

Risk of removal of children from Australia

This infosheet can help you work out if there is a risk of children being removed from Australia, and some practical steps to take if you are worried about this.

Important!

If your ex-partner has your child and your child's passport, and you think they may try to leave Australia soon, you should get urgent legal advice. You may need to make an urgent application to the Family Court of WA to ask for orders to try and stop your child being taken overseas.

Passports

For a child to travel overseas, they will need a passport. If your child already has a passport, if possible, you should keep hold of it and keep it somewhere safe.

Can my ex-partner get an Australian passport for our child without my permission?

In most cases, to get an Australian passport for a child, both parents must agree and sign a passport application. This is required whether you are in a relationship or separated.

All people with parental responsibility (or decision-making power) for a child need to give their permission. If you cannot get the other parent's consent (or the consent of another person who has parental responsibility/decision-making power), you will usually need to apply to the Family Court of WA for orders allowing overseas travel and permission for your child to have an Australian passport.

The Minister can grant a passport for a child without permission from a person with parental responsibility/decision-making power, in some limited situations. Some examples include if they are satisfied there are 'special circumstances' or the child needs to travel overseas because of a family crisis.

What is parental responsibility (or decision-making power) and who has it?

Parental responsibility (or decision-making power) is a legal term used to describe the responsibility parents have to care for their child and the power parents have to make decisions for their child, including whether they can get a passport.

Parents have parental responsibility/decision-making power for their child until they are 18 years old unless a court order is made removing it.

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Parental responsibility/decision-making power is not affected by relationship changes and parents still have parental responsibility/decision-making power for their child after separation and if they re-marry.

The Family Court of WA can make an order giving parental responsibility/decision-making power to a person who is not the parent. For example, a grandparent who is the child's usual carer.

The Children's Court of WA can also make orders that affect parental responsibility/decision-making

power including protection orders which give the Department of Communities or a special guardian parental responsibility/decision-making power for a child.

My name is not on my child's birth certificate – can my ex-partner get a passport without my permission?

If there is only one parent named on a child's birth certificate, the parent (or another person who has parental responsibility/decision-making power) who is applying for a passport must complete an Australian Passport Office, Form B-8.

The purpose of this form is to assist the Australia Passport Office to determine if there may be any other person who is considered to have parental responsibility/decision-making power for the child.

The Form B-8 asks a number of questions including whether any other person has made a formal acknowledgement of parentage for the child and if they have received child support payments. It asks for the details of any other person who may have parental responsibility/decision-making power.

The person completing the Form B-8 must sign a declaration that they are aware it is a criminal offence to make false or misleading statements and penalties of up to 10 years imprisonment, or a fine, or both.

I'm worried my ex-partner will try to get an Australian passport for our child without telling me – what can I do?

If you are worried your ex-partner (or another person who has parental responsibility/decision-making power for your child) may try to get a passport for your child without telling you, you can request a child passport alert by lodging a Child Alert Request Form with the Australian Passport Office. To ask for a child passport alert, you must

How can I get a Child Alert Request form?

You can get a Child Alert Request form by:

- calling the Australian Passport Information Service on **131 232**
- visiting a passport office, or
- visiting your nearest Australian diplomatic or consular mission.

How can I lodge a Child Alert Request form?

Once you have completed the Child Alert Request form you can lodge it by:

- taking it to a passport office or an Australian diplomatic/consular mission
- mailing it to Passport Operations (PC9), GPO Box 9807, Perth, WA
- scanning and emailing it to perth.alerts@dfat.gov.au, or
- if you are overseas, scanning and emailing it to overseas.alerts@dfat.gov.au

have parental responsibility/decision-making power for the child.

If there is a child passport alert, the Australian Passport Office will look carefully at any passport application made for your child. However, it does not guarantee that the Australian Passport Office won't grant a passport for your child.

A child passport alert will stay in place for up to 12 months unless there is a court order which says something different.

Can my ex-partner get a passport for our child from another country?

Different countries have different rules about passports for children. Not all countries require

both parents to agree and sign a passport application for a child.

If you think your child may be eligible for a foreign passport, contact the embassy or consulate of the foreign country to get more information. Check if your child is eligible for a passport and whether both parents are required to sign the passport application. If it is possible for your ex-partner to get a passport for your child without your permission or knowledge, you should get legal advice about your situation.

