



Commonwealth Information Order / Location Order Kit



Disclaimer

This publication contains general information only and is intended as a general guide about the law.

You should not rely on this information as legal advice. We recommend that you talk to a lawyer about your situation if you need advice.

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Contents

Who is this kit for?	4
Key words and legal terms	4
Why would I seek a Commonwealth Information Order / Location Order?	4
Who can apply for a Commonwealth Information Order / Location Order?	5
What are my other options?	5
Issuing subpoenas	5
If there is a Family Violence Restraining Order	6
Do I apply for a Commonwealth Information Order or a Location Order?	6
Who do I direct my Commonwealth Information Order/ Location Order to?	6
What information does a Commonwealth Information/ Location Order provide?	7
What approach does the Court take in proceedings for Commonwealth Information/ Location orders?	7
Location Orders	8
Commonwealth Information Orders	8
Step 1: Preparing and filing the application	8
When there are no existing Family Court proceedings	8
When there are current Family Court proceedings	9
Writing your Form 1 or Form 2	9
Writing your Case Information Affidavit and/or Affidavit	11
Cover letter to the court seeking to file additional Affidavit	12
Cover letter to the court seeking urgent listing	13
Step 2: Serving the application on the relevant government agency or person	14
CIO	14
Location Orders	14
Step 3: The court hearing	14
Step 4: Action after the order is made	14
CIO	14
Location orders	15
How can Legal Aid WA help?	16

Who is this kit for?

The Commonwealth Information Order (“CIO”) / Location Order Kit is for people who do not know the address of a child (and the person caring for them.) A CIO/ Location Order can provide the address of the subject child (and the carer parent) to the court so that the carer parent can be served with an application for parenting orders.

The Kit provides information on how to apply for a CIO/ Location Order. This Kit provides information to help people who are preparing their own court documents.

The Kit provides information about different types of orders and a range of example orders. This Kit is not intended to replace legal advice and it is recommended that you obtain legal advice about your individual situation.

If you would like to apply for a CIO / Location Order you should get legal advice first. Legal Aid WA provides advice in relation to this issue. See below for details about [accessing legal advice](#).

Key words and legal terms

- **Location Order** - an order of the Court which requires a person or state entity to provide to the Court, information they have, or which they obtain, about a child.
- **Commonwealth Information Order** - a type of Location Order which requires a Commonwealth (Federal) Government department, or a Commonwealth instrumentality, to provide to the Court information in its records about the location of a child.
- **Service of court documents** - giving a copy of your court documents to a nominated server, who gives the documents to the other party by way of “service.”

Why would I seek a Commonwealth Information Order / Location Order?

If you don't know the whereabouts of your child (or the person caring for them) then you may not be able to serve the other party with a copy of your court documents. If you haven't served the other party with a copy of your court documents (or the other party is unaware of the court proceedings) then the court may not allow you to proceed with your application.

In rare cases the other party may have removed the child from your primary care and you may not know the whereabouts of the child and other party (for example, they have gone into hiding). In these circumstances a CIO / Location Order can be used to find the location of the other party so a recovery order can be served and the child can be returned to your care with the assistance of police.

Who can apply for a Commonwealth Information Order / Location Order?

You can apply for a CIO or Location Order if you are:

- A parent or relative with the daily care of the child;
- A grandparent, or
- Any other person concerned with the child's care, welfare or development.

What are my other options?

The court will expect you to have exhausted all reasonable non court based avenues of attempting to locate the other party and child before making an application for a CIO / Location Order.

An alternative (perhaps faster) option would be to seek an order for substituted service in the first instance if there is evidence this is a viable way to bring court proceedings to the attention of the other party (e.g., substituted service by way of service on the other parties' parents, substituted service via the respondent's Facebook messenger account or service by way of email). If you think this may be an option you should seek legal advice.

Issuing subpoenas

In some cases, issuing a subpoena may be less expensive than applying for a Location Order and may provide results quicker. It is worthwhile considering whether the relevant information could be obtained by a subpoena, particularly if the relevant information is believed to be held by an individual. For example, you could subpoena the other party's bank statements to identify the location of their transactions.

It should be kept in mind however that some Commonwealth departments, including the Australian Taxation Office and Services Australia, have privacy protection which means they will not be required to respond to a subpoena. However, those departments can be bound by a Commonwealth Information order.

