

1. That the ~~parties~~ Respondent Mother have sole parental responsibility ~~equal shared parental responsibility~~ for the children **Christian Finn Cooke** (born 29 August 2014) and **Joshua Finn Cooke** (born 27 January 2017) ("**the children**").
2. That the children live with the Respondent Mother and spend time with the Applicant Father as follows:
 - (a) During school term time,
 - i. Each Thursday from the conclusion of school (or 3:00pm) to 6:00pm,
 - ii. Each fortnight from Friday at the conclusion of school (or 3:00pm) to the following Sunday at 3:00pm, and
 - (b) For one half of each school holiday period.
3. That changeover is to occur at school on school days and otherwise at the Shell Service Station, Glebe Road, Merewether NSW.
4. That all communications between the parents are to be in relation to the children and to be in writing via text or email.
5. That the parent with the care of the children is to facilitate a phone call with the other parent at any time as requested by either or the children.
6. That the time arrangements otherwise provided herein are to be suspended and the children are to spend time:
 - (a) During each even year, with the Respondent Mother from 3:00pm on Christmas Eve to 3:00pm on Christmas Day and with the Applicant Father from 3:00pm on Christmas Day to 3:00pm on Boxing Day,
 - (b) During each odd year, with the Applicant Father from 3:00pm on Christmas Eve to 3:00pm on Christmas Day and with the Respondent Mother from 3:00pm on Christmas Day to 3:00pm on Boxing Day,
 - (c) During each Mother's Day and Father's Day, from 3:00pm to 6:00pm with the relevant parent to celebrate their Mother's or Father's Day,



- (d) During each of the children's birthdays, from 3:00pm to 6:00pm with the parent with whom they did not wake up with.
7. That the Applicant Father is restrained from consuming alcohol within 12 hours prior to and for the period during which he has the care of the children.
8. That each of the parties is restrained from:
- (a) denigrating the other parent, or allowing any third party to denigrate the other parent, in the presence of the children,
 - (b) discussing any aspects of the parenting dispute between the parties including any aspect of these proceedings,
 - (c) using physical punishment to discipline the children.

Property

~~the Applicant Father shall do all acts and things necessary to sign all documents to transfer his interest in the property at 1/213 Morgan Street, Merewether, to the Respondent Mother.~~

~~That simultaneously with, and conditional upon the immediately preceding Order, the parties shall do all acts and things necessary to discharge the home loan secured by registered mortgage over the title of the property and the Respondent Mother shall refinance the existing home loan so as to remove the Applicant Husband's name from the home loan and shall thereafter indemnify the Applicant Husband in respect of all amounts payable pursuant to the home loan.~~

9. That the Respondent Mother shall retain the property at 703/1 Como Crescent, Southport QLD to the exclusion of the Applicant Husband.
10. That the Respondent shall do all acts and things to transfer to the Applicant the registration for the 2015 Honda CR-V VTi-L motor vehicle (registration no: DAI 47C).
11. That the Applicant shall retain the 2020 Audi Q3 motor vehicle (registration EIN 83R) to the exclusion of the Applicant.
12. That the parties shall do all acts and things to close any bank accounts held jointly by them and divide the balance equally between them.
13. That unless otherwise specified in these Orders and except for the purpose of enforcing the obligations of either of the parties pursuant to these Orders:
- (a) Each party be solely entitled to the exclusion of the other party to all property, including choses-in-action, held in the name of and/or held in the possession of such party as at the date of these Orders,



- (b) Any money standing to the credit of a party in a bank account is to be retained by the party in whose name the account appears,
 - (c) Each party hereby forgoes any claim they may have to any superannuation benefit that is belonging to, owned by or held in the name of the other party,
 - (d) Each party hereby forgoes any claim they may have to any property held on trust by or for the benefit of either party,
 - (e) All insurance policies are to become the sole property of the owner named on such policy,
 - (f) Each party be solely liable for and indemnify the other in respect of any liability held in their name as at the date of these Orders and/or encumbering any item of property to which the party is entitled pursuant to these Orders, and
 - (g) Each party indemnifies each other and keeps the other indemnified in respect of payment of any past, present or future liabilities held in the respective sole names.
14. That the net proceeds of the sale of the property at 1/213 Morgan Street, Merewether NSW be divided between the parties so ~~That the Respondent Mother shall pay to the Applicant Father such lump sum amount~~ as to effect an overall division of net assets including superannuation between the parties in the proportions of 50% to the Respondent Mother and 50% to the Applicant Father.



