

# Protection and property-related orders

## Executive summary

Key or critical points to note in this chapter are:

- To ensure safety of victims and Police, service of protection orders must be afforded priority and carried out without delay.
- Police must serve protection orders if the respondent:
  - holds a firearms licence, or
  - is believed to be in possession of or have access to a firearm (whether or not they have a licence), or
  - service is assessed as being a significant risk to the server.
- At the time of service, Police must demand surrender of all firearms and the firearms licence. Staff safety is of paramount importance when determining appropriate methods to seize firearms or firearms licences.
- Police service of protection orders are crime prevention and victim focus safety opportunities - police can also give the respondent a clear message about accountability if they breach.
- The officer serving a protection order must ensure the victim is contacted and informed that service has occurred.
- District Court and Police staff must develop and implement robust information sharing, collaborative risk assessment and safe service delivery practices for protection orders.
- All breaches of protection orders must be taken seriously and if there is sufficient evidence, it is expected that in most cases the offender will be arrested and prosecuted for the breach.

## Overview

This section contains these topics:

- Purpose of this chapter
- Application of chapter to Police safety orders
- Other related information
- Statutory references

## Purpose of this chapter

This chapter:

- provides information about the purpose of protection orders and other orders relating to property, e.g. occupation, tenancy, and furniture orders
- outlines the standard conditions associated with protection orders including conditions requiring the surrender of weapons and the suspension and revocation of firearms licences
- outlines procedures for serving protection orders and seizing firearms
- reminds staff that serving a protection order is a crime prevention and victim focus safety opportunity.

## **Application of chapter to Police safety orders**

Information in this chapter about conditions, serving protection orders and about seizing firearms also apply to Police safety orders.

## **Other related information**

See also these related Police Manual chapters:

- Family violence policy and procedures for information about responding to family violence, including providing support, safety and intervention
- Police safety orders
- Prosecuting family violence

## **Statutory references**

All section references and references to "the Act" in this chapter are to the Domestic Violence Act 1995 unless otherwise stated.

## **About protection orders**

This section contains these topics:

- Purpose of protection orders
  - Children and young persons
- Who issues protection orders?
- Standard conditions
- Standard conditions apply to associated respondents
- Conditions relating to weapons
  - Suspension and revocation of licences
- Protection orders include non-molestation and non-violence orders
- Withdrawal of protection orders

## Purpose of protection orders

The Domestic Violence Act 1995 provides for one protection order to cover a wide range of situations for an extended group of applicants.

A protection order automatically affords protection to the applicant and any child of the applicant's family. A child aged 17 years and older ('an adult child') remains protected by the order until they leave home. Adult children not living with the applicant must be identified on the order as a specified person, or apply to the court for an order as a protected person.

The order may also be stated to specifically provide protection to a particular person with whom the applicant has a domestic relationship (defined in section 4).

## Children and young persons

Parents cannot take out a protection order against a child or young person. Violent children or young persons should be dealt with under the provisions of the Children and Young Persons and Their Families Act 1989.

## Who issues protection orders?

Protection orders are a civil remedy issued by the Family Court and can only be discharged by the court.

(s45).

## District Court ability to issue protection order

The District Court can also issue protection orders that have the same effect as those created by the Family Court. For example: if the court is satisfied that a person has refused or failed to comply with a Police safety order, a temporary protection order can be issued without an application being made and without either party having to be present in court. However, the judge must be convinced the victim does not object.

(s124N(5))

To achieve this, the victim must agree and the court be provided with evidence of the agreement.

After determining that a temporary protection order is to be issued, the District Court can detain the person for a period not exceeding two hours for the purpose of issuing and serving the order.

(s124P(2))

The District Court can also issue a final protection order when sentencing an offender convicted of an offence involving domestic violence if it is satisfied that the order is necessary for the victim's protection and the victim does not object to the order.

(s~~123~~B Sentencing Act 2002)

## Standard conditions

### Non-violence conditions

It is a condition of every protection order that the respondent must not:

- physically or sexually abuse the protected person
- threaten to physically or sexually abuse the protected person
- damage, or threaten to damage, the protected person's property
- engage, or threaten to engage, in other behaviour, including intimidation or harassment, which amounts to psychological abuse of the protected person
- encourage any person to engage in behaviour against a protected person, where the behaviour, if engaged in by the respondent, would be prohibited by the order.