If there is a Family Violence Restraining Order

If there is a Family Violence Restraining Order (“FVRO”) in place prohibiting you from contacting the other party it will not be appropriate for you to attempt to locate the other party yourself or to ask friends or relatives information about the other party as this may be a breach of your FVRO. If there is an FVRO then a CIO / Location Order may be the best option as the process of locating the other party and child can be controlled confidentially by the court and it protects you from any potential breach of FVRO.

Do I apply for a Commonwealth Information Order or a Location Order?

CIOs are usually directed to Services Australia (or other federal government agencies) and are sought when the person you are attempting to locate is in receipt (or is likely to be in receipt) of, for example, a Centrelink benefit.

Location Orders are sought when the person you are attempting to locate is not in receipt of Services Australia benefits (Centrelink, Medicare or child support) or that person is unlikely to have provided a federal government agency with their location (for example, in the case of someone who has gone into hiding). A Location Order may be sought in cases where you can identify one or more persons (such as the other party’s parents or current partner) who are likely to have or can obtain information about the other party’s and the child’s whereabouts.

Who do I direct my Commonwealth Information Order/ Location Order to?

Consider the people or organisations who might have the information you need. These parties can be compelled to share the location of the child. Some suggestions include:

- relatives of the child
- friends of the child
- government departments such as Services Australia (for Centrelink, Medicare, child support etc.)
- if the other party was employed and is believed to remain employed, the Australian Taxation Office may have information in relation to the parent's current employer
- the Department of Education in your state of territory

- the child's school or daycare
- the police in your state or territory
- the Australian Federal Police.

What information does a Commonwealth Information/ Location Order provide?

A CIO can provide the court with the address of the child (and the person who is believed to be caring for the child). The address will remain confidential and will not be disclosed to you.

A CIO can also provide the court with information about actual or threatened violence or neglect against the child or a person with whom the child lives, even where there is no available information about the location of a child. If the parents of the child were married, the category of people from whom the court can obtain critical family violence risk related information is extended further to any relative of the child (including grandparents, uncles and aunts, nieces and nephews, cousins, step-relatives and foster relatives) or any other person the court may deem relevant.

What approach does the Court take in proceedings for Commonwealth Information/ Location orders?

The best interests of the child is the **paramount consideration** of the court when determining whether a CIO/ Location Order should be made. In some circumstances where there is a serious risk of harm to the child, for example, risk of serious family violence, the court may refuse to grant the order.

In considering an application for a CIO / Location Order, the court will require evidence of:

- the history of the parties' relationship;
- the circumstances surrounding the failure to return the child, if relevant;
- details of the last contact or communication with the child or the parent with whom the child is believed to be;
- details of the investigation already undertaken to locate the child or parent;
- the existence of any family violence;
- any risk to the child;
- why a Location Order is in the child's best interests; and

- if relevant, details supporting the belief that a Commonwealth agency may hold information which may assist in locating the child or parent with whom the child is believed to be.

Location Orders

The court must be satisfied the particular person the Location Order is directed to is likely to have information about the child's location.

Commonwealth Information Orders

To make a CIO the court must be satisfied information about the child's location is likely to be contained in, or to come into, the records of the department concerned.

The court is only allowed to make an order in relation to one government department unless there are exceptional circumstances. You should ensure you make the application to the department most likely to have current information on your child's whereabouts.

The court must be satisfied that the order would not place an unreasonable burden on the Commonwealth or state agency's resources.

Step 1: Preparing and filing the application

When there are no existing Family Court proceedings

If there are no existing court proceedings the application is prepared in the same way as any other initiating application for parenting orders.

To [apply for parenting orders](#), you need to file:

- A [Form 1 Initiating Application](#)

The CIO or Location Order would be included as part of the 'Interim Orders Sought' in the Form 1 Initiating Application – see [below](#) at page 9 for examples on wording

- A [Case Information Affidavit](#) – see [below](#) at page 11 for details to include
- A document meeting the family dispute resolution requirement, which can be:
 - a certificate from a family dispute resolution practitioner, or
 - a [family dispute resolution exemption form](#). Given that you are unaware of the location of the other party it is unlikely you will have a Family Dispute Resolution Certificate and would be required to file the exemption form.
- A copy of:
 - your marriage certificate, if you were married, or
 - the child's birth certificate, if you weren't married.

