



Contravention: Breaching Court Orders

Do I have to follow the orders?

Once Court Orders OR Consent Orders are made you **MUST** follow the orders. If you do not do what the orders say and you do not have a good excuse, you may be in breach of the orders.

Note: Breach and contravention of an order means not following or doing what the orders say.

How do I know if I have followed the orders?

It is important that you follow exactly what the orders say. You may be in breach of an order if you:

- Intentionally do not follow an order and do not have a reasonable excuse
- Do not make a reasonable attempt to follow an order
- Intentionally stop the other parent or anyone else to whom the order applies to from being able to follow the order
- Help a parent or anyone else the order applies to breach an order

The only exception to failing to follow the orders is if you have a reasonable excuse.

What is a reasonable excuse?

When deciding whether a person has followed an order or not, the Court will look at whether that person had a reasonable excuse. Some examples of reasons the Court may find reasonable are:

- The person did not understand what they had to do under the order

- The person reasonably thought that they had to breach the order to protect the health and safety of the child or person contravening the order

It is up to the Court to decide what it thinks is a reasonable excuse. This means that just because one parent says they had a reasonable excuse, it doesn't necessarily mean that the Court will agree.

What is a reasonable attempt to follow an order?

All possible steps **MUST** be taken to follow an order. If an order states that both parents are to spend time with the child this includes encouraging and facilitating the child to spend time with the other parent.

If there are orders in place which state that your child must spend time with the other parent you **MUST** follow that order even if your child does not want to **UNLESS** you have fears for your child's safety. Telling the Court you could not follow an order because your child was upset, sick (unless it is very serious), having a tantrum or refusing to go is not considered a reasonable excuse. You are expected to encourage your child to spend time with their other parent. If however your child is older (note though that there is no 'magic' age) and they are refusing to visit the other parent, the Court may find this reasonable depending on the child's age and maturity.

What happens if one parent doesn't follow the orders?

If someone is not following the orders you can go to Family Dispute Resolution (FDR) at a Family Relationships Centre and try to reach an agreement that suits everyone. At FDR a trained professional will help you work through your problems and try to help you reach an agreement. FDR is a much quicker and cheaper option than going to Court. However, if there has been family violence FDR may not be suitable. Family Relationships Centre staff will help you with this.

If FDR does not work and the other person is still not following the orders you can file a Contravention Application with the Court. You should get legal advice before you file a Contravention Application. You can file the application yourself. You can download the Application — Contravention form from the Family Law Courts website at www.familylawcourts.gov.au. The Court will then hear the matter and it will decide if the orders have been followed or not. The Court will also look at whether or not the person who breached the orders had a reasonable excuse for doing so.

What can the Court do to me if I do not follow the orders?

The Court takes it very seriously when Orders are not followed. However the Court can only punish someone for not following an order if a Contravention Application is filed. When making its decision, unless the alleged breach is serious, the Court has to be convinced on the balance of probabilities that someone has not followed the order. This means that the person who filed the Contravention Application has to convince the Court that it is more likely than not that the other person has breached the order.

If the alleged breach is serious the Court has to be convinced beyond reasonable doubt that the person did not follow the order.

If you do not follow the orders and you do not have a reasonable excuse the Court can punish you by:

- Changing the Parenting Order
- Ordering you to go to a post separation parenting program
- Ordering that you arrange 'make up' time for any time your child lost with the other parent
- Giving you a fine
- Giving you a community service order
- Giving you a good behaviour bond
- Ordering you to pay all/some of the legal costs of the person who filed the Application
- Ordering you to pay for any reasonable expenses the other person had to pay because you failed to follow the order
- Imprisoning you for a period of time

If the other parent or person has filed a Contravention Application against you and you do not go to the Court Hearing, the Court may make orders without you being there, including orders for your arrest.

This factsheet is based on a factsheet developed by Illawarra Legal Centre in 2010. This factsheet is intended as a guide only and should not be used as a substitute for legal advice. The law as at May 2011. Copyright Hawkesbury Nepean Community Legal Centre Inc, 2011.

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