(s~~19~~(1))

### Psychological abuse includes:

- harassment
- damage to property
- threats of physical abuse, sexual abuse, or psychological abuse
- financial or economic abuse (e.g. denying or limiting access to financial resources, or preventing or restricting employment opportunities or access to education)
- in relation to a child, includes causing or allowing the child to see or hear the physical, sexual, or psychological abuse of a person with whom the child has a domestic relationship or putting the child at real risk of seeing or hearing that abuse occurring (s~~3~~)

### Non-contact conditions

Standard non-contact conditions in every protection order (listed in section ~~19~~(2)) also apply except while the protected person and respondent are, with the express consent of the protected person, living in the same house. The non-contact conditions are automatically suspended during this period but may be revived if the protected person subsequently withdraws their consent to the respondent living in the same house.

### Special conditions relating to contact

Special conditions may formalise ongoing contact.

Consent and withdrawal of consent may be given on behalf of the protected person by the person specified in a special condition of the protection order as the person entitled to do so. For example, the order may specify who can consent to contact on behalf of a child protected by the order.

## Programmes

The court must direct the respondent to attend a programme, such as counselling, unless there is good reason not to. Non-compliance with such a direction is an offence.

## Standard conditions apply to associated respondents

Where a protection order has been made against an associated respondent, standard conditions with all necessary modifications, apply equally in relation to that person.

## Conditions relating to weapons

It is a condition of every protection order that the respondent must not:

- possess, or have any weapon (firearm, airgun, pistol, restricted weapon, ammunition or explosive) under their control
- hold a firearms licence.

The respondent must surrender to Police any weapon in their possession or under their control (whether or not it is lawfully in their possession or under their control) and any firearms licence held by them:

- as soon as practicable after the service of the protection order on them (and within 24 hours of the service), and
- on demand made, at any time, by a constable.

(s<sup>21</sup>(1))

**Note:** These requirements also apply on the issuing of a Police safety order.

## Suspension and revocation of licences

Where a temporary protection order is issued, any firearms licence held by the respondent is deemed to be suspended subject to s<sup>22</sup> (court may dispense with, modify or discharge standard conditions). The licence is deemed to be revoked when an order becomes final.

In the case of Police safety orders, the person against whom the order is issued has their firearms licence suspended for the duration of the safety order and they are deemed not to hold a firearms licence for that period.

Police must retain any weapons surrendered to them on the issue of a protection order or Police safety order for the period of the licence suspension and, except in circumstances where the weapon may be lawfully retained, return the weapon to the person as soon as practicable after the suspension ceases to be in force.

(s<sub>25</sub>)

**Note:** While the court may dispense with, modify, discharge, or re-impose standard conditions relating to weapons (s<sub>22</sub>) Police must never approve the issue of a firearms licence while there is a protection order against the applicant.

## Protection orders include non-molestation and non-violence orders

### Note:

Non-molestation and non-violence orders issued under the Domestic Protection Act 1982 and still in force when the Domestic Violence Act 1995 came into effect are treated as protection orders issued under the new Act. The only difference is that they do not contain the conditions relating to weapons. If the Respondent of a non-molestation or non-violence order has a firearms licence staff must notify an Inspector or above to consider revocation of the firearms licences under ss<sub>27</sub> or 27A of the Arms Act.

Breaches of these orders are prosecuted under appropriate provisions in the Domestic Violence Act 1995. (If prosecuting, ensure the orders were still valid when the Domestic Violence Act 1995 came into force).

(s<sub>133</sub>)

## Withdrawal of protection orders

Dynamics of family violence indicate that the aggressor in the relationship may coerce the protected person to seek a discharge of a protection order. Police should be aware of this and oppose the application when history of the parties indicates the protection order should stay in place.

## Serving protection orders and seizing firearms

This section contains these topics:

- Service principles
- Procedures for serving protection orders
- When the respondent is a Police employee
- Recording a protection order in NIA
- Multiple protection order alerts in NIA
- Local protocols for service of protection orders
- Protection orders and Arms Act 1983 responsibilities

## Service principles

In all cases where Police serve protection orders or Police safety orders, the 'Prevention First' mindset must be applied. Police service of a protection order is a problem solving opportunity to prevent ongoing family violence crime and victimisation within an often dysfunctional family or a 'crime family'.

