



ENFORCEMENT HEARINGS IN FAMILY LAW PROCEEDINGS IN THE FEDERAL CIRCUIT 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 20.11-20.14 FAMILY LAW RULES 2004 Rules 25B.17 - 25B.20 FEDERAL CIRCUIT 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 Circuit 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 a 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 Circuit 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 at least seven days before the enforcement hearing, you must:

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

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 Rule 25B.18 of the Federal Circuit 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 to pay
- order that the total amount owing be paid in full or by instalments
- order enforcement of the obligation
- 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 Circuit 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



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- 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.

Legal advice Source: Family Court of Australia website, www.familycourt.gov.au