



## Parenting Orders - What can happen if they are breached?

### What is a parenting order?

A parenting order is a set of orders made by a court about parenting arrangements for a child. There are 3 types of parenting orders:

1. Consent orders – which is a written agreement by the children's parents which is approved by a Court;
2. Interim orders – which are orders made after an initial hearing by a Court when the parents cannot agree, being orders that apply on a temporary basis until final orders are made;
3. Final orders – which are orders that apply from the end of the hearing until the Court says otherwise, or until the child turns 18.

### What are your legal obligations?

- You must do everything a parenting order says. In doing so, you cannot be merely passive but must take positive action which includes taking all reasonable steps to ensure that the order is put into effect. You must also positively encourage your children to comply with the orders.
- If a parenting order has been made that provides for a child to spend time with, live with, communicate with a person, or a person is to have parental responsibility for a child, then it is an offence to send the child from Australia without an order of the Court, or without the consent in writing of the person in whose favour the order has been made.
- If the parenting order provides that two or more people have equal shared parental responsibility, any decision about a major long-term issue in relation to a child must be made jointly. This requires each person to consult with the other person and make a genuine effort to reach a joint decision.
- Even if the needs or circumstances of you, the child or the other party change, the Court order applies until it is formally changed by a Court or, in some situations, you enter into a parenting plan with the other party.

### How is a parenting order contravened (breached)?

A person breaches a parenting order, which has not been altered by a parenting plan, when the person:

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.



If a court decides that a person has failed to comply with an order, it will consider whether the person has a reasonable excuse for breaching the order.

## What is reasonable excuse?

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; or,
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.

## 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 to the Court 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 proven; or
2. the contravention was proven but there was a reasonable excuse; or
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 person has 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 parenting order;
- order the person to attend a post separation parenting program;
- compensate for the time lost with a child as a result of the contravention;
- require the person to enter into a bond, participate in community service, pay a fine, or even sentence the person to imprisonment;
- order the person to pay all or some of the legal costs and reasonable expenses of the other parties as a result of the contravention.

## What is the lesson?

If an existing court order no longer reflects current arrangements for a child, it should be changed rather than it being breached. A parenting order should also be changed if you or the other party cannot reasonably comply with the order.

***At Bateman Battersby we have a number of experienced Lawyers who specialise in Family Law matters. If you need help with parenting orders or wish to discuss any family law issue, please feel free to contact [Oliver Hagen](#) or [Ken Gray](#) on (02) 4731 5899 or email us at [familylaw@batemanbattersby.com.au](mailto:familylaw@batemanbattersby.com.au).***