Interlocutory orders sought by you the respondent

This section is **ONLY** to be completed if interlocutory orders were sought by the applicant in the Initiating Application. Otherwise, an *Application in a Proceeding* must be filed.

5a. State the paragraph numbers of the interlocutory orders sought in the *Initiating Application* (at Part A) with which you agreed. Give each order the same paragraph number from the *Initiating Application* eg. 3, 4, 6, 10.

1.

5b. State precisely and briefly any other interlocutory orders sought by you the respondent. Please give a number to each order sought. If you seek interlocutory orders, you must file an affidavit which sets out the facts relied on in support of your application.

Parenting

1. That the children live with the Mother and spend time with the Father as follows:
 - (a) During school term time,
 - i. Each Thursday from the conclusion of school (or 3:00pm) to 6:00pm,
 - ii. Each fortnight from Friday at the conclusion of school (or 3:00pm) to the following Sunday at 3:00pm, and
 - (b) For one half of each school holiday period.
2. That changeover is to occur at school on school days and otherwise at the Shell Service Station, Glebe Road, Merewether NSW.
3. That all communications between the parents are to be in relation to the children and to be in writing via text or email.
4. That the parent with the care of the children is to facilitate a phone call with the other parent at any time as requested by either or the children.
5. That the time arrangements otherwise provided herein are to be suspended and the children are to spend time:
 - (a) During each even year, with the Mother from 3:00pm on Christmas Eve to 3:00pm on Christmas Day and with the Father from 3:00pm on Christmas Day to 3:00pm on Boxing Day,
 - (b) During each odd year, with the Father from 3:00pm on Christmas Eve to 3:00pm on Christmas Day and with the Mother from 3:00pm on Christmas Day to 3:00pm on Boxing Day,
 - (c) During each Mother's Day and Father's Day, from 3:00pm to 6:00pm with the relevant parent to celebrate their Mother's or Father's Day,
 - (d) During each of the children's birthdays, from 3:00pm to 6:00pm with the parent with whom they did not wake up with.



6. That the Father is restrained from consuming alcohol within 12 hours prior to and for the period for which he has the care of the children.
7. That each of the parties is restrained from:
 - (a) denigrating the other parent, or allowing any third party to denigrate the other parent, in the presence of the children,
 - (b) discussing any aspects of the parenting dispute between the parties including any aspect of these proceedings,
 - (c) using physical punishment to discipline the children.

Property

~~That the Respondent Mother shall have exclusive occupancy of the property at 1/213 Morgan Street, Merewether and shall thereafter attend to payment to all home loan repayments, rates, insurances and all other outgoings in respect of the property.~~

Sale of 1/213 Morgan Street, Merewether NSW

8. That forthwith on the making of these Orders, the parties shall forthwith do all acts and things and sign all documents necessary to cause the property at 1/213 Morgan Street, Merewether NSW ("***the Morgan Street Property***") to be sold and for this purpose:
 - (a) The parties are to agree on the appointment of a real estate agent and, failing agreement within seven (7) days of these Orders, the Respondent shall provide the names of three (3) real estate agents to the Applicant, and the Applicant shall choose the agent from the three (3) real estate agents within seven (7) days of receiving the names, failing which the Respondent shall choose the real estate agent to act in relation to the sale,
 - (b) The parties are to execute the real estate agent's Agency Agreement within seven (7) days of receiving same,
 - (c) The Morgan Street Property is to be marketed for sale by private treaty for a period of three (3) months from the appointment of the real estate agent,
 - (d) the Applicant and Respondent to each pay one half of all marketing and advertising costs in relation to the sale, with the Respondent to pay all such costs at first instance and the Applicant's one-half liability for such costs to be adjusted in favour of the Respondent on settlement from the settlement proceeds,
 - (e) The parties are to instruct Kent Conveyancing (or such other conveyancer agreed by the parties, and which maintains a trust account) in relation to the sale to