Family Law Watchlist

What is the Family Law Watchlist?

The Family Law Watchlist (Watchlist) is designed to alert the Australian Federal Police (AFP) if a child is leaving Australia.

If a child's name is on the Watchlist and the alert is activated, the child will not be allowed to leave Australia.

How can I have my child's name placed on the Family Law Watchlist?

To have your child's name placed on the Watchlist you will need to have a Family Court order which requires the AFP to place your child on the Watchlist.

To have your child's name placed on the Watchlist you will need to have a Family Court order which requires the AFP to place your child on the Watchlist.

If you have made an application to the Family Court of WA to stop your child travelling overseas or have lodged an appeal to prevent overseas travel, you can make an application yourself to the AFP to place your child's name on the Watchlist. To do this, you need to complete a Family Law Watchlist

Request Form. The request form is available on the Australian Federal Police website: www.afp.gov.au

You will need to provide the AFP with a sealed copy of your Application or Appeal documents. Sealed means the documents you have lodged with the Family Court of WA have been stamped by the court.

What other orders can I ask the Family Court of WA to make?

Will the court case be ongoing?

If you make an application to the Family Court of WA for your child's name to be placed on the Watchlist and other orders about travel, this will start an ongoing case about your child.

The court proceedings may deal with other issues about your child, not just overseas travel. For example, the case might deal with the issue of how much time your child will spend with both parents and how decisions about your child will be made in the future.

The court proceedings will be ongoing until the case ends either by you reaching a final agreement with the Respondent, or the court making a decision about final orders after a trial.

It is recommended you seek legal advice before starting a case in the Family Court of WA.

You can ask the Family Court of WA to make other orders about overseas travel including an order restraining your ex-partner (or another person) from taking or sending your child overseas. This type of order is called an 'injunction'.

You can also ask for orders about what should happen with your child's passport. For example, you may wish to ask for an order that your child's passport be returned to you or held by the Family Court.

Do I have to tell my ex-partner that I'm asking for our child's name to be placed on the Watchlist?

Sometimes, in very urgent cases, you can ask the court to hear your application for your child's name to be placed on the Watchlist without your ex-partner (or another person involved in the case) being told about the court hearing. The legal name for this type of hearing is an "*ex parte* hearing".

The court will only do this in cases where there is a very good reason to hear the application without the other person being told about it first.

If you want an *ex parte* hearing of your application, you will need to ask for this in your letter to the court. You lodge your letter to the court asking for an *ex parte* hearing on the eCourts Portal of WA at the same time as you lodge your other court documents asking for your child's name to be added to the Watchlist.

If you are not sure whether you should ask for an *ex parte* hearing, you should get legal advice, if possible.

How can I make an application to the Family Court of WA for my child's name to be placed on the Family Law Watchlist?

To make an application to the Family Court of WA for your child's name to be placed on the Family Law Watchlist, you will need to fill in a number of court forms and lodge these on the [eCourts Portal of WA](#).

You can find step-by-step practical information about how to register for the eCourts Portal of WA and lodge your Family Court of WA documents in the infosheet, [Family Court of WA: Signing and filing documents](#).

Where can I find the court forms?

You can find the court forms you need to complete for orders to stop your child traveling overseas on the Family Court of WA website: www.familycourt.wa.gov.au

On the top right hand side of the Family Court of WA homepage, click on the 'Forms and Resources' tab and then 'Forms' in the drop down menu.

In the 'Forms' drop down menu, the forms you will need to complete can be found under the heading 'Parenting'.

The forms to ask for a court filing fee exemption can be found under the heading 'Fees'.

Do I have to pay a filing fee?

There are filing fees unless the court approves an exemption or deferral of fees.

See the Family Court of WA [website](#) for current fees.

To pay the filing fee, you will need a VISA or Mastercard credit/debit card. If you do not have a card, you can get a pre-paid card from the Post Office.

If you are not able to get a fee exemption but cannot afford to pay the court filing fee, you can ask to pay at a later time.

To ask to pay at a later time, you need to complete a Payment of Court Fees – Request for Deferral (Form NP9).

Can I get a fee exemption?

