



Compliance with Parenting Orders

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Whether an agreement has been reached about the care of children and formalised into Consent Orders, or at the end of the Courts' process (where a Judge decides what is going to happen), Final Orders are made and are legally binding on both parties. This article explores the different options available if there has been a contravention (or breach) or non-compliance with a Parenting Order.

Enforcement Order vs Contravention Application in parenting disputes

If the other party does not comply with Parenting Orders, there are three options to resolve the problem:

1. Negotiate and see what the hurdles are to compliance with the Orders;
2. Apply to the Court for an Enforcement Order; or
3. File a Contravention Application in the Court.

What is an Enforcement Order?

An Enforcement Order is sought when the other party does not comply with Court Orders, and you merely seek to solve the problem and move on. Enforcement Orders are made by the Court forcing someone to do something to comply with the initial Family Law Order.

What is a Contravention Application?

A Contravention Application is made when there have been repeated breaches or instances of non-compliance or where the gravity of the breach or non-compliance is significant.

The aim of a Contravention Application is to effectively punish or sanction the party for failing to comply with the Family Law Order.

Upon filing the Contravention Application with the Court, the matter will go before a Court Registrar or Judge to hear and determine the matter.

What to consider when choosing between the two options

When deciding whether to apply for an Enforcement Order or file a Contravention Application, you should consider the following:

- The nature of the non-compliance or breach and what is needed to remedy the issue;
- The seriousness of the non-compliance or breach;
- The ongoing relationship between the parents and the impact further proceedings may have on that relationship; and
- The likelihood of the Court either ordering you pay the other party's legal costs for a failed application or the other party paying your legal costs if you are successful.

Prior to choosing whether to seek an Enforcement Order or file a Contravention Application, we strongly recommend you [seek legal advice from a lawyer experienced in family law](#).

Consequences for failing to comply with Parenting Orders

There are serious consequences for failing to comply with a Parenting Order.

The Court can penalise someone for failing to comply with an order without a reasonable excuse. Depending on the situation and the type and gravity of the breach, the Court can vary the primary order, make an order for legal costs of either of the parties, impose a fine or even a sentence of imprisonment.

Before the Court can properly consider a Contravention Application or an Application for an Enforcement Order, the Court must determine whether a breach (or non-compliance) of the Parenting Orders took place and that it took place without a reasonable excuse.

Meaning of contravention

A contravention is established where:

- There are clear and unambiguous orders setting out an obligation. This also includes the requirement that parents take an active role to positively encourage children to spend time with the other parent;

- A person bound by the Order either intentionally failed to comply or failed to take reasonable steps to comply;
- A person prevented a person bound by the Order to comply with the Order or aided or abetted the person bound by the Order to breach the Order.

Meaning of reasonable excuse

Even if a contravention or breach is established, a party may have a reasonable excuse for not complying with the Parenting Order.

Reasonable excuses include (but are not limited to) the following:

- The party did not understand the obligation – hence the importance of clear and unambiguous wording in Parenting Orders;
- There are certain circumstances that satisfy the Court that the party ought to be excused;
- The party believes on reasonable grounds that the contravention is necessary to protect the health and safety of the party and child and the period of the breach was no more than necessary to protect the health and safety of all parties.

This does not mean a party can claim that the Parenting Order is contrary to the welfare of the child. Parenting Orders are enforceable and binding.

It is vital to get legal advice about whether you or the other party have a reasonable excuse not to comply with a Parenting Order given the ordinary human misfortunes and misunderstandings that may occur.

The effect of Parenting Plans

A Parenting Plan is an informal, written and signed agreement between parents that sets out the care arrangements for the children. The Plan is agreed jointly with you and your former partner and neither party needs to go to Court.

The Court is required to consider any existing Parenting Plans in a Contravention Application but [Parenting Plans themselves are not subject of the breach – only Parenting Orders can be the subject of a Contravention Application](#) for non-compliance with the Orders.

Parenting Plans are not enforceable in and of themselves.

What can the Court order in an application for an Enforcement Order or Contravention Application?

Under the *Family Law Act 1975*, there is a three-staged parenting compliance regime which sets out the consequences for non-compliance with Parenting Orders.

The three stages are designed to educate parents about their responsibilities and impose sanctions for breaches, depending on the gravity of the breach.

Stage 1 – Education before a breach occurs

When Parenting Orders are made, the Court and lawyers are required to explain to the parties the consequences of non-compliance. This is designed to educate parents about their responsibilities regarding their children. It is assumed that the parents understand the consequences before the non-compliance even occurs.

Stage 2 - Once a breach occurs

Where the breach is the first of such breaches, the Court is required to order the defaulting party to attend an approved parenting course. The Court can also make orders compensating a party for the loss of time with the child.

The purpose of this stage is for the Court to order an outcome that is diversionary in nature (aiming to educate and prevent further breaches) where the breach is once-off or less significant.

Stage 3 – If there is a second or further breach or if the first breach is significant enough

The Court outcomes are more serious. The Court can order a party pay a fine or even a sentence of imprisonment.

The Court can also vary the primary Parenting Orders even if a contravention was not established.

How a family lawyer can help

We can help you work out the most efficient and cost-effective way to resolve any disputes around compliance with Parenting Orders.

Whether you are applying for or defending an application for an Enforcement Order or Contravention Application, it is important to get legal advice about any potential consequences that follow and how best to present your case.

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