



Seeking Recovery Orders when children go missing

There are occasions when a parent involved in Family Law proceedings removes a child from their usual residence in contravention of a Parenting Order, stopping the other parent from having contact with the children because they cannot be located. In these situations, the other parent can make an application to the Family Court seeking a Recovery Order.

Parenting Orders

A Parenting Order is an order of a Court issued pursuant to section 65D of the Family Law Act which may deal with, but is not limited to, one or more of the following:

- when or how a child may travel;
- the person or persons with whom a child is to live;
- the time a child is to spend with another person or other persons;
- the allocation of parental responsibility for a child;
- the communication a child is to have with another person or other persons; or maintenance of a child.

It's the responsibility of the persons that are party to the Parenting Order to ensure that the conditions imposed by such an order are complied with.

Recovery Orders

A Recovery Order is an order of the Family Court that can require that a child be returned to:

- a parent of the child;
- a person who has a parenting order that states the child lives with, spends time with or communicates with that person, or
- a person who has parental responsibility for the child.

You can apply for a recovery order if you are:

- a person who the child lives with, spends time with or communicates with as stated in a Parenting Order;
- a person who has parental responsibility for the child in a Parenting Order;
- grandparent of the child; or
- a person concerned with the care, welfare and development of the child.



If the parent breaching the Parenting Order cannot be found, you may ask the Court to issue other orders to help locate the child including:

- Location Order – which requires a person or government agency to provide the court with information about the location of the child and/or the parent who has taken the child.
- Commonwealth Information Order – requires a Commonwealth Government Department, such as Centrelink, to give the Court information about the child's location that is contained in or comes into the records of the Department.
- Publication order – allows the media to publish details and photographs of the missing child and the person they are believed to be with.

An application for a Recovery Order should be filed in the Federal Circuit Court. If you have a current parenting case in the Family Court, the application should be filed in that Court. If you do not have a current Parenting Order, you should apply for one at the same time as applying for a Recovery Order.

The Family Court however is not itself a child recovery agency, and if the Court makes an Order authorising or directing another person or persons to find, recover and deliver the child, then you must give a copy of the order to that person or persons. In most instances, this will be the Australian Federal Police (AFP).

Taking Children overseas

Under sections 65Y or 65Z of the Family Law Act it is an offence for a person to take or send a child from Australia:

- contrary to an order limiting or preventing the child's overseas travel, where court proceedings for a Parenting Order are pending; or
- where an appeal against a Parenting Order is pending.

In April 2019, further amendments to the Family Law Act came into effect creating offences for retaining a child outside Australia where there is a Court order in place, or Court proceedings for a Parenting Order are pending.

All of the above offences are punishable by up to three years imprisonment. Additionally, taking or sending a child from Australia, or retaining a child outside Australia contrary to an order of the court, may result in contempt of court.

The Family Law Watchlist

The Australian Federal Police (AFP) maintain the Family Law Watchlist which is the system designed to alert police to the movement of children. It identifies whether children are leaving Australia in circumstances where their names may have been placed on the Family Law Watchlist. A child's name may be placed on the Family Law Watchlist in the following circumstances:

- a Court has issued a Parenting Order limiting or preventing the child's overseas travel;
- a Court has issued an Injunction limiting or preventing the child's overseas travel;
- the child is the subject of a Parenting Order Application currently before a Court that may limit or prevent overseas travel;
- the child is the subject of an Application for an Order to place the child on the Family Law Watchlist; or



- the child is the subject of a Parenting Order or Injunction under appeal.

Placing your child on the Family Law Watchlist.

In order to place your child on the Family Law Watchlist you must first complete a Family Law Watchlist request form and, in addition, you need to have either:

- obtained a Court Order that limits or prevents the child overseas travel, and which also requests the AFP to place the child on the Family Law Watchlist; or
- filed an Application with a Court for an Order seeking to prevent the child travelling overseas or a Parenting Order that limits or prevents the child's overseas travel and also requests the AFP to place the child on the Family Law Watchlist.

An Order placing the child on the Family Law Watchlist must be specific, not implied. The AFP prefers that Orders include a defined period of 2 -3 years for any restriction on the child's travel. Increasingly, Judges are also favouring a defined period for a Watchlist Order.

If you wish to remove your child from the Family Law Watchlist, and their name was placed on the list due to a Court Order, it is generally required that you obtain a further Order removing that child from the Watchlist.

We have a number of experienced Lawyers who specialise in Family Law matters. If you need help with a Recovery Order or wish to discuss any family law issue, please feel free to contact [Oliver Hagen](#) or [Ken Gray](#) on (02) 4731 5899 or email us at familylaw@batemanbattersby.com.au.