Orders must be served having regard to these four core principles that guide effective Police responses to family violence

Principle	Responsibilities
<b>Safety</b>	Protect the safety of all parties, especially the protected person/s and serving officer, by assessing risk. This assessment may mean initiating Police service of the order or a graduated victim response, (e.g. creating and actioning a victim intervention plan (VIP)) for the applicant). (See 'Safety, support and intervention' in the <u>Family violence policy and procedures</u> ).
<b>Information gathering</b>	Risk information should be collected before and during service. Any intelligence gained must be documented and recorded in NIA(). This information will assist future safety and crime prevention planning as part of the victim focus response and FV risk assessment.
<b>Accountability</b>	Respondents should be given clear messages during Police service of orders that they are accountable should they breach. These messages should clearly explain the provisions of the order and the consequences of a breach. This increases the deterrent impact of protection orders by ensuring that respondents have no excuse to breach the order.

**Partnerships** Court staff, Police records staff, family violence specialists, and other Police staff must develop and implement robust information sharing, collaborative risk assessment and safe service delivery practices.

### Note: Police safety orders

Due to the compressed time frame of a **Police safety order** and the time limitations on service (48 hours before expiry) they must be served as soon as possible, with both parties and the Crime Reporting Line (CRL) being advised once this is done. (Refer to 'Procedures when orders are served' in the 'Authorising, issuing and serving safety orders' section of the Police safety orders chapter for further information about serving safety orders.

## Procedures for serving protection orders

This table outlines the procedures for Courts and Police for the service of protection orders and seizure of firearms. These procedures also apply, where appropriate, to the service of Police and Court issued safety orders.

Step	Action
1	The Family Court decides on the application for a protection order.  <b>Note:</b> This application includes an affidavit that outlines past and present domestic violence endured by the protected person/s and children. If the protection order is granted <u>without notice</u> , it is because the evidence indicated immediate 'risk of harm' or 'undue hardship' to the protected person and or children.
2	The Family Court delivers a copy of the order to the nearest Police District Commander without delay. <b>Note:</b> This will be either hard copy and/ or an email with a scanned copy.

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3 The District Commander arranges (local procedures will determine who in each district is responsible for these tasks) for :

- File Management Centre to enter a Code 7P file in NIA (see Recording a protection order in NIA below)
- a copy of the protection order to be attached
- details of the protection order to be entered
- creation of alerts for all applicants, respondents and all other protected persons.
- adherence to recording standards outlined in the National recording standards
- checking whether parties hold firearms licences.

**Note:** Safety of applicants (and police) must not be compromised by undue delay.

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4 The District Commander arranges to send copies of the order without delay to the O/C station nearest to where:

- the protected person(s) resides
- the respondent resides.

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5 On receipt of the order, the O/C station nearest to where the respondent resides must:

- check that recording standards have been met
- assess all relevant information to determine **who should serve the order (see step 6)** and what other police actions may be required, e.g:
  - an Inspector or above consider the revocation of firearms licences under ss27 or 27A of the Arms Act
  - where the respondent is believed to be in possession of or have access to firearms, a warrantless search for firearms under s18 of the Search and Surveillance Act
  - a graduated victim response, e.g. a Police visit to the applicant, or creating and actioning a victim intervention plan (VIP) for the protected person (see 'Prevention First - Victim Focus' in Victims (Police service to victims))

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6 **Police must serve protection orders** if the respondent:

- holds a firearms licence, or
- is believed to be in possession of or have access to a firearm (whether or not they have a licence), or
- service is assessed as being a significant risk to the server.

- 7 **At the time of service, Police must demand surrender of all firearms and the firearms licence under s<sup>21</sup> DVA.** Respondents who fail to surrender all firearms in their possession on demand or their firearms licence, may be arrested for breach of the protection order.

If...	also consider invoking...
the respondent holds a firearms licence	the provisions of ss <sup>27</sup> or <sup>27A</sup> of the Arms Act 1983 (revocation of licences)
there is belief that the respondent may be in possession of or have access to firearms	<p>s<sup>18</sup> of the Search and Surveillance Act 2012 (Warrantless searches associated with arms)</p> <p>A report must be sent to the Commissioner within 3 days if this power is exercised.</p>

- 8 Police must provide suitable storage for all weapons seized under the Domestic Violence Act 1995 or Arms Act 1983 for the period of the suspension of the firearms licence.

