

Parenting Orders Not Being Followed? A Complete Guide for Parents

My Ex-Partner Has Breached a Parenting Order: What Should I Do First?

Parenting Orders are meant to provide certainty

After what is often a long and emotional family law process, finally obtaining Parenting Orders can bring a sense of relief. The arrangements for your children are set out clearly, and both parents are expected to follow them.

It can therefore be extremely frustrating when your former partner does not do what the Orders

require.

If this happens, don’t panic. There are several steps you can take before considering Court action.

Step 1: Read the Orders Carefully

Before taking any action, go back and read your Parenting Orders.

Many parents rely on memory and discover later that the Orders say something different to what they believed. If the Orders were made several years ago, it’s particularly important to refresh your understanding of exactly what they require.

Step 2: Keep Detailed Records

If your former partner is not following the Orders, start keeping records of what has happened.

This may include:

- Text messages and emails
- Missed visits or cancelled time with the children
- Dates and times of handovers
- School or medical records
- Notes about what occurred and when

The more information you have, the easier it will be to explain the situation if legal advice is needed.

Step 3: Communicate Calmly

In many situations, it is best to raise the issue directly with the other parent first.

Keep your communication polite and factual. Refer to the specific part of the Parenting Order that has not been followed and avoid being drawn into arguments.

The goal is to resolve the issue if possible and create a clear written record of your attempts to do so.

Has My Ex Actually Breached a Parenting Order?

Not Every Breach Is a Contravention

Many parents assume that any failure to follow a Parenting Order automatically means the other parent has contravened the Orders.

In reality, family law is not always that simple.

The Court considers the circumstances surrounding the alleged breach before deciding whether a parent has contravened a Parenting Order.

What Is a Contravention?

Generally speaking, a parent may have contravened a Parenting Order if they intentionally fail to comply with it or make no reasonable attempt to comply.

For example:

- Refusing to return a child at the agreed time.
- Repeatedly cancelling time with the other parent without explanation.
- Deliberately ignoring obligations contained in the Orders.

These situations may be viewed differently from circumstances where something unexpected occurs.

Can a Parent Have a Reasonable Excuse?

Sometimes yes.

The Court may accept that a parent had a reasonable excuse for not following an Order.

For example, a parent may genuinely believe they needed to act to protect someone’s health or safety. In other circumstances, a parent may not have properly understood what the Order required.

Every Situation Is Different

Whether a breach has occurred and whether there is a reasonable excuse depends on the facts of each case.

That is why obtaining legal advice early can be extremely helpful. A lawyer can assess the circumstances and explain whether Court action is likely to be appropriate.

Do I Need Mediation If Parenting Orders Are Being Ignored?

Court Isn’t Always the First Step

When Parenting Orders are not being followed, many people immediately think about going back to Court.

However, in many situations, mediation may be the better place to start.

What Is Family Dispute Resolution?

Family Dispute Resolution (FDR) is a structured process that helps separated parents discuss issues and work towards a solution.

An independent practitioner facilitates the discussion and helps parents focus on practical outcomes for their children.

Why Is Mediation Important?

Sometimes the issue isn’t that one parent is deliberately refusing to follow the Orders.

Instead:

- Children’s schedules have changed.
- Work commitments have changed.
- Living arrangements have changed.
- Communication between the parents has broken down.

FDR can help identify the real problem and explore solutions without the time, stress and expense of Court proceedings.

Is Mediation Always Required?

Not always.

There are exceptions where Court action may be appropriate without first attending Family Dispute Resolution.

Examples may include:

- Urgent situations
- Family violence concerns
- Risks to a child's safety or wellbeing

If you have concerns about your child's immediate safety, seek legal advice promptly.

A Practical First Step

For many families, mediation provides an opportunity to resolve the issue before the conflict escalates.

Even where an agreement cannot be reached, the process can help clarify the issues and identify the appropriate next steps.

Can I file a Contravention Application if Parenting Orders are breached?

Yes, the Court Can Become Involved.

If Parenting Orders are repeatedly ignored and the issue cannot be resolved through communication or mediation, you may need to ask the Court to intervene.

One option may be filing a Contravention Application.

What Is a Contravention Application?

A Contravention Application asks the Court to determine whether a Parenting Order has been breached and, if so, what should happen next.

These applications are taken seriously and require detailed evidence about what occurred.

What Can the Court Do?

The Court has a range of options depending on the circumstances.

Possible outcomes include:

- Make-up time with a child
- Changes to existing Parenting Orders
- Parenting courses or programs
- Payment of expenses caused by the breach
- Legal costs orders
- Fines
- In the most serious cases, imprisonment

Every matter is assessed individually.

Is Filing a Contravention Always the Right Answer?

Not necessarily.

Sometimes what appears to be a breach is actually a sign that the existing Parenting Orders no longer work for the family.

Children grow older, schools change, activities increase and parents' circumstances evolve. In those situations, changing the Orders may be more effective than simply filing a Contravention Application.

Getting the Right Advice

Whether you are considering filing a Contravention Application with respect to Parenting Orders or seeking changes to the current arrangements will depend on your circumstances.

Obtaining legal advice early can help you understand your options and find the most practical solution for your family moving forward. We offer a 90-minute initial meeting to develop a “Family Road Map” tailored to your personal situation.

All your concerns will be addressed in this appointment, and your lawyer will explain the process and outline a plan for next steps. All for a set fee.

For more information or to book your 90 minute “Family Road Map” appointment, please call 8238 6666 or complete our **Contact Form.**

The information in this article is general in nature and was accurate at the time of publication. Laws and circumstances can change. For advice specific to your situation, please seek professional legal advice.