



The National Contravention List to Enforce Family Court Orders

Date: Monday October 25, 2021

On 18 August 2021, the Family Court of Australia and the Federal Circuit Court announced the launch of a new National Contravention List (“NCL”) designed to handle ongoing problems associated with compliance with Family Court Orders. The NCL took effect on 1 September 2021, coinciding with the commencement of the [Federal Circuit and Family Court of Australia \(“FCFCOA”\)](#).

The FCFCOA is the court for family law matters, resulting from the merger of the previous Federal Circuit Court of Australia and the Family Court of Australia.

Why is there now a National Contravention List?

The National Contravention List was adopted following a recommendation by the Joint Select Committee on Australia’s Family Law System in its [Second Interim Report](#) released in March 2021.

Parties to family law proceedings must comply with Court Orders unless a reasonable excuse can be demonstrated to the Court.

Chief Justice of the Family Court of Australia and the Chief Judge of the Federal Circuit Court of Australia, the Honourable Will Alstergen, articulated that a lack of compliance with Court Orders:

diminishes confidence in the Family Court system of justice;

leads to wasted time and legal costs; and

prevents parties from exiting the court system and moving forward with their lives.

How will the National Contravention List work?

The NCL will be administered by Registrars in the first instance. Registrars of the FCFCOA will assess each contravention application and the matter generally and, if appropriate, allocate the matter to either a Judge or a Senior Judicial Registrar.

The NCL will be conducted electronically.

The objectives of the National Contravention List are:

to efficiently deal with applications on a national basis in a timely, cost-effective and safe way for all litigants;

for applications to be given a first return date within 14 days of filing;

to ensure compliance with court orders by all parties;

to impose appropriate penalties or sanctions where a contravention has been proved and where a party has failed to demonstrate they had a reasonable excuse for non-compliance with court orders;

to proactively facilitate the resolution of underlying issues in disputes that lead to the filing of applications;

to triage appropriate matters to [dispute resolution](#); and

to be responsive to a party's wishes to resolve matters without recourse to additional litigation.

Advantages of the National Contravention List

Two main gripes that litigants within the Family Court system (together with legal practitioners) have are:

the delay for matters to be heard and brought to resolution; and

the [lack of compliance with Court Orders](#) (and accountability for non-compliance with court orders).

The NCL aims to tackle both of these pitfalls in the family law system.

Under the NCL, contravention applications will be listed for first return (noting generally, a first return hearing will be a [direction hearing](#)) **within 14 days** of filing the application. Under the old system, contravention applications were listed for first return in or about 42 days.

With the NCL, there will be greater accountability for parties to comply with Court Orders that are made in family law proceedings in the FCFCOA, as failure to comply will mean the matter is bought back before the court (and quickly).

Filing a Contravention Application - practical considerations

When filing your contravention application, you must also file:

the Court Order, agreement or undertaking that you allege has been breached;

an affidavit; and

a valid section 60I certificate or an exemption form if a valid exemption for family dispute resolution ("FDR") applies.

A section 60I certificate is a certificate that has been issued by a registered Family Dispute Resolution Practitioner demonstrating either:

a party did not attend FDR because the other party refused or failed to attend;

a party did not attend FDR because the FDR practitioner considered that the circumstances were not appropriate for FDR;

a party did not attend FDR, and the parties did not make a genuine effort to resolve the issue;

a party did attend, and the parties did make a genuine effort to resolve the issues; or

the parties started the FDR process, but the FDR practitioner considered that it would not be appropriate to continue.

To show that a genuine attempt has been made to resolve their dispute, parties are required to obtain a section 60I certificate.

You may also need to file an Affidavit for non-filing of a section 60I certificate if the contravention application relates to:

an existing Court Order that was made within the last 12 months; **and**

there are reasonable grounds to believe that the person who has allegedly contravened the order has behaved in a way that shows serious disregard for their obligations under that order.

When filing a contravention application, you cannot eFile this type of application; that is, file it electronically. You must email a copy of your application to contraventionlist@fcfcoa.gov.au.

There is no court filing fee for filing a contravention application.

Get help from a family lawyer

You should always seek legal advice prior to filing a contravention application to ensure that your application is capable of achieving your desired outcome.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.