**Note:** Dispose of firearms according to s<sup>28</sup> Arms Act 1983 when a final order is made.

9 The police officer who serves a protection order must:

- without delay, give notice to the O/C station nearest to where the copy of the order was served
- ensure that the victim is contacted and informed that service has occurred
- document this victim contact in the victims node in NIA
- forward notice of service back to the family court, either hard copy or electronically
- maintain national recording standards.

**Notes:**

Staff safety is of paramount importance when determining appropriate methods to seize firearms or firearms licences.

To ensure safety of victims and Police, service of protection orders must be afforded priority and carried out without delay.

## When the respondent is a Police employee

In any case where the respondent is a Police employee, a copy of any protection order or a copy of a variation of an order must be sent to the employee's District Commander or National Manager (or the Deputy Chief Executive : People at PNHQ () if the employee is of a superintendent's level or above) for appropriate action to be taken.

## Recording a protection order in NIA

Once written or electronic confirmation of a protection order has been received from the court, the details of the order must be recorded in NIA () as an occurrence and coded 7P (Protection Order). The respondent, applicant and any children protected by the order must be recorded in the occurrence. A Domestic Violence Protection Order alert must also be created. Refer to the National Recording Standard (NRS) for further information about Domestic Violence Protection Order recording.

## Multiple protection order alerts in NIA

NIA () will automatically generate a multiple protection order alert on a person's dossier view if they are linked to two or more 7P (Protection Order) occurrences as respondents, applicants and other protected person(s). Family violence offenders who have multiple protection orders present an elevated risk and should be managed accordingly. The multiple protection order alerts process provides Districts a prevention and risk mitigation opportunity.

## Local protocols for service of protection orders

District Commanders must ensure there is a local 'service of protection order' protocol between Police and the Family Court that outlines:

- an agreed process to ensure police serve protection orders, or accompany bailiffs or their agent to serve protection orders, if the respondent:
  - holds a firearms licence, or is believed to be in possession of a firearm (whether or not they have a licence), or
  - is assessed as being a significant risk to the server
- a shared risk assessment process to ensure police serve protection orders in other appropriate cases, for example where service is necessary as part of a planned crime prevention intervention or a victim focused safety response
- the process that court staff, bailiffs or their agents agree to use to inform the O/C of the nearest station to the protected person, that service of a protection order has occurred
- the agreed process by which notice of service is delivered to the O/C station in a timely manner in an appropriate form.

## Protection orders and Arms Act 1983 responsibilities

As well as the Domestic Violence Act 1995 provisions, an Inspector has the power to independently consider whether or not any person is deemed to be 'fit and proper' to hold a firearms licence. (Refer to the Arms chapter in the Police Manual for further information.)

## Orders relating to property

This section contains these topics:

- Police safety order
- Occupation order
- Tenancy order
- Furniture order
- Ancillary furniture order

## Police safety order

See the [Police safety orders](#) Police Manual chapter for information about the purpose and effects of such orders.

## Occupation order

An occupation order is a court order entitling the applicant, to the exclusion of the person against whom the order is made, to personally occupy the house to which the order relates, together with any land, buildings and the like that would normally be used for the purposes of a household.

## Tenancy order

A tenancy order is a court order allowing the applicant to become the tenant of the house according to terms and conditions of the tenancy. The other party ceases to be a tenant.

## Furniture order

The court may, independently of any occupation order or tenancy order, issue a furniture order, entitling the applicant to possession of the furniture, household appliances and household effects, so long as the furniture order is in force.

## Ancillary furniture order

The court may, on or after making an occupation or tenancy order, grant the applicant the right to use all or any of the furniture, household appliances and household effects in the house specified in the order.

An 'ancillary furniture order' is therefore made in conjunction with a tenancy or occupation order. A 'furniture order' may be granted where no tenancy or occupation orders are made.

See sections [52–75](#) of the Domestic Violence Act 1995.

