

What is a family law Contravention Application?

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E&A Lawyers has made the decision to no longer provide family law services. While we no longer take on any new family law matters, we are happy to assist by referring you to lawyers specialising in this area. Please don't hesitate to contact us if you would like a referral.

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In family law proceedings, a contravention application is an application made to the Federal Circuit and Family Court of Australia (The Court) seeking the Court's remedy where there has been a breach of Court Orders. A contravention application may be made for an alleged breach of a Parenting Order or a Financial Order regarding a property settlement.

What is the National Contravention List?

The Court expects that all parties to family law proceedings will comply with orders of the Court. In 2021, the Court established a National Contravention List that deals with all contravention applications filed. Any alleged breaches of Court orders by parties will be taken seriously and dealt with expeditiously by the Court's National Contravention list.

What does a contravention application do?

You should file a contravention application if you are seeking that the Court impose a punishment or another consequence on a party for the breach of a Court Order.

Before filing a contravention application, you should consider the outcome that you want to achieve. A contravention application is filed if you are seeking a punishment or another consequence when the Orders are breached. It does **not** ensure compliance with the order; however, the court does have the power to do so.

What is required before filing a contravention application?

Prior to filing a contravention application, parties are expected to have complied with the Court's pre-action procedures where it is safe to do so.

Each prospective party to a proceeding in the Federal Circuit and Family Court of Australia must make a genuine effort, by means of family dispute resolution (**FDR**), to resolve the dispute before filing an application to start proceedings. This can help the parties work through the disagreement and reach a resolution without the need to go to Court.

You can read more about the required pre-action procedures in our earlier blog, “Pre-action procedures before filing in Family Law Courts”.

If the matter cannot be resolved by FDR, an “*Application – Contravention*” may be filed with the Court outlining the orders being sought. The contravention application must be annexed with:

- an Affidavit;
- a copy of the orders that are alleged to have been breached; and
- a section 60I certificate (unless an exception applies).

A section 60I certificate is issued by a registered Family Dispute Resolution Practitioner and confirms that a genuine attempt has been made to resolve the matter at mediation/FDR.

Contravention applications related to parenting matters vs financial matters

The pathway to take in parenting matters versus financial matters varies slightly, so it is best to consult a member of our family law team should you wish to discuss an alleged non-compliance with Court orders.

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Non-compliance with Parenting Orders

A party contravenes a child-related Court Order (a Parenting Order) if:

1. the person intentionally fails to comply with the order; or
2. the person makes no reasonable attempt to comply with the order.

Examples of a person contravening a child-related Court Order may include the following:

1. The order provides for the child to spend time with a party and the person intentionally hinders or prevents another person from spending time with the child in accordance with the order; or

2. The order provides with whom the child shall live and the person either contrary to the order removes the child from the care of another person or refuses or fails to deliver or return the child to another person.

The non-compliant party may claim to have a reasonable excuse for contravening a child-related order but bears the legal burden to prove the excuse.

Meaning of reasonable excuse for contravening a child related Court Order?

If a person has failed to comply with an order, the Court will consider if the person had a 'reasonable excuse'. A person may have a reasonable excuse for contravening a child-related order if:

1. the person did not understand obligations imposed by the order and the Court considers that the person ought to be excused in respect to the contravention;
2. the person contravened the order because they reasonably believed that their actions constituting the contravention were necessary to protect the health or safety of a child or any other person, and the period of the contravention was not longer than necessary to protect the health or safety of a child or other person.

The Court may, at any stage of proceedings, make any, or a combination of the following orders (noting the Court does not need to find that the person contravened a child-related order to make certain orders):

1. Make an order for make-up time;
2. Vary or suspend the primary order;
3. Order you to attend a post-separation parenting program.

In circumstances where a contravention is established without a reasonable excuse, the Court may impose a penalty, which includes:

1. requiring a party to enter into a bond;
2. payment of a fine;
3. payment of compensation for reasonable expenses lost as a result of the contravention (for example: airfares);
4. payment of all or some of the legal costs of the other party/ies;
5. imprisonment for a period of time.

Non-compliance with Financial Orders

If the parties are unable to reach an agreement at FDR, there are two options available to the parties:

1. File an Enforcement application; and/or
2. File a Contravention Application.

It must be noted that the option to file an enforcement application is only available to non-parenting matters.

If a Contravention Application is filed for a non-parenting matter, and the contravention is proven without a reasonable excuse, the Court may impose the same penalties as noted above.

Are there any alternatives to a Contravention Application?

If you are not seeking punishment of the non-compliant party, but rather seeking enforcement of the existing Court Order which was breached, then you should instead file an enforcement application. As mentioned earlier, an enforcement application cannot be used in parenting matters.

An enforcement application is suitable when you simply want to resolve the matter and move forward. The Federal Circuit and Family Court of Australia can make an Enforcement Order and, as the name suggests, can force the non-compliant party to comply with the original Court Orders.

Get help from a family lawyer

If you require any assistance with a contravention application (or enforcement application in the case of financial matters) or any other issues you are having with your family law matter, please do not hesitate to contact our office. We would be pleased to assist.

Contacting a family lawyer

For more information or to arrange a consultation with a lawyer, you can call or email us.

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