- Your Centrelink CRN number (if you have a Commonwealth Concession Card). You will need this when you are lodging your documents on the eCourts Portal of WA if you are going to ask for a filing fee exemption.
- [Fee Exemption – General](#) or [Fee Exemption- Financial Hardship](#) if you don't have a Commonwealth Concession Card and want to apply for a fee exemption.
- You may be applying for parenting orders and [property and financial orders](#) in the same Initiating Application. If so, you also need to file a [Form 13 Financial Statement](#) and a supporting [Affidavit – General](#).
- If the circumstances of your case are unable to be adequately explained in your Case Information Affidavit, you will need to prepare an additional [Affidavit – General](#). See [below](#) at page 11 for more details. You will need to ask for permission to file the additional Affidavit in a [cover letter](#) to the Court when filing your documents. An example letter is provided [below](#) on page 12.
- If the circumstances of your case are urgent, for example, you need a recovery order, you will also need to file a cover letter addressed to the court seeking your matter be listed urgently. An example letter is provided [below](#) on page 13.

When there are current Family Court proceedings

If there are current court proceedings, or there are no current proceedings but the court orders are less than 12 months old, the following forms will need to be filed:

- [Form 2 - Application in a Case](#); and
- [Affidavit](#).

Writing your Form 1 or Form 2

In the Form 1 (or Form 2) you are the Applicant and the Respondent is the other party who is presumed to have care of the child.

Example orders

Location order where parties were married

1. A Location Order issue in the usual form pursuant to Section 67M of the *Family Law Act 1975*, directed to:
 - a. INSERT NAME OF PERSON

requiring them to provide to the Principal Registrar of the Family Court of Western Australia all information in relation to the location of the [mother / father / other] (FULL NAME), born [date of birth] and the [child/children], [full name/names and date/s of birth of the child/children,] including but not limited to their last known address.

2. The Applicant, INSERT YOUR FULL NAME, is to arrange for service of this order on INSERT FULL NAMES OF THE PEOPLE LISTED IN ORDER 1(a).
3. That pursuant to section 67P(1) of the *Family Law Act 1975*, leave be granted to the Registrar to disclose the information provided under these orders to a process server engaged by [name of firm] to serve documents on [mother / father / other].

Location order where parties were not married

1. A Location Order issue in the usual form pursuant to Section 146 of the *Family Court Act 1997*, directed to:

- a. INSERT NAME OF PERSON

requiring them to provide to the Principal Registrar of the Family Court of Western Australia all information in relation to the location of the [mother / father / other] (FULL NAME), born [date of birth] and the [child/children], [full name/names and date/s of birth of the child/children,] including but not limited to their last known address.

2. The Applicant, INSERT YOUR FULL NAME, is to arrange for service of this order on INSERT FULL NAMES OF THE PEOPLE LISTED IN ORDER 1a.
3. That pursuant to section 148 of the *Family Court Act 1997* (WA), leave be granted to the Registrar to disclose the information provided under these orders to a process server engaged by [name of firm] to serve documents on [mother / father / other].

Commonwealth Information Order

1. A Commonwealth Information Order issue in the usual form directed to the Chief Executive Officer of Services Australia requiring the Chief Executive Officer to furnish to the Principal Registrar of the Family Court of Western Australia such information as is contained or comes into the records of Services Australia relating to the whereabouts of the Respondent, FULL NAME born DATE OF BIRTH and/or the child FULL NAME (gender) born DATE OF BIRTH.
2. The Applicant cause Services Australia to be served with a sealed copy of this order.
3. On the Principal Registrar receiving information concerning the whereabouts of OTHER PARTY'S FULL NAME and / or CHILD/REN'S FULL NAME, the Principal Registrar have liberty to inform the Applicant's process server nominated by Applicant of the address at which the Respondent may be served.
4. That on receipt of the information as to the whereabouts of the said child and/or the said OTHER PARTY'S FULL NAME, [XYZ & Co – NAME OF PROCESS SERVER], be restrained from divulging such information to the Applicant.
5. Alternative Order 3 to be used in connection with a Recovery Order application.
6. On the Principal Registrar receiving information concerning the whereabouts of OTHER PARTY FULL NAME and / or CHILD/REN FULL NAME, the Principal Registrar have liberty

to inform the Applicant's process server nominated by the Applicant of the address at which the Respondent may be served and the children recovered.

Final orders

Note: if you are filing a Form 1 Initiating Application you may be seeking final orders about your children such as live with/spend time arrangements. If you are unsure what type of orders you want to ask for you can seek the following final order, "The Applicant have leave to particularise their final orders at a later stage." The court will ask you later on in proceedings to file an Amended Form 1 Initiating Application setting out in detail the parenting orders you are seeking.

