



Recovery Orders in family law

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The breakdown of a relationship is often stressful and challenging, particularly when children are involved. One of the most distressing situations arises when a parent takes a child or refuses to return a child without consent. In these cases, it may be necessary to apply for a Recovery Order from the Court.

What is a Recovery Order?

A Recovery Order is an order of the Court that can require a child to be returned to their parent, a person with a parenting order, or a person who has [parental responsibility](#) for the child.

A Recovery Order can authorise or direct a person or people, such as police officers, to search, locate and return a child to you. It further allows police officers to use force, if necessary, when taking steps to recover a child. A Recovery Order can also give directions about the day-to-day care of a child until the child is returned to you.

Furthermore, a Recovery Order can prohibit the person withholding the child from removing them again in the future and can authorise the arrest of such a person who again removes or takes the child without the need for a warrant.

The Court has power to make any or all of the above orders when making a Recovery Order.

Who can apply for a Recovery Order?

The following people can apply for a Recovery Order:

- A person who has parental responsibility for the child under a [parenting order](#);
- A person in a parenting order with whom the child lives with, spends time with, or communicates with;
- The child's grandparent; or
- An individual who has a concern for the child's care, welfare and development. This could include someone the child lives with or spends time with, even if there is no formal parenting order in place reflecting this.

If you meet one of the above criteria, you can apply for a Recovery Order through the Federal Circuit and Family Court of Australia.

What does the Court consider when deciding whether to make a Recovery Order?

The Court considers the [best interests of the child](#) as the paramount consideration. In doing so, the Court may have regard to a number of factors, including the child's safety, including safety from family violence, abuse or neglect and the child's emotional, psychological, developmental and cultural needs.

What happens after a Recovery Order is made?

If the Court makes a recovery order authorising or directing another person to find, recover and return the child to you, you must provide a copy of the order to that person. In most cases, this will be the Australian Federal Police.

If your child is found, the Australian Federal Police will ordinarily not recover them until you are nearby. This may involve you travelling to collect your child when they are recovered. Once your child is returned to you, you are obliged to notify the registry staff at the Court as soon as possible.

What happens if the child is still missing?

In some cases, you may need to ask the Court to make additional orders to help locate your child. This may include the following.

Location Order

This order requires a person to provide the Court with any information they have about the whereabouts of the child.

Commonwealth Information Order

This order requires a federal government agency, such as Centrelink, to supply the Court with any information they have regarding the child's location.

Publication Order

This permits the media to release details and photos of the missing child and the individual they are believed to be with. The specific terms of this order can differ depending on the situation. This type of order is generally considered a final recourse.

Get help from an experienced family lawyer

If your child has been taken or not returned to you without your consent or in breach of a Court Order, it is essential to act quickly and get legal advice. Our family lawyers have expertise and experience with Recovery Order matters and can assist you in applying to the Court seeking to have your child returned to you. Our family law team can provide guidance and support you through the entire process to help you achieve the best outcome.

If you are facing a situation where a Recovery Order may be necessary, contact us today and speak to one of our family lawyers.

Contacting Smith Family Law

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Further reading

- [The Hague Convention and international child abduction](#)
- [Children's passports in family law matters](#)
- [Relocating with children after separation](#)

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.