

Compliance with parenting orders

This fact sheet provides information for people who allege a parenting order has been contravened (breached). It explains some of the options available.

When a parenting order is made, each person affected by the order must comply with (follow) the order. If you allege another person has not complied with an order, you can:

- seek legal advice
- attend family dispute resolution
- apply to a family law court.

Seek legal advice

You should seek legal advice before deciding what to do. A lawyer can help you understand your legal rights and responsibilities, and explain how the law applies to your case. A lawyer can also help you reach an agreement without going to court. You can seek legal advice from a legal aid office, community legal centre or private law firm. Court staff can help you with questions about court forms and the court process, but cannot give you legal advice.

Attend family dispute resolution

Family dispute resolution can help you and the other party work through your disagreement. Resolving issues this way is less formal than going to court and should cost less in money, time and emotion. As both parties work on the solution, the agreement is likely to last longer.

In most cases it is compulsory to attend family dispute resolution before applying to a court for parenting orders. There are some exceptions. For more details see 'Apply to a court' below. If you have fears for your safety about attending family dispute resolution, speak to staff at these agencies about your options and the support services that are available.

If an agreement is reached through family dispute resolution, you may:

- enter into a parenting plan, or
- apply to a court for consent orders.

NOTE – A parenting plan is different from a parenting order. A parenting order is made by a court. A parenting plan is a written agreement that sets out parenting arrangements for children. It is not legally enforceable, although its contents can negate a term of a court order so that it is no longer enforceable. Before entering into a parenting plan, you should seek legal advice.

For more information about family dispute resolution or parenting plans:

- go to www.familyrelationships.gov.au
- call 1800 050 321
- or visit a Family Relationship Centre near you.

Apply to a court

If an agreement cannot be reached, you may consider applying to a court for orders. Going to court is often a stressful time. It can also be expensive and time consuming. Sometimes, however, it may be the only way to resolve a dispute.

Before you apply to the Court for a parenting order, including those seeking changes to an existing parenting order, you need to attend Family Dispute Resolution (FDR) and obtain a certificate from a registered FDR provider.

There are some exceptions to this requirement, such as cases involving family violence, child abuse, or urgency. For more information about these exceptions, see the fact sheet 'Compulsory Family Dispute Resolution - court procedures and requirements'.

For more information about FDR and how to locate a registered FDR provider

- go to www.familyrelationships.gov.au
- or call the Family Relationship Advice Line on 1800 050 321.

NOTE: If you are required to provide a certificate and you fail to do so, the Court cannot accept your application.

Changing a court order

If an existing court order no longer reflects current arrangements for a child, it should be changed. A parenting order should also be changed if you or the other party cannot reasonably comply with the order. You should seek legal advice about your options for changing a court order.

How is an order contravened?

A person contravenes an order, which has not been altered by a parenting plan, if he or she:

- 1 intentionally fails to comply with the order, or
- 2 makes no reasonable attempt to comply with the order, or
- 3 intentionally prevents compliance with the order by a person who is bound by it, or
- 4 aids or abets a contravention of the order by a person who is bound by it.

What is a reasonable attempt to comply?

When a parenting order is made, each person affected by the order must comply with the order. This includes taking all reasonable steps to comply with the order. For example, a parent has an obligation to ensure a child spends time with the other parent (if this is specified in the order).

What is a reasonable excuse?

If a court decides a person has failed to comply with an order, it will consider whether the person had a reasonable excuse for contravening the order. Some examples of reasonable excuses that may satisfy a court include:

- 1 the person did not understand the obligations imposed by the order, or
- 2 the person reasonably believed that the actions constituting the contravention were necessary to protect the health and safety of a person, including the person who contravened the order or the child, and
- 3 the contravention did not last longer than was necessary to protect the health and safety of the person who contravened the order or the child.

Standard of proof

When a court makes a decision about evidence you give, it applies a standard of proof. Except for more serious contraventions, a party must prove the allegations on the 'balance of probabilities'; they must be more likely to exist than not. Where the allegation is that one party has not complied with a court order, the alleging party (the applicant in a contravention case) must establish that it is more likely than not that the alleged breach occurred.

If a court considers imposing a prison sentence, it will not find the case proved unless the allegations are established 'beyond reasonable doubt'. This is the same standard required in criminal matters.

Penalties for failing to comply with a parenting order

A court can only penalise someone for failing to comply with a parenting order, which has not been altered by a parenting plan, if another person files an application alleging the person did not comply with the order. After considering all the facts of the case and applying the law, a court may decide:

- 1 the alleged contravention was not established
- 2 the contravention was established but there was a reasonable excuse
- 3 there was a less serious contravention without reasonable excuse, or
- 4 there was a more serious contravention without reasonable excuse.

If a court finds that you have failed to comply with a parenting order without reasonable excuse, it may impose a penalty. Depending on the particulars of the case and the type of contravention, a court may:

- vary the primary order
- order you to attend a post separation parenting program
- compensate for time lost with a child as a result of the contravention
- require you to enter into a bond
- order you to pay all or some of the legal costs of the other parties
- order you to pay compensation for reasonable expenses lost as a result of the contravention
- require you to participate in community service
- order you to pay a fine
- order you to a sentence of imprisonment.

In addition to these orders, a court may also adjourn the case to allow you or the other party to apply for a further parenting order.

The penalties are listed in Division 13A of Part VII in the *Family Law Act 1975*. To view the Act, go to www.familylawcourts.gov.au

What forms do I need to file?

If you decide to apply to court, you need to file:

- an application alleging contravention,
- an affidavit, and
- a certificate from a Family Dispute Resolution practitioner (unless one of the exceptions outlined in the brochure 'Compulsory Family Dispute Resolution – court procedures and requirements' applies)

For more information, including access to any legislation, forms or publications listed in this fact sheet:

- go to www.familylawcourts.gov.au
- call 1300 352 000, or
- visit a family law registry near you.