



FEDERAL CIRCUIT  
AND FAMILY COURT  
OF AUSTRALIA

# Enforcement hearings

This brochure answers frequently asked questions about enforcement hearings in the Federal Circuit and Family Court of Australia. 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).



## *Federal Circuit and Family Court of Australia (Family Law) Rules 2021 - Rules 11.11–11.14*

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 1975* (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 Part VIIIAB financial agreement or Part VIIIAB termination agreement under Part VIIIAB of the Family Law 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 court order, or a child support liability.

A person seeking to enforce an agreement must first obtain an order enforcing the Agreement under section 87(11)(c) for maintenance agreements, section 90KA(c) for financial agreements, and section 90UN(c) for Part VIIIAB financial agreements.

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 – Enforcement](#), and
- an [Affidavit](#), complying with Rules 11.06 and 2.13 of the *Family Law Rules 2021*.

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.

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 11.12 of the *Family Law Rules 2021*), 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 will be given an opportunity to ask questions of the payer (known as cross-examination). Both the payee and the payer will be given an opportunity to ask questions of any witnesses.

## 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 uploaded to the Commonwealth Courts Portal at [www.comcourts.gov.au](http://www.comcourts.gov.au).

**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 11.14 of the *Family Law Rules 2021* provides 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.

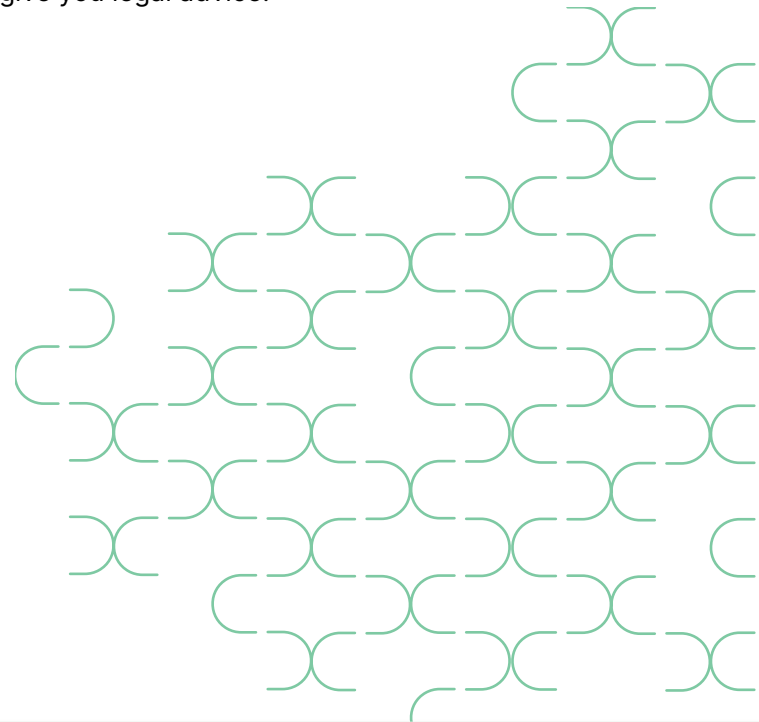
A refusal or failure to comply may be a contempt of court or an offence.

### Legal advice

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



### More information

For more information including access to the legislation and any of the forms or publications listed in this fact sheet:

- go to [www.fcfcoa.gov.au](http://www.fcfcoa.gov.au)
- live chat on the website
- call **1300 352 000**, or
- visit a family law registry near you.