## Orders made without notice

This section contains these topics:

- When can orders be made without notice?
- Temporary orders
  - Lack of knowledge does not affect order's validity
  - Temporary orders become final after three months

## When can orders be made without notice?

Protection orders may be made without notice to the other party if the court is satisfied that the delay caused by proceeding by way of notice would or might entail undue hardship or a risk of harm to the applicant, or a child of the applicant's family, or both.

#### (s13)

Occupation and tenancy orders may also be made without notice if the court is satisfied that:

- the respondent has physically or sexually abused the applicant or child of the applicant's family, and
- the delay caused by proceeding by way of notice would or might expose the applicant or the child to physical or sexual abuse.

#### (s60)

## Temporary orders

If the court agrees the situation fulfils the criteria, it will make temporary orders in the first instance. The orders and applications are then served on the respondent who will have an opportunity to apply to discharge them or oppose final orders being made.

While orders made under the Domestic Violence Act 1995 are usually served promptly, there will be some time delay between an order being made without notice and a respondent being served with that order. Therefore, if an order has been issued without notice, the respondent may not be, or claim not to be, aware of its existence immediately.

### Lack of knowledge does not affect order's validity

Whether the respondent knows of the order's existence or not does not affect its validity. Once signed by a judge, it is in force. However, the respondent must know of its existence if criminal charges are to be filed for breaching that order. They do not necessarily have to be formally served with the order to know of its existence.

### Temporary orders become final after three months

The respondent can seek a hearing but, if they do nothing, the temporary order becomes final after three months. Non-service of the final protection order is not fatal to a prosecution for breaching that order (*Police v Graham* [2000] DCR 569).

In all cases involving applications for temporary orders, you must ensure the applicant is linked to appropriate support agencies.

## Breaches of protection and other orders

This section contains these topics:

- Breaching a protection order
- Any breach of a protection order is a serious matter
- Investigating breaches
- Interview statements - What should be included?

## Breaching a protection order

The following may constitute a breach of a protection order:

- physical abuse
- sexual abuse
- psychological abuse
- threats of the above
- watching, loitering, following, accosting
- unwanted contact, phone, letters or otherwise
- text messages
- entering or remaining on premises occupied by the applicant
- non attendance of a stopping violence programme
- property damage.

## Any breach of a protection order is a serious matter

Given the seriousness of breaching a court order, if there is sufficient evidence, it is expected that in most cases there will be an arrest and prosecution of an offender for the breach. To do less may place an applicant at risk of harm. E.g. a seemingly innocent text message such as "I saw you in the supermarket today" could in fact be part of the coercive control dynamics that are often present in family violence situations. If there is also sufficient evidence of a breach along with evidence of other offending from the same incident, it is expected that the offender will be charged with all offences including the breach.

Any breach of a protection order is part of a history of previous domestic violence suffered by a victim.

A protection order is a court order designed to keep protected persons (including children) safe from harm. The protected persons are already victims of past domestic violence and are at risk of future harm.

A protection order only works as a safety mechanism if Police respond positively to any complaint of any breach.

## Investigating breaches

### A breach investigation is an opportunity to:

- hold an offender accountable through investigation, arrest and prosecution

- institute a crime prevention response to deter further offending by:
  - serving a Police safety order (if not sufficient to arrest)
  - other additional measures
- assess, plan for and implement a victim focus response to keep victim/s safe by decreasing vulnerability through:
  - risk assessment
  - implementation or upgrading of a victim safety plan.

## **Therefore any report of a breach of a protection order must be:**

- investigated to a high standard to ensure available evidence is collected allowing prosecution (see: Prosecuting family violence)
- assessed to ensure the safety of the victim/s (protected persons)
- focused on keeping the protected person/s safe with a graduated victim response
- documented as to both the investigation and safety responses.

## **Interview statements - What should be included?**

**When interviewing the... the statement should include:**

**the...**

- 
- |        |  |
|--------|--|
| victim | <ul style="list-style-type: none"><li>• date order filed</li><li>• type of breach alleged</li><li>• details of the breach</li><li>• confirmation of the offender's knowledge of the existence of the protection order</li><li>• concerns for safety.</li></ul> |
|--------|--|

Also consider obtaining Comms Centre recordings to locate the victim or witnesses initial report.