- prepare a Contract for Sale within two (2) weeks of the appointment of the real estate agent for the purpose of the real estate agent marketing the Morgan Street Property for sale,
- (f) The parties are to agree on the listing price of the Morgan Street Property and, failing agreement, the real estate agent is to nominate the listing price,
- (g) If, on the real estate agent's recommendation, there are works required to be done to the Morgan Street Property to prepare it for sale, and the parties agree to such works in writing, the parties are to be equally liable for the costs of such works, with the Respondent to pay all such costs at first instance and the Applicant's one-half liability for such costs to be adjusted in favour of the Respondent on settlement from the settlement proceeds,
- (h) The parties are to agree on the sale price of the Morgan Street Property and, failing agreement, the agent may accept the sale price for the Morgan Street Property provided the sale price is not less than \$2,000,000 for the first two months of the Morgan Street Property being listed for sale and thereafter failing agreement the agent may accept the sale price of the property provided the sale price is not less than \$1,900,000,
- (i) The settlement period for the sale is to be as nominated by the purchaser provided that such settlement period is not more than 42 days,
- (j) That in the event that Contracts for Sale are not exchanged three (3) months after being listed, the Morgan Street Property is to be auctioned within the next three (3) months with the following provisions to apply:
- i. The parties are to agree on an auctioneer and, failing agreement, the auctioneer is to be appointed by the real estate agent,
 - ii. The parties are to agree on the reserve price of the Morgan Street Property and, failing agreement, the auctioneer is to set the reserve price; and
 - iii. Should the Morgan Street Property fail to reach the reserve price, the Morgan Street Property is to be auctioned in successive auctions, each auction being no less than two (2) months and no more than four (4) months apart, with the reserve price to reduce by 5% on each occasion until the Morgan Street Property is sold.



9. That forthwith upon settlement of the sale of the Morgan Street Property the parties shall do all acts and things and sign all documents necessary to distribute the proceeds of sale in the following order and priority:
- (a) In payment of the real estate agent's commission and auction expenses arising on the sale,
 - (b) In payment of any proper legal costs and expenses arising from the sale,
 - (c) In discharge of the home loans with Westpac Bank secured by registered Mortgage against the title of the Morgan Street Property,
 - (d) In payment of the remainder to be held in the trust account of Kent Conveyancing or the trust account of such other conveyancer acting in relation to the sale.

Exclusive occupancy of 1/213 Morgan Street, Merewether NSW

10. That pending settlement of the sale, the Applicant shall have exclusive occupancy of the Morgan Street Property provided that he does all acts and things necessary to allow access to the property to the real estate agent as requested by the real estate agent, tradespeople and any prospective purchasers, and to keep the property clean and in a fit and proper state of repair to the date of settlement.
11. That pending the sale of the Morgan Street Property, the Respondent shall pay all costs in relation to the Morgan Street Property as and when they fall due, including home loan repayments, land rates, water rates, utilities and building insurance, and

Applicant's use of 2015 Honda CR-V VTi-L

12. That the Applicant shall have use of the 2015 Honda CR-V VTi-L (registration no: DAI 47C) and the Respondent shall continue to pay the registration and insurance costs for the vehicle.

Litigation funding

13. That within seven (7) days of the date of these Orders, the Respondent shall pay to the Applicant the sum of \$30,000 as litigation funding by way of partial property settlement to an account nominated by the Applicant.