Writing your Case Information Affidavit and/or Affidavit

If there are no current court proceedings and you are filing a Form 1 Initiating Application, the below information can be written in your Case Information Affidavit at Paragraph 30: Current Dispute. If the circumstances of the case are unable to be adequately explained in your Case Information Affidavit, an Affidavit will need to be prepared (and you will need to seek permission to file the additional Affidavit by filing a covering letter to the Court with your application). In most cases this will not be necessary. Your Affidavit will need to cover information about:

1. The history of you and the other party's relationship.
2. The court history (if any) or why there has been no need to resort to court action in the past.
3. Details of the court orders breached, if relevant.
4. The relationship between you and the child and any other relevant person.
5. Where the child might be and the basis for that belief.
6. Details about the last known whereabouts of the child.
7. Steps you have taken to find the child.
8. Why it is in the child's best interests for the order to be made.
9. The expected effect on the child if an order is not made.
10. The basis for the belief that the relevant department or people/person will hold the requested information.
11. Whether the other party is in receipt of a Centrelink or Medicare benefit or if there is a child support assessment in place.
12. Whether there is an FVRO or other order in place which prohibits you from contacting the other party.
13. Details of anyone you think is likely to have information about the other party and child's whereabouts and the reasons why you think it is likely the particular person would be in possession of this information (e.g., the other party has a close relationship with her mother, who is likely to be in contact with her and to know where she is staying).

Cover letter to the court seeking to file additional Affidavit

Your Name

Your Address

Date

The Principal Registrar
Family Court of Western Australia
150 Terrace Road
PERTH WA 6000

Dear Sir/Madam,

PARTIES NAMES

FAMILY COURT OF WA

FILE NO:

I am the Applicant in the above proceedings.

The Respondent is FULL NAME.

I seek permission to file an additional Affidavit to provide the Court with more evidence about my interim orders sought regarding a Commonwealth Information Order / Location Order. My Affidavit discusses in more detail why I am seeking a Commonwealth Information Order / Location Order in relation to my child.

I request my Affidavit be filed notwithstanding any non-compliance with the rules of the Family Court of Western Australia.

Yours faithfully

Your full name and signature

Cover letter to the court seeking urgent listing

Your Name

Your Address

Date

The Principal Registrar
Family Court of Western Australia
150 Terrace Road
PERTH WA 6000

Dear Sir/Madam,

PARTIES NAMES

FAMILY COURT OF WA

FILE NO:

I am the Applicant in the above proceedings.

The Respondent is FULL NAME.

I request my Application for a Commonwealth Information Order / Location Order and recovery order be listed on an urgent and ex parte basis before the duty Magistrate today or as soon as possible. I am seeking an ex parte hearing because (explain risk to child if the other party becomes aware of your application).

I am seeking an urgent hearing for the following reasons:

1. explain risk to the child and circumstances of child's removal from your primary care.

I request the enclosed application be filed notwithstanding any non-compliance with the rules of the Family Court of Western Australia.

Yours faithfully

Your full name and signature

Step 2: Serving the application on the relevant government agency or person

CIO

An application for a CIO must be served on the relevant government agency **at least 7 days prior** to your court hearing. The court has discretion to make the order with **less than 7 days' notice** to the relevant government agency if the court considers special circumstances exist warranting this.

Services Australia (Centrelink, Medicare, child support) requires you to send a filed copy of your filed court documents by email to subpoena@servicesaustralia.gov.au.

You don't need to pay money to Services Australia for a CIO.

Location Orders

If you are applying for a Location Order directed to a related party, such as a relative or friend, you should not serve them with your application prior to the court hearing to avoid the risk of them tipping off the other party.

Step 3: The court hearing

If it is practical for the court, the court must fix a date for a hearing of your CIO/ Location Order application within 14 days of filing. This hearing will be before a Magistrate or Judge.

You must make sure you have provided a copy of your application to the relevant government agency at least 7 days prior to your court hearing.

You will need to attend your court hearing and answer any questions the court asks you. It is very important to answer all of the court's questions truthfully, and give all the information about your case, both the good and the bad.

The Magistrate or Judge will read all of the court documents, listen to what you have to say and then make a decision about what procedural orders to make in your case.

Step 4: Action after the order is made

CIO

Once the court has made the CIO, you must email a copy of the court order to the relevant government agency. In relation to Services Australia, this is: subpoena@servicesaustralia.gov.au.

The Family Court will write directly to the relevant government agency to request that the information be provided to the Principal Registrar of the Family Court of Western Australia.

