



Breaching Family court orders – what can I do?

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As family lawyers, we often come across instances where there are court orders in place (either interim orders or final orders), and one party is not complying with their obligations under the orders. In this blog, we look at the implications of breaching Family Court orders.

Examples of non-compliance with Family Court orders

1. [Property settlement orders](#): failure by a party to pay a cash sum or sign the necessary documents to transfer a property;
2. [Spousal maintenance orders](#): failure to meet lump sum or periodic payments, whether on a once off occasion or on an ongoing basis;
3. [Parenting orders](#): failure to return the children at an agreed time, whether on a once off occasion or on an ongoing basis.

Not following orders can carry serious consequences.

Two options in the Family Court for the aggrieved party

If there are orders in place and they are not being followed, there are two options through the Family Court for the aggrieved party:

An Application for Enforcement; or

A Contravention Application.

You can either file one application or both applications can be simultaneously filed.

Which application is filed will depend on the desired outcome.

Prior to filing any application, you should also try to resolve the dispute with the other party by attending [Family Dispute Resolution](#) or mediation. For parenting matters, attending Family Dispute Resolution is required prior to a Contravention Application being accepted for filing.

What is an Enforcement Application?

When an Enforcement Application is made, you are asking the Court to make the party in breach of court orders comply with the existing order. The Court will remind the offending party of their obligations to follow the orders and warn of future consequences if the breach behaviour continues.

The party who files the Enforcement Application must prove, on the balance of probabilities, (meaning, more likely than not), their allegation that the other party has breached orders.

What is a Contravention Application?

When a Contravention Application is made, you are asking the Court to make the party in breach of court orders comply with the existing order but also punish the offending party for their behaviour.

Contravention proceedings are quasi-criminal proceedings and run in a prosecutorial manner.

The party who files the Contravention Application may need to prove, beyond reasonable doubt, their allegation that the other party has breached the orders.

Are there any defences for breaching an order?

The Court will consider a person has breached an order if they consider a party deliberately did not comply with the order or the party made no reasonable attempts to comply with the order.

The Court will also consider whether a party has a reasonable excuse for breaching an order, in circumstances where it is proved that there was a breach.

A reasonable excuse includes:

The person did not understand the obligations imposed by the order; or

The person believed that breaching the order was necessary [to protect the health and safety of any person](#) (including

themselves or a child) and the breach only lasted as long as necessary for that protection.

What are the consequences of not following Family Court orders?

If the Court finds a party has breached an order without reasonable excuse, it may impose a penalty.

Depending on the situation and the type of contravention, one of (or a combination of) the following consequences can apply:

Payment of all or some of the other party's legal costs;

Compensation to the other party for lost time with a child (known as "make-up time");

The requirement to attend a post-separation parenting program;

The requirement to undertake community service. Failing to undertake community service can result in another penalty being imposed;

The requirement to enter into a bond that can last for up to 2 years. It may require the person to be of good behaviour, attend counselling or participate in dispute resolution. Breaching the bond can result in a fine or other penalty being imposed.

Payment of a fine; or

A term of imprisonment (in the most extreme cases).

The Court may also amend the orders or adjourn the case to allow a party to apply to amend the orders.

If an order is impossible to comply with, the Court can also vary the existing order to ensure compliance is possible in the future.

Get help from a family lawyer

If your former partner is not following your Family Court orders and you'd like advice about your options for Enforcement or Contravention Applications, or if you'd like to discuss your divorce or any other family law issues with a lawyer, get in touch with us.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.