



This fact sheet summarises the Ask LOIS webinar on this topic presented on Gabrielle Craig, Assistant Principal Solicitor, Women's Legal Service NSW
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This factsheet will cover the following:

Language & Terminology

Parenting orders:

- What is a contravention
- What to do when an order is contravened
- Possible outcomes in court
- Penalties for contravention

AVOs:

- Penalties for contravention
- Enforcement of AVOs
- Police complaints

Language and terminology

Contravention

Failure to comply with a court order. Also referred to as a "breach" or "non-compliance".

Parenting order

A court order that sets out parenting arrangements for a child.

e.g.

Allocation of parental responsibility

Whom the child lives with

Whom the child spends time with

Applicant

Person who applies to the court for an order, in the case of contravention orders, the person who applies to the court for the contravention order (not necessarily the same person who applied to the court for parenting orders)

Respondent

In the case of contravention orders, the person who is alleged to have breached the order

Parenting Orders

What is a contravention?

An order is contravened where there has been:

1. an intentional failure to comply with an order; or
2. no reasonable attempt to comply with an order

What the court deems as 'reasonable' is highly dependent on the facts & circumstances of each case.

What to do when an order is contravened

Contravention is a complex and technical area of law, with specific rules and fact-dependent application of those rules. If your client comes to you saying that they are thinking of contravening orders, or if they are alleging contravention, tell them to get advice from a family law solicitor:

LawAccess

1300 888 529

<http://www.lawaccess.nsw.gov.au/>

Local Community Legal Centres

<https://www.clcnsw.org.au/>

If a party to family law proceedings believes that there has been a contravention of family law orders then it is up to them to take steps to enforce the order and file a contravention application at the Federal Circuit Court of Australia or the Family Court of Australia. The Police are not responsible for enforcement of parenting orders.

If contravention has been alleged, there are three options open to parties to resolve their dispute.

1. Informal Agreement

Parties can meet informally and try and come to a resolution. It could be as simple as picking up the phone or having a coffee and talking about the circumstances that have led to the contravention.

2. Family Dispute Resolution

Parties also commonly use family dispute resolution in order to try and resolve their dispute. The large majority of contravention matters are resolved through FDR. *In some cases, contravention occurs because the current orders are no longer appropriate. If that is the case, parties may form a new agreement and enshrine this in a parenting plan. It's important to remember that later-made parenting plans trump previously made court orders. So if your client is on the whole happy with the court orders but only wants to change a specific order, make sure your client gets legal advice in drafting a new parenting plan because the last thing you want it to render the sum of the court orders unenforceable, especially if they are in favour of your client.*

3. Go to Court

Lastly, if FDR is not successful or if it is deemed inappropriate, then parties may go to court.

Going to Court – possible outcomes

There are 4 possible outcomes in a contravention hearing:

1. No breach

The court may find that no breach occurred. The applicant has alleged contravention, but has not been able to prove, on a balance of probabilities, that the respondent intentionally failed to comply with the order, or made no reasonable attempt to comply with the order.

2. Breach & reasonable excuse

The court may find that a breach occurred but that there was a reasonable excuse for that breach. S70NAE sets out that a “reasonable excuse” for contravening an order exists:

- If the respondent **did not understand the obligations** imposed by the order.
- If the respondent believed on reasonable grounds:
 - it was necessary to protect the **health and safety** of a particular person; **and**
 - the period during which the child was kept from the applicant was **not longer than necessary** to protect the health and safety of that person.

Note how specific the legislation is in terms of defining what a reasonable excuse is.

- You can withhold a child because you reasonably believe that it is necessary to protect the health and safety of the child.
- But you cannot withhold a child, even if you have a reasonable belief that it is not in the child’s best interest to spend time with the other parent.

How the ‘reasonable excuse’ is framed is crucial.

It is not a question as to whether the order might not be in the best interests of the child. The question is whether it is necessary to protect the health or safety of a person including the child.¹

3. Breach – less serious

The court may find that a breach occurred, and that there was no reasonable excuse for that breach, but that the contravention was a less serious contravention.

The court is more likely to find a less serious contravention when:

- there has not been previous court proceedings where a contravention of the same order was proved; and
- the court is satisfied that the respondent has not behaved in a way that shows a serious disregard for his/her obligations under the contravened order.

4. Breach – more serious

The court may find that a breach occurred, and that there was no reasonable excuse for that breach, and that the contravention was a more serious contravention.

The court is more likely to find a less serious contravention when:

- there has been previous court proceedings where a contravention of the same order was proved; or
- the court is satisfied that the respondent has behaved in a way that shows a serious disregard for his/her obligations under the contravened order.

Penalties for contravention

If the court finds an order was contravened without a reasonable excuse, it has a range of powers to deal with that contravention.

In less serious cases, the court may make:

- an order to attend a post separation parenting programme to better understand the obligations created by parenting orders
- a bond
- a costs order

In more serious cases, the court may order:

- a community service order
- a fine
- a sentence of imprisonment
- a bond
- a cost order

Apprehended Violence Orders (AVOs)

Although an AVO itself does not represent a criminal conviction, *the breach of an AVO is a criminal offence.*

The penalties are:

- fine of up to \$5,500; and/or

¹ In the Marriage of O'Brien (1992) 15 Fam LR 723

- Imprisonment for up to 2 years.

Enforcement of AVOS

The police are responsible for the enforcement of AVOS.

If a protected person believes that their AVO has been breached, they should immediately report the breach to the police.

The protected person should also keep records of the following:

- details of the breach including time, location and any witnesses;
- which Police Station the breach was reported to;
- the name of the Police Officer that the breach was reported to; and
- the event number.

What if the police do not take any action?

- Talk to the Shift Supervisor with aim to resolve issue immediately
- Written complaint to Local Area Commander
- Written complaint to NSW Police Force - Professional Standards Command
- Complaint to Law Enforcement Conduct Commission