

FACT SHEET: FAMILY LAW – ENFORCING A PARENTING ORDER

What is a 'contravention' of a parenting order?

A 'contravention' occurs when a person breaches, neglects or refuses to comply with an order made by the court. If the court has made parenting orders, a person is taken to have contravened those orders if they:

- intentionally fail to or do not make reasonable attempt to comply with the order; or
- intentionally prevent someone who is bound by the order complying; or
- have helped someone breach an order.

Does the party have reasonable excuse?

In some circumstances, the person responsible for the breach may have an excuse. A person may be considered to have a reasonable excuse for contravention if:

- at time of contravention, they did not understand the obligations imposed on them by the order and the court is satisfied they should be excused.
- they believed on reasonable grounds that the contravention was necessary to protect the health or safety of child and the contravention did not last longer than necessary.

Contravention Applications

If you are alleging that the other party has failed to comply with the parenting orders, you may make an application to the court. The Court may decide either:

- the *alleged contravention was not proved*.
- the *Contravention was proven*, but there *was reasonable excuse*.
- there was a *less serious contravention without reasonable excuse*.
- more *serious contravention without reasonable excuse*.

The type of application made to the court depends on the outcome you are seeking – whether you want to be compensated for lost time with the children due to the contravention or whether you are wanting to impose a punishment on the other party.

Applicant does not want to punish other party but compensation for lost time

If the other party has contravened an order, but the contravention is not considered very serious, you may file an Application in a Case (Form 2) with the Family Court or an Application in Federal Magistrates Court to be compensated for lost time with the children. For example, if the parenting orders specify that the children are to be returned by 4pm Sunday afternoon and the father does not return them until 8pm, the mother may make an application to be compensated for the 4 hours lost time with the children.

An Application should be filed with:

- Affidavit outlining facts of alleged contravention;
- Copy of orders; and
- If the application is made after July 2008, a Family Dispute Resolution (FDR) Certificate

Applicant seeks an order from the Court imposing punishment for contravention

If the contravention is more serious, you may file a Contravention Application (Form 18) with either the Family Court or the Federal Magistrates Court. A breach of orders may be considered more serious if the breach is severe (for example, removing children from the State or country without permission) or there are repeated breaches.

The application must detail:

- the orders alleged to have been breached;
- detail instances of breach such as specific dates and times;
- two affidavits - one swearing contents of application are true and another containing evidence of breach & details of previous court finding regarding any previous breaches.

Contravention Amounting to Contempt of Court

If the contravention amounts to a contempt of court, you may a Contempt of Court Application (Form 19) with the Family Court or the Federal Magistrates Court. A contravention of parenting order may amount to contempt of court if it:

- amounts to a 'flagrant challenge to the court's authority; or
- shows serious disregard of the respondent's obligations under the order.

The application will need to include an affidavit detailing facts and seriousness of breach.

Penalties for Contravening Parenting Order

Where court finds a party has contravened an order without reasonable excuse the court may, if in best interest of the child:

- Vary the primary order;
- Order parent attend post separation parenting program;
- Compensate parent for time lost with child as result of contravention;
- Require party to enter into a bond;
- Order party pay legal costs of other parties;
- Order party pay compensation for reasonable expenses incurred as result of contravention;
- Require contravening party to participate in community service;
- Order contravening party to pay a fine;
- Order contravening party to a sentence of imprisonment

Where party has breached parenting order & cannot be found

You may apply to the Court for a location order requiring other persons or organizations to give any information they may have about the location of the other party and the child.

Where party fails to return child

If a person breaches a parenting order by failing to return the child/ren, you may apply to the Court for a recovery order.

If applying in the Family Court, you will need to file an 'Application in a Case' Form (Form 2) and an affidavit supporting the application. If applying in the Federal Magistrates Court, you will need to file an 'Application' Form, Information Sheet and Affidavit.

Contacts

Family Court (www.familycourt.gov.au)

Federal Magistrates Court (www.fmc.gov.au)

Ph: 1300 352 000

Disclaimer: This fact sheet provides general information and does not provide legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to a court.