If the CIO is being sought with a view to then serving documents on the other party it is your responsibility to arrange a process (document) server. You can find a process server by searching “process server Perth” in your internet search engine (or you can search in the anticipated geographical area documents will be required to be served on the other party, for example “Busselton”). Process servers charge money for their services.

Once the court receives the required information as to the whereabouts of the other party they will notify you that the order has been complied with and your nominated process server will confidentially correspond with the court to obtain the required information to serve the other party.

A CIO stays in force for 12 months and while in force the person to whom the order applies must provide the information sought by the order as soon as practicable, or as soon as practicable after it comes into the records of the Department concerned. The Commonwealth Department is required to search its records for the requested information once every 3 months unless specifically ordered otherwise by the court. Unless specifically ordered, the Commonwealth Department is not required to search records more than 2 years old.

Location orders

It is your responsibility to arrange for service of the Location Order on the person/s who is/are the subject of the Location Order.

If the Location Order is being sought with a view to then serving documents on the other party it is your responsibility to arrange a process (document) server. You can find a process server by searching “process server Perth” (or you can search in the anticipated geographical area documents will be required to be served on the other party, for example “Busselton”) into your internet search engine. Process servers charge money for their services.

Once the court receives the required information as to the whereabouts of the other party they will notify you that the order has been complied with and your nominated process server will confidentially correspond with the court to obtain the required information to serve the other party.

A Location Order stays in force for 12 months or longer if the court considers this appropriate. During the period the order is in place, the person to whom it applies must provide the information sought by the order as soon as practicable, or as soon as practicable after the person obtains it.

If your child is returned to you after a Location Order has been made, you must, as soon as practicable, notify the relevant agency or person.

How can Legal Aid WA help?

Legal Aid WA can give legal advice and assistance in relation to Commonwealth Information Orders/Location Orders. This includes, in some situations, help with urgent court applications.

Phone the Infoline on **1300 650 579** for free information about the law, to ask about our services and to find out how we can help you.

First Nations callers can phone Legal Yarn on **1800 319 803** to access a culturally safe telephone information service for Aboriginal and Torres Strait Islander People; staffed by mob, for mob.

The Infoline and Legal Yarn are open Monday - Friday from 9.00 am to 4.00 pm (Western Standard Time), except on public holidays.

If you are deaf or have a hearing or speech impairment, calls to the Infoline and Legal Yarn can be made using the [National Relay Service](#).


Alternatively, you can visit one of Legal Aid WA's [office locations](#).


We have a duty lawyer service called Family Advocacy and Support Services (FASS) located at the Family Court of WA in Perth, which provides legal advice and social support services to people affected by family violence. The duty lawyer service is a free drop in service (no appointment required) available Monday to Friday, 9am to 4pm which can help with urgent family law problems.

FASS is also available when the Family Court is on circuit in Broome, Kalgoorlie, Geraldton, Bunbury and Albany.

See more at Legal Aid WA's [Get Legal Help](#) page.

LEGAL AID WA CONTACTS

 **Infoline:** 1300 650 579

 **Legal Yarn:** 1800 319 803 (for First Nations callers)

 **Website/InfoChat:** www.legalaid.wa.gov.au

Interpreting and relay services to help you contact us:

 **Translating & Interpreting Service:** 131 450

 **National Relay Service:** 133 677

Perth office

32 St Georges Terrace,
PERTH WA 6000
1300 650 579
(08) 9261 6222

Great Southern Office

Unit 3, 43 – 47 Duke Street,
ALBANY WA 6330
(08) 9892 9700

Southwest Office

7th Floor, Bunbury Tower,
61 Victoria Street,
BUNBURY WA 6230
(08) 9721 2277

Midwest & Gascoyne Office

Unit 8, The Boardwalk,
273 Foreshore Drive
GERALDTON WA 6530
(08) 9921 0200

Goldfields Office

Suite 3, 120 Egan Street,
KALGOORLIE WA 6430
(08) 9025 1300

Pilbara Office

28 Throssell Road,
SOUTH HEDLAND WA 6722
(08) 9172 3733

West Kimberley Office

Upper Level, Woody's Arcade,
15 – 17 Dampier Terrace
BROOME WA 6725
(08) 9195 5888

East Kimberley Office

98 Konkerberry Drive
KUNUNURRA WA 6743
(08) 9166 5800

Indian Ocean Office

Administration Building,
20 Jalan Pantai, Christmas
Island, INDIAN OCEAN WA
6798 (08) 9164 7529

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