Part C: The details of the parties

The details of the applicant/s (as set out in Part B of the *Initiating Application*)

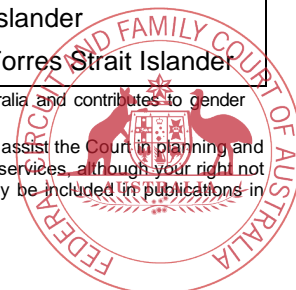
	Applicant 1	Applicant 2
6. Family name as used now	Cooke	
7. Given names	Stephen Christopher	

The details of you the respondent/s

	Respondent 1	Respondent 2
8. Family name as used now	Cooke	
9. Given names	Heather Anne	
10. Gender [^]	<input type="checkbox"/> Choose not to answer <input type="checkbox"/> M (male) <input checked="" type="checkbox"/> F (female) <input type="checkbox"/> X (indeterminate/intersex/unspecified)	<input type="checkbox"/> Choose not to answer <input type="checkbox"/> M (male) <input type="checkbox"/> F (female) <input type="checkbox"/> X (indeterminate/intersex/unspecified)
11a. Residential address (incl postcode)	C/ - Delaney Roberts Family Lawyers, 274 Bruncker Road, ADAMSTOWN, NSW, 2289	
11b. Email	heather111cooke@gmail.com	
You do not have to state your residential address, email address or your telephone number if it is not safe to do so. You can repeat your contact address for service if you wish.		
12. Telephone number (home and mobile)	0431 016 494	
13. Date of birth (day / month / year)	31/07/1978	
14. Usual occupation	Cardiologist	
15. Mark box as applicable for each respondent	<input checked="" type="checkbox"/> Present in Australia <input type="checkbox"/> Ordinarily resident in Australia <input checked="" type="checkbox"/> An Australian citizen <input checked="" type="checkbox"/> Domiciled in Australia	<input type="checkbox"/> Present in Australia <input type="checkbox"/> Ordinarily resident in Australia <input type="checkbox"/> An Australian citizen <input type="checkbox"/> Domiciled in Australia
16. Description	<input checked="" type="checkbox"/> Party to a marriage <input type="checkbox"/> Party to a de facto relationship that has broken down <input checked="" type="checkbox"/> Parent <input type="checkbox"/> Grandparent <input type="checkbox"/> Other (specify):	<input type="checkbox"/> Party to a marriage <input type="checkbox"/> Party to a de facto relationship that has broken down <input type="checkbox"/> Parent <input type="checkbox"/> Grandparent <input type="checkbox"/> Other (specify):
17. Is an interpreter required?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes If Yes, state language & dialect:	<input type="checkbox"/> No <input type="checkbox"/> Yes If Yes, state language & dialect:
18. Is the respondent of Aboriginal and/or of Torres Strait Islander origin? [~]	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes Aboriginal <input type="checkbox"/> Yes Torres Strait Islander <input type="checkbox"/> Yes Aboriginal & Torres Strait Islander	<input type="checkbox"/> No <input type="checkbox"/> Yes Aboriginal <input type="checkbox"/> Yes Torres Strait Islander <input type="checkbox"/> Yes Aboriginal & Torres Strait Islander

[^] You are not required to answer this question. The information assists to understand the diversity of family relationships in Australia and contributes to gender disaggregated data. The Courts' privacy policies can be found on www.fcfoa.gov.au.

[~] You are not required to answer this question, but it will greatly assist the Court if you do. The information sought is being collected to assist the Court in planning and delivering client services. It is possible that you may be contacted to participate in a review of a particular aspect of the Court's services, although your right not to participate will be respected. The information you provide may be shared with researchers approved by the Court, and may be included in publications in statistical form in a way that does not identify you.



Part D: The facts in dispute

19. Are there any facts in the *Initiating Application* which are not agreed?

- No Go to Part E
 Yes Give details

Part E: Other court cases and orders

20. Since the filing of the *Initiating Application*, has there been any new case started or order made in this or any other court about family law, child support, family violence or abuse in relation to a child (including orders which have applied to a child or a member of the child's family), or child welfare issues that involve any of the parties or children listed in the *Initiating Application*?

- No Go to Part F
 Yes Give details

Part F: For financial and/or spouse/de facto partner maintenance applications

Complete this part only if financial and/or spouse / de facto partner maintenance orders are not sought in the *Initiating Application (Family Law)* and financial and/or spouse / de facto partner maintenance orders are sought by you in this response.

21. Have the parties entered into a financial agreement or Part VIIIAB financial agreement under the *Family Law Act 1975* or under any relevant state or territory legislation?

