

# Injunctions

**An injunction is an order from the court that is enforceable at law. This article looks at what an injunction is, how they can be useful, and how they might be obtained.**

## What is an Injunction?

An injunction is an equitable remedy which the courts may order and enforce. The injunction may require a particular action to be performed or an unlawful action to be stopped. These two requirements can be classified under the headings of mandatory injunction and prohibitory injunction respectively. An example of a situation where a prohibitory injunction can be issued by the court is where someone is carrying out business which contravenes environmental laws. The court would prohibit that person from continuing on in their business. Prohibitory injunctions are preferred and more often used than mandatory injunctions for the simple reason that mandatory injunctions require constant surveillance and attention of a particular person's conduct by the court.

An injunction may also be permanent or temporary. Normally if it is issued in the early stages of litigation, it is in the form of a temporary restraining order (TRO). Temporary injunctions are granted prior to trial. In order to gain a temporary injunction / interim injunction it must be shown that there will be a high likelihood of success based on the merits of the case.

If an injunction is not adhered to, even after adequate notice has been provided to the individual, the individual may be punished for contempt of the court; requiring steep fines and / or imprisonment.

## How to obtain an injunction

An injunction can be obtained when the courts have decided that it is the best remedy to be ordered. Further, an injunction may be granted after a judicial review. Judicial review refers to the review of previous decisions by the court to ascertain whether they were properly made in terms of procedural fairness or natural justice.

Within New South Wales, injunctions are most often issued by the Supreme Court. Sometimes the Land and Environmental Court will also issue injunctions. If the matter involves federal agencies, the Federal Court or Federal Magistrates Court would be the avenues to go to in order to obtain an injunction.

It must be noted however, that injunctive relief is a discretionary remedy; this means that the court has the power to decide in which cases an injunction may be granted. Once it has been shown that rights have been violated, the courts must decide whether they should utilise their power to grant an injunction. To do this, the court will balance the irreparability of injuries and inadequacy of damages if an injunction were not granted against the damages that granting an injunction would cause.

## In which areas of law can an injunction be issued?

Numerous areas of law allow for the equitable remedy of injunction to be ordered by the Court. Here are some of the areas of law in which an injunction may be granted and the type of circumstances.

- Defamation: Only when the courts have ascertained that there is no 'real room for debate' then they will consider issuing an injunction. It must be noted that courts are often wary in granting injunctions in cases of defamation as they want to interfere as little as possible with free speech. However, once an injunction is granted by the court, instructions are given to the publisher that prohibits the publishing of the defamatory article.
- Misleading conduct: (in the case of consumer protection): Generally misleading conduct requires that there

is a real possibility that the average member of the target audience could have been misled by the conduct of traders. This area of law provides statutory protection and also provides for remedies such as injunctions in the relevant Acts, e.g. *Trade Practices Act* s.80 and *Fair Trading Act* s.65.

- **Trespass:** This occurs when someone enters land without permission or refuses to leave after permission is withdrawn. If a person repeatedly trespasses, an injunction may be sought by the occupier from the Supreme Court. This may be expensive and time consuming. Due to this long process, an *interim injunction* may be applied for and quickly obtained in urgent cases when the repeated trespass has serious consequences.
- **Nuisance:** If a person causes or does not prevent damage from a regular activity or natural occurrence on their land to their neighbour's land, then the neighbour may apply to the Supreme Court for an injunction. The injunction will stop the neighbour from partaking in the nuisance behaviour. Similar to the area of trespass, an *interim injunction* may be applied for in urgent cases where the nuisance is a serious one.
- Other areas of law in which an injunction may be granted include the areas of confidentiality, land use, copyright, property and family law.

### Why are injunctions issued?

Injunctions are an equitable remedy, and as such strive to achieve fairness. They are primarily issued in light of the fact that not all legal problems may be solved by monetary compensation. Rather, injunctions are used to restore the *Status quo ante* that is to make whole someone whose rights have been violated, and to bring them back or to reinstate them back to their original position.

### Practical aspects of an injunction – How long will it take to obtain one, what are the costs involved?

The length of time it will take before an injunction is granted and the cost of getting an injunction depends

upon the nature of the legal dispute and the level of corporation between the two parties. It has been acknowledged that the process of obtaining an injunction from the Supreme Court may be expensive and complex.

Preparation by your lawyer would take a few hours and going to the Court to be heard would also take a few hours. That would be at its fastest. Normally a few days preparation by your lawyer is recommended.

It is ultimately up to the court's discretion to decide whether or not to order an injunction. A rough estimate of costs would be \$5,000.00 to \$10,000.00.

*Comasters is able to act for clients in injunction matters, for a plaintiff (applicant) or a defendant (respondent).*

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**Important:** This is not advice. Clients should not act solely on the basis of the material contained in this paper. Our formal advice should be sought before acting on any aspect of the above information.

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