



FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA  
DIVISION 1 | DIVISION 2

## DEFAULTERS' LIST (FAM-DEFAULT)

### Family Law Practice Direction

#### 1. INTRODUCTION

- 1.1 This Practice Direction establishes a Defaulters' List.
- 1.2 The purpose of the List is to ensure compliance with the relevant [Federal Circuit and Family Court of Australia \(Family Law\) Rules 2021](#) (**Family Law Rules**) and any case management orders and directions made by a Registrar in family law or child support proceedings, in accordance with the overarching purpose of family law practice and procedure.
- 1.3 The Defaulters' List will initially be piloted in the Sydney Registry of the Courts with a view to expansion if successful.
- 1.4 It is to be read together with:
  - (a) the [Family Law Act 1975 \(Cth\)](#) (**Family Law Act**);
  - (b) the Family Law Rules; and
  - (c) the [Central Practice Direction – Family Law Case Management](#).

#### 2. OBJECTS OF CASE MANAGEMENT

- 2.1 Proceedings in the Courts are to be managed to achieve the following objectives:
  - (a) the just resolution of disputes according to law;
  - (b) the efficient use of the judicial and administrative resources available for the purposes of the Court;
  - (c) the efficient disposal of the Court's overall caseload;
  - (d) the disposal of all proceedings in a timely manner;
  - (e) the resolution of disputes at a cost that is proportionate to the importance and complexity of the matters in dispute.

- 2.2 The Courts are committed to the ongoing management by each Court of the conduct of proceedings from the time of commencement to finalisation of the proceedings.
- 2.3 The Courts, the parties and their lawyers are under a duty to give effect to the overarching purpose of facilitating matters being resolved as quickly, inexpensively and as efficiently as possible, having regard to safety of families and children and the best interests of the child (see sections 95 and 96 of the Family Law Act). The establishment of a Defaulters' List is to ensure compliance with relevant rules and case management orders and directions and is intended to further this overarching purpose.
- 2.4 Where a party is found to have failed to comply with the requirements of the rules and or a case management order or direction made by a Registrar, the Court may refer the party to a judge for a hearing in the Defaulters' List. The parties will be advised, by notice from the Court, as to the date that they must attend for the purpose of explaining their non-compliance.

### **3. DIRECTIONS THE COURT MAY MAKE**

- 3.1 The Court may give such directions as it thinks fit for the efficient determination of the real issues between the parties to the proceedings including those set out in the [Central Practice Direction – Family Law Case Management](#) and the Federal Circuit and Family Law Rules 2021.
- 3.2 Generally, directions will focus upon resolving or at least narrowing issues in dispute and may include:
- (a) encouraging the parties to co-operate with each other in the conduct of proceedings;
  - (b) identifying the issues at an early stage;
  - (c) deciding promptly which issues need full investigation and a hearing and accordingly disposing summarily of the others;
  - (d) deciding the order in which the issues are to be resolved;

- (e) encouraging the parties to use an alternative dispute resolution procedure if the court considers that appropriate and facilitating the use of such procedure;
- (f) helping the parties to settle the whole or part of the case;
- (g) fixing timetables or otherwise controlling the progress of the case;
- (h) considering whether the likely benefits of taking a particular step justify the cost of taking it;
- (i) dealing with as many aspects of the case as it can on the same occasion;
- (j) making use of technology where appropriate;
- (k) giving directions to ensure that the hearing of a case proceeds quickly and efficiently;
- (l) limiting the time for the hearing or other part of a case, including at the hearing the number of witnesses and the time for the examination or cross-examination of a witnesses.

#### **4. WHEN A PARTY IS IN DEFAULT**

4.1 Subrule 10.26(1) provides that an applicant is in default if they fail to:

- (a) comply with an order of the court in the proceeding;
- (b) file and serve a document required under the Family Law Rules;
- (c) produce a document as required by Division 6.2.2;
- (d) do any act required to be done by the Family Law or the Family Law Regulations; or
- (e) prosecute the proceeding with due diligence.

