



This brochure answers frequently asked questions about enforcement hearings in the Family Court and the Federal Magistrates Court. An enforcement hearing allows a person who is owed money (the payee) to get information about the financial situation of the person who owes the money (the payer).

Rules 20.11 to 20.14 *Family Law Rules 2004*

Rules 25B.17 to 25B.20 *Federal Magistrates Court Rules 2001*

An **OBLIGATION TO PAY MONEY** includes:

- (a) a provision requiring a payer to pay money under:
 - (i) an order made under the *Family Law Act 1975*, the *Child Support (Assessment) Act 1989* or the *Child Support (Registration and Collection) Act 1988*
 - (ii) a registered parenting plan
 - (iii) an award made in arbitration and registered under section 13H of the Family Law Act
 - (iv) a maintenance agreement registered under subsection 86 (1) of the Family Law Act
 - (v) a maintenance agreement approved under section 87 of the Family Law Act
 - (vi) a financial agreement or termination agreement under Part VIIIA of the Family Law Act
 - (via) a financial agreement under Part VIIIAB of the Act or a termination agreement under Part VIIIAB of the Act
 - (vii) an agreement varying or revoking an original agreement dealing with the maintenance of a child under section 66SA of the Family Law Act, or
 - (viii) an overseas maintenance order or agreement that, under the *Family Law Regulations 1984*, is enforceable in Australia;
- (b) a liability to pay arrears accrued under an order or agreement
- (c) a debt due to the Commonwealth under section 30 or section 67 of the *Child Support (Registration and Collection) Act*
- (d) a child support liability

(e) an order imposing a fine or the forfeiture of a bond, or

(f) costs, including the costs of enforcement.

ENFORCEMENT HEARING – a hearing conducted on the application of a payee where the respondent and any witnesses are cross-examined about a payer's financial affairs and ability to pay a financial obligation.

ENFORCEMENT ORDER – an order requiring a person to comply with an obligation, including an enforcement warrant, a third party debt notice and an order varying an enforcement order.

STAY ORDER – to suspend an order.

Who can apply for an enforcement hearing?

Anyone owed money under a Family Court or Federal Magistrates Court order, agreement or a child support liability. The application must be directed to a payer or, if the payer is a corporation, an officer of the corporation. This person should be named as respondent to the application.

Do you have to attend the enforcement hearing?

Yes. Both the payee and payer must attend, unless the payer produces the documents required or pays the amount owing before the enforcement hearing. If the payer does not attend, the Court may issue a warrant for their arrest.

What is the process for an enforcement hearing?

If you are the payee, you apply for an enforcement hearing by filing:

- an Application in a Case, and
- an affidavit, complying with Rules 20.06 and 24.01 of the Family Law Rules or Rules 25B.12 and 2.01 of the Federal Magistrates Court Rules.

At least 14 days before the date fixed for the enforcement hearing, you must personally serve on the payer:

- the application
- the affidavit
- a list of documents that you want the payer to produce
- a written notice demanding the production of these documents, and
- a copy of this brochure – Enforcement Hearings.

If you are the payer, you must at least seven days before the enforcement hearing:

- complete and file a Financial Statement, and
- serve it on the payee.

More detail about service is in the Court's Service Kit.

What happens at an enforcement hearing?

At the hearing, the payer:

- must produce the documents required by the payee (documents in the payer's possession or control which are relevant to the enforcement application) (see Rule 20.12 of the Family Law Rules or 25B.18 of the Federal Magistrates Court Rules), and
- may be examined about the payer's financial affairs.

The payer may be asked about:

- the reason for the failure to pay
- their income, property, debts and resources, and
- any disposal of property.

The payee and payer (or their lawyers) will be given an opportunity to ask questions of the other and any witnesses (known as cross-examination).

What is the outcome of the enforcement hearing?

At the hearing the Court may:

- identify the total amount owing under an obligation
- order that the total amount owing be paid in full or by instalments
- order enforcement of the obligation to pay
- prevent the disposal of property or wasting of assets by the payer
- stay the enforcement of an obligation (including an enforcement order), and/or
- make orders for costs.

The order will be prepared by the registry and a copy posted to you.

Note – The Court will not investigate the order, agreement or child support liability being enforced. If a payer wishes to apply to vary or discharge an obligation, a separate application is necessary.

What if the payer produces the documents required before the enforcement hearing?

A payer may, with the agreement of the payee, produce the documents to the payee at a time and place agreed before the day of the enforcement hearing. If the payee is satisfied with the information provided, the payee may give written notice to the payer and the Court, discontinuing the application. In this situation, the payer is no longer required to attend the enforcement hearing.

When can a payer be penalised for failing to comply?

Rule 20.14 of the Family Law Rules or Rule 25B.20 of the Federal Magistrates Court Rules, provide that a penalty may be imposed on a payer who fails to:

- serve a Financial Statement
- produce copies of documents to the payee
- attend the enforcement hearing as required by the application or as otherwise directed by the Court, or

attends the enforcement hearing but:

- fails to answer a question put to them, or
- fails to give an answer to the Court's satisfaction.

A refusal or failure to comply may be a contempt of court or an offence.

More information

For more information including access to any of the legislation, forms or publications listed in this brochure:

- go to www.familylawcourts.gov.au
- call **1300 352 000**, or
- visit a family law registry near you.

AUSTRALIAN CAPITAL TERRITORY

Canberra ~ Cnr University Ave and Childers St
Canberra ACT 2600

NEW SOUTH WALES

Albury ~ Level 1, 463 Kiewa St Albury NSW 2640

Dubbo ~ Cnr Macquarie and Wingewarra Sts
Dubbo NSW 2830

Lismore ~ Level 2, 29-31 Molesworth St Lismore NSW 2480

Newcastle ~ 61 Bolton St Newcastle NSW 2300

Parramatta ~ 1-3 George St Parramatta NSW 2150

Sydney ~ 97-99 Goulburn St Sydney NSW 2000

Wollongong ~ Level 1, 43 Burelli St Wollongong NSW 2500

NORTHERN TERRITORY

Alice Springs ~ Level 1, Centrepoint Building Hartley St
Alice Springs NT 0870

Darwin ~ 80 Mitchell St Darwin NT 0800

QUEENSLAND

Brisbane ~ 119 North Quay Brisbane Qld 4000

Cairns ~ Level 3 and 4, 104 Grafton St Cairns, QLD 4870

Rockhampton ~ 46 East St (Cnr Fitzroy St)
Rockhampton Qld 4700

Townsville ~ Level 2, Commonwealth Centre, 143 Walker St
Townsville Qld 4810

SOUTH AUSTRALIA

Adelaide ~ 3 Angas St Adelaide SA 5000

TASMANIA

Hobart ~ 39-41 Davey St Hobart Tas 7000

Launceston ~ Level 3, ANZ Building, Cnr Brisbane
& George Sts Launceston Tas 7250

VICTORIA

Dandenong ~ 53-55 Robinson St Dandenong Vic 3175

Melbourne ~ 305 William St Melbourne Vic 3000

WESTERN AUSTRALIA

Perth ~ Family Court of Western Australia
150 Terrace Rd Perth WA 6000
08 9224 8222

Legal advice

Enforcement is a complex area of law. If you have any legal questions about enforcement, you should seek legal advice. You can seek legal advice from a:

- legal aid office
- community legal centre, or
- private law firm.

Court staff can help you with questions about court forms and the court process, but cannot give you legal advice.