If you have one of the following Commonwealth Concession Cards, you can get a fee exemption by providing your Centrelink CRN number when you lodge your application on the eCourts Portal of WA:

- Health Care Card
- Pensioner Concession Card
- Commonwealth Senior Health Card, or
- any card from Centrelink or the Department of Veterans' Affairs that entitles you to Commonwealth Health Concessions.

If you are receiving Austudy, Abstudy or Youth Allowance, you can get a fee exemption by providing your CRN number.

If you can show proof of one of the following, you can ask for a fee exemption by completing a Fee Exemption - General (Form NP13):

- you are receiving Legal Aid, or
- you are aged under 18 years.

If you don't fit in to any of the above categories, but you can show that the fee will cause you financial hardship, you can ask for a fee exemption by completing a Fee Exemption – Financial Hardship (Form NP14).

You need to show that your income, day-to-day living expenses, debts and assets would mean that if you the paid the fee, it would cause you financial hardship.

When do I need to lodge my request for a fee exemption?

If you are asking for a fee exemption, you will need to lodge the form on the eCourts Portal of WA and have the exemption approved by the court, before you can lodge your application.

What documents do I need if I already have a case in the Family Court of WA?

If you already have a case in the Family Court of WA about your child, you will need the following documents:

1. A letter to the court asking for an urgent hearing of your application for orders to stop your child travelling overseas. You need to tell the court in your letter why your situation is urgent. If you would like an *ex parte* hearing you need to ask for this in your letter and tell the court why you need one.
2. A Form 2 – Application in a Case.
3. An Affidavit – General. In your Affidavit you can tell the court about what has happened and why you are worried your child might be taken overseas. Your Affidavit must be sworn or affirmed before a Justice of the Peace or Lawyer.

Example orders for Form 2 – Application in a Case

The following are example orders for a Form 2 – Application in a Case:

1. That until further order, the Respondent [insert FULL NAME and date of birth] and their servants and/or agents be restrained from removing the child/ren [insert FULL NAME and date of birth] from the Commonwealth of Australia.
2. There be an order in the usual terms placing the child on the Family Law Watchlist for a period of [insert either 2 years or until 18 years].

What documents do I need if I don't have a case in the Family Court of WA?

If you don't already have a case in the Family Court of WA about your child, you will need the following documents:

1. Your marriage certificate (if you were married).
2. Your child's birth certificate.
3. 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 to ask for a fee exemption.
4. Fee Exemption – General (Form NP13) or Fee Exemption- Financial Hardship (Form NP14) if you don't have a Commonwealth Concession Card and want to apply for a fee exemption.
5. A letter to the court asking for an urgent hearing of your application. You need to tell the court in your letter why your situation is urgent. If you would like an *ex parte* hearing you need to ask for this in your letter and tell the court why you need one.
6. Family Dispute Resolution – Exemption Form (Form NP1).
7. Form 1 – Initiating Application.
8. Case Information Affidavit (Form NP3).

What if I don't have a copy of my marriage certificate or child's birth certificate?

If you are missing your marriage certificate or child's birth certificate, you need to give an undertaking (make a promise) in your letter to the court that you will get the missing document and provide it to the court as soon as possible.

Example final orders for Form 1 – Initiating Application

The following are example orders for a Form 1 – Initiating Application:

1. The children live with the Applicant.
2. The Applicant have leave to particularise their final orders at a later stage (you can include this if you are unsure about what final arrangements you would like put in place.)

Example interim orders for Form 1 – Initiating Application

1. That until further order, the Respondent [insert FULL NAME and date of birth] and their servants and/or agents be restrained from removing the child/ren [insert FULL NAME and date of birth] from the Commonwealth of Australia.
2. There be an order in the usual terms placing the child on the Family Law Watchlist for a period of [insert either 2 years or until 18 years].

How do I serve documents on the Respondent?

Service is the process of someone personally handing documents to the Respondent. The documents cannot be sent to the Respondent by post or electronically, unless the court has given special permission for you to do this.

You will need to arrange for someone else to serve the Respondent with your court documents. You are not allowed to do this yourself. The server must be someone over 18 years of age. This could be a friend or family member.

You can also use a private process service. You would need to pay for this service so it is best to contact a few different services to check their fees.

