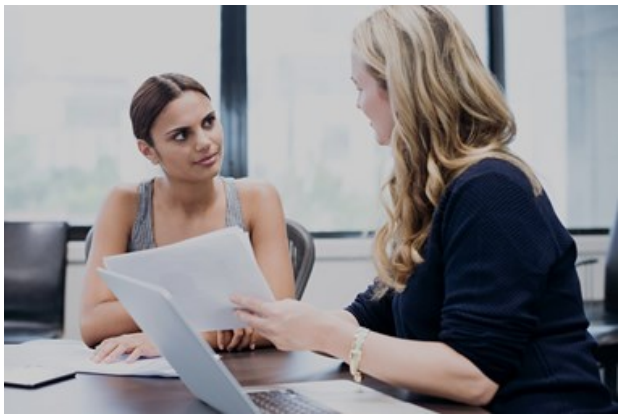


National Contravention List to enforce Family Court Orders

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If a party to a family law matter intentionally fails to comply with Parenting Orders or Financial Orders (regarding property settlement), or makes no reasonable attempt to comply with Orders of the Family Court, the other party may make an application to the Court seeking to deal with the contravention or non-compliance. Such an application is referred to as a contravention application.

Since 1 September 2021, contravention applications are heard and determined in the National Contravention List.

This blog explores the role of the National Contravention List and the options for a contravention application to enforce Family Court Orders.

What is the National Contravention List?

The National Contravention List is the national list of the Federal Circuit and Family Court of Australia (“the Court”), which is tasked with hearing and determining contravention applications.

The key objectives of the list are to deal with contravention applications in a quick and cost-effective manner. In order to do this, all contravention applications are heard electronically. Further, where possible, all matters are listed for a First Return Hearing within 14 days of the application being filed.

The objectives of a contravention application

Contravention applications are made to:

- support compliance with Court Orders;
- where appropriate, resolve issues within parenting orders that have contributed to the non-compliance;
- deter non-compliance;
- uphold the authority of the Court by enforcing compliance where necessary and appropriate;
- efficiently deal with Applications in a timely, cost-effective and safe manner;
- impose appropriate penalties or sanctions on the contravening party ("the respondent") for their contraventions; and
- triage appropriate matters to dispute resolution.

If you do not wish for the other party to be penalised for breach of or non-compliance with Court Orders but would prefer them to simply comply with current Orders, then an enforcement application may be more appropriate. You can learn more about enforcement orders in our previous blogs:

- Compliance with Parenting Orders
- Compliance with Family Law Financial Orders

Contravention applications are generally reserved for more serious or repeated breaches of existing Court Orders.

Consequences of non-compliance with Family Court Orders

Where the National Contravention List finds that a party has contravened a Court Order, there may be serious consequences. These consequences may depend upon whether the Orders breached were Parenting Orders or Property Orders, as well as what kind of a breach is proven.

Contravention applications in parenting matters

After a contravention application has been made, the Court has the power to vary or alter an existing Parenting Order if they consider that a change is in the children's best interests. The Court may make the following findings:

Contravention of Parenting Orders established but with reasonable excuse

If the Court establishes a contravention of Parenting Orders but finds that the respondent has a reasonable excuse for the contravention, the Court may make Orders that compensate the applicant for any time the children have not spent with them as a result of the breach (but only if doing so is determined to be in the children's best interests).

Reasonable excuses include (but are not limited to) the following:

- The party did not understand the obligation – hence the importance of clear and unambiguous wording in Parenting Orders;
- There are certain circumstances that satisfy the Court that the party ought to be excused from compliance with the Orders;
- The party believes on reasonable grounds that the contravention is necessary to protect the health and safety of the party and child, and the period of the breach was no more than necessary to protect the health and safety of all parties.

This does not mean a party can claim that the Parenting Order is contrary to the welfare of the child. Parenting Orders are enforceable and binding.

Contravention of Parenting Orders established without reasonable excuse

If the Court establishes that there has been a contravention of Parenting Orders without a reasonable excuse, they may make Orders to:

- direct the respondent to attend parenting programs;
- order a parent to provide 'make-up' time with the children they have missed as a result of the contravention;
- direct the respondent to enter a bond with conditions, such as requiring them to attend a family consultant or family counselling.

There is also the possibility that the Court can make a Costs Order against the party who has been found to have contravened the Orders without reasonable excuse.

The Court may also elect to vary the primary parenting orders, but again only if doing so is determined to be in the children's best interests.

Contravention established (where the Court is satisfied beyond reasonable doubt that the contravention occurred without reasonable excuse):

If, however, the Court establishes that there has been a contravention without a reasonable excuse for a more significant contravention (i.e. the Respondent has already been found by the Court to have contravened the Parenting Orders), the Court will additionally have the powers to make the following Orders:

- Fine the Respondent.
- Impose a term of imprisonment on the Respondent but only if the Court is satisfied that, in all the circumstances, it would not be appropriate for the Court to deal with the contravention in any other way.

The Court may also elect to vary the primary Parenting Orders, but again only if doing so is determined to be in the children's best interests.

Contravention applications in financial matters (property settlement)

Where a respondent is found to have contravened Financial Orders made by the Court during property settlement, the Court has the power to do the following:

- impose a sentence on the Respondent (such as a community service Order).
- direct the Respondent to enter a bond with conditions.
- fine the Respondent.
- impose a term of imprisonment on the Respondent (but only if the Court finds the contravention was intentional or fraudulent and it is not appropriate for the contravention to be dealt with in any other way).

The Court may also elect to vary and/or discharge the primary property orders in order to ensure compliance with the contravened order, if the Court considers that to be appropriate.

Who can be found in contravention of Parenting or Financial Orders?

It is not only a person who is bound by a court Parenting Order or Financial Order who can contravene the Order.

Under the *Family Law Act*, anyone who intentionally prevents another person, who is bound by an Order, from complying with the Order may also be said to have contravened the Order.

Someone who has aided or abetted the contravention of a Court Order by someone bound to it may also be found to have contravened the Order.

Get help from a family lawyer

Smith Family Law will be able to help you understand the options most appropriate to your circumstances if you have had Parenting or Financial Orders contravened or if have been served with a contravention application.

Contacting Smith Family Law

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This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.