4.2 Subrule 10.26(2) provides that a respondent is in default if they fail to:

- (a) give an address for service before the time for the respondent to give an address has expired;
- (b) file a response before the time for the respondent to file a response has expired;
- (c) comply with an order of the court in the proceeding;

- (d) file and serve a document required under the Family Law Rules;
- (e) produce a document as required by Division 6.2.2;
- (f) do any act required to be done by the Family Law or the Family Law Regulations;
- (g) defend the proceeding with due diligence; or
- (h) prosecute with due diligence any application the respondent has made in the proceeding.

***Extensions of time to be obtained prospectively***

- 4.3 Parties must comply with all timeframes specified in the rules of court, an order or direction. Rule 1.33 of the Family Law Rules provides that if a step is taken after the time specified by the relevant rule or a procedural order then the step is of no effect.
- 4.4 Applications for extensions of time to comply with the requirements of the rules or an order or direction, or for relief from obligations set out in an order or direction (see rule 1.34 of the Family Law Rules), should be made prospectively, that is, prior to the default occurring.
- 4.5 Applications for adjournment of a court event due to anticipated non-compliance with an order or direction should:
  - (a) in the case of a final hearing, be made not less than 14 days prior to the hearing; or
  - (b) in the case of any other court event, within 2 business days of that court event.

***Onus on the defaulter to show cause***

- 4.6 The onus is on the defaulting party to apply for relief from the requirement(s) of the rules or a procedural order. The burden is not on the complying party to seek the imposition of a sanction or penalty.
- 4.7 In considering a show cause application the Court may consider:
  - (a) the interests of the parties in the proceedings and the administration of justice by the court more generally;

- (b) whether the application for relief has been made promptly;
- (c) whether the failure to comply was intentional;
- (d) whether there is a good explanation for the failure;
- (e) the extent to which the party in default has complied with other rules, practice directions, court orders and any relevant pre-action protocol;
- (f) whether the failure to comply was caused by the party or their legal representative;
- (g) whether the trial date or the likely trial date can still be met if relief is granted;
- (h) the effect which the failure to comply had on each party; and the effect which the granting of relief would have on each party;
- (i) whether all parties consent to the step being taken after the specified time;
- (j) any other matter that the court consider relevant.

## **5. POWERS OF THE COURT ON FINDING DEFAULT**

5.1 If a party is in default, the Court may make any orders, give any directions and specify any consequences for non-compliance with the order that the Court thinks just, including doing any one or more of the following (see subrule 10.27(1) of the Family Law Rules):

- (a) order that the proceeding be stayed or dismissed as to the whole or any part of the relief claimed by the party;
- (b) set aside a step taken or an order made;
- (c) order that a step in the proceeding be taken within the time limited in the order;
- (d) order costs;
- (e) prohibit the party from taking a further step in the proceeding until the occurrence of a specified event;
- (f) make any order that is to take effect if the party does not take a step ordered by the court in the proceeding in the time limited in the order;

- (g) proceed on the non-defaulting party's evidence together with:
  - (i) if considered appropriate by the Court—such evidence as the defaulting party has filed; and
  - (ii) such evidence as tendered during cross-examination by the defaulting party; and
  - (iii) submissions by either party limited to the matters that are the subject of evidence;
- (h) in exceptional circumstances—proceed on the non-defaulting party's evidence without hearing from the defaulting party.

## **6. COSTS**

- 6.1 The defaulting party and/or their lawyers should be aware of the potential costs consequences of failing to comply with the requirements of the rules and/or a case management order or direction (see section 96 of the Family Law Act).

## **7. NOTICE OF POTENTIAL SUMMARY DISMISSAL OR UNDEFENDED HEARING**

- 7.1 The notice to the parties advising that the matter has been allocated to the Defaulters' List will include the required notice that the matter may be summarily dismissed (subrule 10.22(3)), that judgment may be given in the absence of a party, or proceed as an undefended hearing (rule 10.27).

The Honourable Justice William Alstergren  
Chief Justice (Division 1) | Chief Judge (Division 2)  
Federal Circuit and Family Court of Australia  
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