

Recovery Orders

This factsheet provides basic information only on family law. This factsheet should not be substituted for legal advice. You should seek legal advice about what to do in relation to your matter.

This factsheet explains what a Recovery Order is in family law. If you need free and confidential help with a family law matter, contact the Legal Aid Family Law Duty Service on 1300 654 314.

Who can apply for a 'Recovery Order'?

A recovery order may be applied for by any of the following people:

- a parent;
- a person a child is to live with or spend time with under a parenting order;
- a person who has parental responsibility for the child;
- a grandparent; or
- the person the child live or spends time with without a parenting order.

What is a 'Recovery Order'?

A Recovery Order is an Order made by the Family Court. A Recovery Order enables police to retrieve a child that has been removed or withheld from any of the people listed above. A recovery order can be made on an urgent basis, depending on the circumstances.

If a child has been removed or withheld by the other parent, it is important to get legal advice immediately. Legal Aid's Family Law Duty Service can provide free 'one-off' legal advice about family law, including Recovery Orders, on an urgent basis.

Legal Aid ACT Family Law Duty Service

Phone: **1300 654 314**

Location: Family Court, Nigel Bowen Commonwealth Law Courts, Cnr University Ave & Childers St, Canberra Australian Capital Territory 2601.

How do you apply for a Recovery Order?

If a child has been withheld or removed from you, you or your solicitor can make an application to the Court for a Recovery Order. If you have grounds to file for an urgent recovery order, you will not need to attempt mediation before applying to the court. If you need a recovery order, you should get legal advice immediately. If you delay in taking legal action you can be seen to be agreeing to the action taken by the other parent.

If there are no family law orders in place, you can apply for a Recovery Order by filing the following Family Court documents:

1. Initiating Application which tells the court that you are seeking a Recovery Order.
2. A Notice of Child Abuse, Family Violence or Risk, which sets out what risks there are to the child in the care of the other parent. This may include a risk of abuse, neglect, or exposure to family violence.
3. An Affidavit- Non-Filing of Family Dispute Resolution Certificate. This document is filed when seeking an urgent recovery order and sets out why the matter is so urgent that you are unable to first attempt mediation.
4. Genuine Steps Certificate. This document is filed to tell the Court that, due to urgency, you are seeking an exemption from the pre-action procedures usually required.
5. A Parenting Questionnaire. This document sets out additional information about the child/ren and the care you provide.
6. An Undertaking as to Disclosure. This document is a legal promise to the Court that you have and will continue to provide the Court and the other parent all information relevant to the case.
7. Affidavit. This is the document where you set out the recent events that has caused you to apply to the court. An affidavit should focus on what you have seen or heard.
8. A copy of any family violence order affecting the child/ren or a member of the child/ren's family.

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9. A cover letter as to urgency. This should outline the nature of the application and why it is urgent. You should refer to specific paragraphs in the affidavit which highlight why the matter is urgent.

If you are already in family law court proceedings for parenting orders, you can apply for a recovery order by filing an Application in Proceeding which sets out the orders that you seek and an Affidavit.

Depending on your circumstances, the Legal Aid Family Law Duty Service may be able to assist you to prepare and file your application for a Recovery Order. The Family Law Duty Service can often do this on an urgent basis for free. Depending on your circumstances, you may not even be required to apply for Legal Aid before the Family Law Duty Service provides this free help to you.

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What happens after I file the documents for a recovery Order?

After you have filed the recovery documents, you will be told by the court when your application for a Recovery Order will be heard and determined. The younger the child, or the greater the risk to the child, the shorter the time the matter will take to get to Court. Depending on the urgency of your matter and the capacity of the Court, a recovery order may even be heard by the court the same day that it was filed.

Usually, the court will also tell you when you must serve the court documents that you have filed on the other parent. This is the process of providing the documents to the other parent, so that they can respond to your application. You will not always be required to serve the documents on the other parent. For example, if there is a real risk that the other parent might harm the child(ren),

or flee with the child if served with the documents, You can apply to have the matter heard by the Court 'ex-parte.' If the Court hears the matter 'ex-parte', the other party will not be notified of the recovery order application until **after** the order has already been made.

What will happen at the first Court Hearing?

On the first court date for your Recovery Order application, the Court will decide whether or not a recovery order should be made or list the matter for hearing on another day. Generally speaking, if you have been the primary carer of the child for even a few months, the Court will most likely order the child back into your care and, if necessary, issue a recovery order which enables the police to retrieve the child. The Court may make a recovery order to have the child retrieved, even if there are no Family Law Orders or written parenting agreements in place in relation to the child.

If a recover order is made, usually the Court will Order that the parent return the child to you within a certain timeframe. Often there will be an additional order that enables the police to go and retrieve the child from the other parent and return the child to you, if the parent does not follow the orders and return the child(ren).

If the Court has real concerns that the child is at a real risk in the care of the other parent, they may order that the police retrieve the child on the first instance.

Can I apply to stop my child from being taken overseas?

If you have concerns that your child will be taken overseas without your permission, you can apply to the Family Court for a watch list order. A watch list order is a family law order that is made by the Family Court. A watch list order has the effect of placing a child and/or their parent on an airport watch list. You can apply to have the child placed on the airport watch list at the same time as applying for a recovery order.

The watch-list is monitored by the AFP. A person who is on the airport watch list is prohibited from boarding any international flights or vessels. If a person who is on the

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airport watch list attempts to board an international flight or ship, they will be stopped by the Air or port Marshall and prevented from leaving the airport/dock.

The court will consider whether or not there is a reasonable risk that a party will take the child overseas permanently or for an extended period of time, against your wishes. The court will want to know why you believe an order is necessary to prevent the child from being removed from the country – for example, perhaps the other party recently threatened to take the child overseas, against your wishes. If you have real concerns that your child will be removed from the country without your permission, you should get legal advice immediately.

Can I stop a child from being issued with an Australian passport?

If you have parental responsibility for a child, you can request a child passport alert be made. If there is a child passport alert, when a request for an Australian passport is made for that child, the Department of Foreign Affairs and Trade (DFAT) will scrutinize that request more closely, and they may ultimately choose not to issue that child with a passport.

Child passport alert requests are made directly to DFAT, and do not need to be made by the Family Court of Australia. For more information on how to apply for a child passport alert, please visit the DFAT website at <https://www.passports.gov.au/getting-passport-how-it-works/how-get-child-passport/child-alert-requests> .

Get Help

Legal Aid ACT Family Law Duty Service

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Please note that the Legal Aid Family Law Duty Service 'in-person' service at the Family Court is temporarily suspended due to the current Covid-19 crisis and is operating remotely by phone.

<http://www.legalaidact.org.au/events>

Phone: **1300 654 314**

Department of Foreign Affairs and Trade (DFAT)

Phone: **131 232**

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