

Appendix 2

Contempt (ALRC Report 35)

Key recommendations

- The common law principles of contempt should be abolished and replaced by statutory provisions that would govern all Federal Courts except the High Court. These wide-ranging reforms would overhaul each existing form of contempt.
- Current forms of contempt should be replaced by criminal offences. To establish that a person was criminally liable, however, specific criteria should be met. ALRC Report 35 provided a list of recommended criteria for each form of contempt, the main purpose of which was to clarify the law and limit liability to situations where the conduct was sufficiently severe.
- These offences should be tried in the same way as normal criminal offences, rather than by a compressed form of hearing (summary procedure) to ensure that an accused's rights were protected.
- There would be two exceptions to this practice: improper behaviour in court and disobedience contempt. Contempt in the face of the court should be treated as a criminal offence, but the matter should continue to be heard summarily. To overcome the concerns raised about the fairness of this practice, the accused person should be able to require the original judge not to be in charge of the trial.
- The law governing disobedience contempt should be replaced by a statutory system of 'non-compliance proceedings'. Where a person has disobeyed an order, the other party should be able to request that the court impose sanctions (such as imprisonment or fines) to punish disobedience or pressure the disobeying person into complying with the order.
- Where the abolition of the common law forms of contempt would otherwise leave the courts without power to punish certain forms of interference with the administration of justice, the Commission recommended that the *Crimes Act 1914* (Cth) be amended to remedy this situation.
- Specific recommendations were made in ALRC Report 35 for the reform of contempt in family law matters, including replacing the present system of contempt and quasi-contempt contained in the *Family Law Act 1975* (Cth) be replaced by single procedure for the enforcement of orders. A number of policy considerations should be kept in mind when enforcing orders: punishment should only be used as a last resort when counselling has failed to resolve the issue; a wider range of

sentencing options should be available; in punishing those who do not comply with orders, the court should consider how the disobeying person's conduct harmed others, but must also consider how the punishment would affect any children involved.

- A specific offence should be created for breach of a restraining injunction. Where a person has breached a custody order by abducting a child, the police should have explicit power to arrest the abductor.
- Each Family Court Registry should establish an 'enforcement list' to ensure that non-compliance proceedings are heard as quickly as possible.¹

1 <https://www.alrc.gov.au/inquiries/contempt> (accessed 2 November 2017).