- No Yes

22. If either party has a superannuation interest, have the parties entered into a binding superannuation agreement in relation to that superannuation interest?

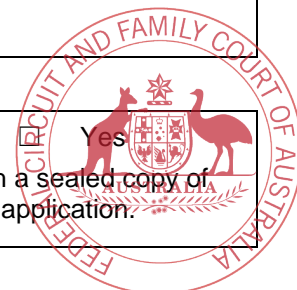
- No Yes

23. Is any party currently bankrupt or currently a debtor in bankruptcy proceedings started by either a creditor's petition or a debtor's petition or currently a debtor subject to a personal insolvency agreement?

- No Yes

24. Is there a proceeds of crime order or current forfeiture application in relation to any of the property of any of the parties?

- No Yes
 If yes, attach a sealed copy of the order or application.



Part G: For maintenance applications only

Complete this part only if maintenance orders are not sought in the *Initiating Application* and maintenance orders are sought in this response.

25a. Is there an existing order for maintenance?

<input checked="" type="checkbox"/> No Go to Part I <input type="checkbox"/> Yes
If yes, either attach copies of any orders or provide details below. (If there is more than one order, attach extra pages as required.)

25b. Court name and place where the order was made

--

25c. Order date

(If the order was made in another court it will need to be registered by filing a sealed copy).

/ /

25d. Names of parties to the order.

--



~~Part H: De facto relationship jurisdiction – financial causes~~ (subsection 4(1) of the *Family Law Act 1975* defines de facto financial cause)

Complete all the boxes below if relying on the Court's jurisdiction to make orders for the benefit of a party to a de facto relationship that has broken down.

~~Entitlement to apply and geographic requirements~~

~~26a. Did your de facto relationship break down on or after 1 March 2009 or if resident in South Australia on or after 1 July 2010? (See important notes for completion of Part H)~~

No Yes

~~26b. Is the period or the total of the periods of the de facto relationship at least two years?~~

No Yes

~~26c. Is there a child of the de facto relationship?~~

No Yes

~~26d. Has the applicant made substantial contributions and a failure to make an order or declaration would result in serious injustice to the applicant?~~

No Yes

~~26e. Is, or was, the relationship registered under a prescribed law of a state or territory of Australia?~~

No Yes

~~26f. Were both parties to the relationship ordinarily resident in one or more of the Australian territories or New South Wales, Queensland, Victoria, Tasmania, or South Australia for at least one third of the domestic relationship or at the date the relationship broke down?~~

No Yes

~~26g. Did the applicant make substantial contributions in one or more of the Australian territories or New South Wales, Queensland, Victoria, Tasmania, or South Australia?~~

No Yes

~~Part I: Cross-vested jurisdiction~~

Complete only if relying on cross-vested jurisdiction. (Note: An affidavit *must* be filed – see rule 9.10 of the Rules.)

~~27. If relying on a cross-vesting law, specify the territory law relied on~~



Part J: Statement of Truth of the contents of this document

28. Respondent 1	Respondent 2
<ol style="list-style-type: none"> 1. The facts of which I have personal knowledge are true. 2. All other facts are true to the best of my knowledge, information and belief and the orders sought in this application are supported by evidence. 3. I am aware that I have a duty to the Court and to each other party to give full and frank disclosure – in a timely manner – of all information relevant to the issues in the case. 4. I have read and complied with the pre-action procedures required of me as outlined in Schedule 1 of the Rules, and completed a <i>Genuine Steps Certificate</i>. 	<ol style="list-style-type: none"> 1. The facts of which I have personal knowledge are true. 2. All other facts are true to the best of my knowledge, information and belief and the orders sought in this application are supported by evidence. 3. I am aware that I have a duty to the Court and to each other party to give full and frank disclosure – in a timely manner – of all information relevant to the issues in the case. 4. I have read and complied with the pre-action procedures required of me as outlined in Schedule 1 of the Rules, and completed a <i>Genuine Steps Certificate</i>.

I have read and understood this Statement of Truth (please tick)

Signature of Respondent 1

Date 05 / 04 / 2024

I have read and understood this Statement of Truth (please tick)

Signature of Respondent 2

Date / /

