

Contravention of a Parenting Order

Breach of an Order

A person breaches (contravenes) an Order when they:

- Intentionally fail to comply with the Order
- Make no reasonable attempt to comply with the Order
- Intentionally prevent compliance with the Order by a person who is bound by it
- Aid or abet a contravention of the Order by a person who is bound by it

Reasonable excuse

If such a person contravenes an Order the Court will consider whether the person had a reasonable excuse such as whether:

- The person at the time of the contravention did not understand the obligations imposed by the Order; or
- The person believed on reasonable grounds that the actions constituting the contravention were necessary to protect the health or safety of a person including the person who contravened the Order or the child; and
- The time of the contravention was not longer than was necessary to protect the health or safety of the person including the person who contravened the Order or the child.

Penalties

The penalties that a Court can impose if a Court finds that a person contravened an Order without a reasonable excuse depend on the type of contravention and the particulars of each case. The Court may Order the person who contravened the Order to:

- Attend a post-separation parenting program
- Enter into a bond
- Pay all or some of the legal costs of the other party
- Pay reasonable expenses lost as a result of the contravention
- Participate in community service
- Pay a fine
- The Court can also vary the Parenting Order, make an Order compensating the other person for lost time with a child, adjourn the case to allow either party to apply for a further parenting order and sentence the person who contravenes the Order to a term of imprisonment.

Standard of proof

The standard of proof to be applied in contravention proceedings is proof on the balance of probabilities — the Applicant must prove their case is more likely than not to have happened. However, for the Court to impose a serious penalty such as a bond, community service order, major fine or imprisonment, the Court must be satisfied beyond a reasonable doubt that the grounds for making the Order exist. These penalties are usually reserved for the most serious breaches.