The person who is going to serve the documents will need:

- an address for the Respondent (this could be their home, work place, or somewhere else you think they are most likely to be), and
- a photo of the Respondent if they do not know them.

If the Respondent refuses to take the court documents when the person tries to serve them, the server needs to place the documents as close as possible to the Respondent and try to tell them what the documents are. They must not leave the documents with someone else.

If you cannot find the Respondent to serve the court documents, keep a record of what enquiries you have made to try and find them and the efforts you have made to try and serve them. The court will want to know about this next time your case is in court. You should also get legal advice and assistance, if possible.

What does the term service mean?

Service is the legal term for the formal process of giving a sealed copy of court documents to the Respondent. Sealed means the documents have been filed and stamped as received by the court.

You need to give the Respondent a copy of your court documents so they can see what you wrote in your application and have a chance to respond.

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When do I serve the Respondent?

In most cases, you need to serve the Respondent with your court documents after you have lodged them on the eCourts Portal of WA, they have been sealed by the court and you have been given a court date.

You need to make sure the Respondent is served with your court documents before the court hearing. However, if the court gives permission for an *ex parte* hearing of your application, you need to serve the Respondent with your documents after the court hearing.

What documents do I need to serve the Respondent with?

You will need to serve the Respondent with a copy of the following sealed court documents:

- all court documents you have filed with the court (you don't need to give them a copy of Fee Exemption forms)
- the letter you wrote to the court, and
- the court orders (if orders were made at an *ex parte* hearing).

What service documents need to be lodged on the eCourts Portal of WA?

After the Respondent has been served with a copy of your sealed court documents, there are some extra forms which need to be completed and lodged on the eCourts Portal of WA.

- Affidavit of Service (Form 7) – fill out parts A – C to help the person serving the documents. The server will need to fill out Part D after they have served the documents and then sworn or affirmed before a Justice of the Peace or Lawyer.
- An Acknowledgement of Service (Form 6) – the server can ask the Respondent to sign this form to confirm they have been served with the documents. If the Respondent refuses to sign the form, there are other ways service can be proven.

You need to lodge these forms on the eCourts Portal of WA before your next court hearing. If you don't have time to do this before the court hearing, you should take the forms with you to the hearing and tell the court you have them.

What happens at the court hearing?

There will be a court hearing about your application before a Magistrate or Judge. You will need to attend this 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.

If the Respondent attends the court hearing, they will be given an opportunity to tell the court their side of the story and any concerns they may have.

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

How can Legal Aid WA help?

Legal Aid WA can give legal advice and assistance to people who are worried that their child may be taken overseas without permission. This includes, in some situations, help with urgent court applications. To find out what assistance we can give you, call the Legal Aid WA Infoline on **1300 650 579** Monday to Friday, 9am to 4pm.

We have a duty lawyer service located at the Family Court of WA in Perth which provides Family Advocacy and Support Services (FASS) including 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 including applications to prevent a child being taken overseas.

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

What if my child has already been taken overseas?

Information about what you can do if your child has already been taken overseas can be found on the Attorney-General's Department website: www.ag.gov.au

Australia is part of an international agreement, the Hague Convention on International Child Abduction, which covers applications and arrangements for children to be returned to Australia if they have been wrongfully taken or kept overseas.

International Social Service (ISS) Australia can give free legal advice and assistance if your child has been abducted to a Hague Convention country. You can contact ISS by calling **1300 657 843**.

LEGAL AID WA OFFICES



Infoline: 1300 650 579



Translating & Interpreting Service:
131 450



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



National Relay Service: 133 677
(for hearing and speech impaired)

Perth Office

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

Midwest & Gascoyne Office

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

West Kimberley Office

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

Great Southern Office

Unit 3, 43-47 Duke Street,
Albany, WA 6330
(08) 9892 9700

Goldfields Office

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

East Kimberley Office

98 Konkerberry Drive,
Kununurra, WA 6743
(08) 9166 5800

Southwest Office

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

Pilbara Office

28 Throssell Road,
South Hedland, WA 6722
(08) 9172 3733

Indian Ocean Office

Administration Building,
20 Jalan Pantai, Christmas Island,
Indian Ocean, WA 6798
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