- offender
- offender's knowledge of the existence of order
  - knowledge of service
  - alibis
  - sound basis that breach has occurred and the offender is responsible for that breach.

Also:

check offender's cell phone if used in the commission of the offence (photocopy any text messages/ outgoing calls and numbers)

consider obtaining phone and calling data where phone breaches are alleged via a production order. (Think about this option early).

Note: **Approval** must be sought before approaching any phone company with a request for information - see lists of **District**

#### **Sworn Police Staff:**



[List of approvers in districts.pdf](#)

156.83 KB

and **Communications Centre staff:**



[List of approvers in Communications centres.pdf](#)

90.52 KB

authorised to approve a request.

## **Offences, penalties and Police powers relating to breaches**

This section contains these topics:

- Protection order-related offences
- Penalties for breaching a protection order
- Breaching occupation and tenancy orders
  - Breaches of property related orders and protection orders
- Breaching a parenting order

## Protection order-related offences

This table details offences relating to protection orders and Police powers in respect of those.

Offence	You must prove the suspect's identity and that they...	Powers
Breaching a protection order  <u>s49(1)</u>  (Note: s49 also applies to final non-molestation and non-violence orders made under the Domestic Protection Act 1982 in force at 1 July 1996).	without reasonable excuse:  did any act in contravention of a protection order, or  failed to comply with any condition of a protection order.	You can arrest without warrant any person whom you have good cause to suspect has breached a protection order.  ( <u>s50</u> )
Offence to fail to comply with direction to attend assessment and non-violence programme  ( <u>s51T</u> )	A respondent who fails without reasonable excuse, to comply with a direction made under section 51D commits an offence	It is expected that a summons would first be sought and served. If it cannot be served, or the person fails to attend, a warrant can be sought under section <u>34</u> of the Criminal Procedure Act 2011.

## Penalties for breaching a protection order

Every person who commits an offence against section 49(1) of either contravening or failing to comply with a protection order, is liable if convicted on indictment, to imprisonment for a term not exceeding 3 years.

#### Penalties for failing to comply with direction

A respondent who fails, without reasonable excuse, to comply with a direction made by the court under section 51D commits an offence and is liable to; six months imprisonment or a fine not exceeding \$5,000.

(s51T)

## Breaching occupation and tenancy orders

This table outlines offences relating to occupation and tenancy orders and Police powers in respect of those.

<b>Breaching...</b>	<b>The right to personally occupy ...</b>	<b>Powers</b>
an occupation order	<p>the household residence is held to the exclusion of the other party.</p> <p>A person who violates the order commits an offence against s<u>3</u> Trespass Act 1980 or, if a warning is given, against s<u>4</u>.</p>	<p>You can:</p> <ul style="list-style-type: none"> <li>• Arrest (<u>s315</u>(2)(a) or (b) Crimes Act 1961)</li> <li>• when lawfully assisting anyone in peaceable possession of a property, use reasonable force to:           <ul style="list-style-type: none"> <li>◦ prevent any person from trespassing on the property, or</li> <li>◦ remove any person from it</li> </ul> </li> </ul> <p>as long as you do not strike or do bodily harm to the person.</p>

a tenancy order	the rented property is held to the exclusion of the other party.  A person who violates the order commits an offence against s <u>3</u> Trespass Act 1980 or, if a warning is given, against s <u>4</u> .	s <u>56(1)</u> Crimes Act 1961
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## Breaches of property related orders and protection orders

It is possible that any offender who has breached an occupation or tenancy order has also breached a protection order. These offenders may be charged with both offences. It is important that offenders are convicted of breaches of protection orders so they are included in their criminal history lists. Where evidential sufficiency and public interest tests are met, prosecution action should be taken.

If a person breaches a Police safety order this is not an offence, but does allow Police to exercise powers such as taking the person into custody using reasonable force, or seeking a warrant to arrest which will provide for a power of entry in certain circumstances (see 'Actions for breach of safety order' in the Police safety order chapter).

## Breaching a parenting order

Breaching a parenting order is an offence under s78 Care of Children Act 2004 with penalties of up to 3 months imprisonment or a fine of up to \$2500. Resisting or obstructing a parenting order is an offence under s79 Care of Children Act 2004, also with penalties of up to 3 months imprisonment or a fine of up to \$2500.

