

# Family Court of WA: Recovery orders

This infosheet has information about recovery orders including what they are and how you can make an application for a recovery order in the Family Court of WA.

## What is a recovery order?

A recovery order is a type of order made by the Family Court of WA for the return of a child. It gives the police the power to find and remove a child from the person keeping them and return them to the person who has applied for the recovery order. A recovery order is most commonly made in urgent situations where a child has been removed from their usual carer and the child is at risk.

A recovery order can be made when a child has been taken somewhere in Australia. If your child has been taken overseas, you should get urgent legal advice.

## Who can ask for a recovery order?

Most commonly it will be a parent of a child who asks the court for a recovery order as they are typically a child's main carer (often called the primary carer).

However, anyone who cares for a child or is concerned about their care, welfare and development can ask for a recovery order. You do not have to be biologically related to a child to be able to ask for a recovery order. For example, a close family friend who is concerned about a child's welfare can apply for a recovery order.

## How quickly do I need to act?

It is important to act quickly. If you don't act quickly and take steps to try and have your child returned to you, it may be difficult to get a recovery order. Typically, a recovery order application is made to the Family Court of WA within a couple of days of a child being removed or failing to be returned to their usual carer.

## Do I need to already have court orders to ask for a recovery order?

You don't need to already have court orders about your child to apply for a recovery order.

If you don't already have court orders in place about your child, you will need to ask for an order for your child to "live with" you at the same time as asking for a recovery order.

There are also different forms you need to fill in depending on whether or not you already have court orders in place about your child.

## Can the police help return my child without a recovery order?

**If you are worried your child is in immediate danger, you should call the police on 000.**

If you are worried your child is in immediate danger, you should call the police on **000**. In less urgent situations you can visit your local police station or call **131 444**. The police may be able to do a welfare check on your child.

In most situations, the police do not have the power to remove a child from the person keeping them if there is a disagreement about who should be the child's carer. This is the case even if you already have court orders which say your child is to live with you. You will still need a recovery order.

## How does the court decide about making a recovery order?

The court can decide to make a recovery order for the return of a child if it believes this is in the best interests of the child.

The term “best interests of the child” has a special legal meaning and the court has to take into account a number of considerations when working out what orders are in a child’s best interests.

The primary considerations the court must consider when deciding what arrangements are in a child’s best interests are:

- the need to protect them from physical or psychological harm, abuse, neglect or family violence – including being exposed to these (for example, a child seeing or hearing family violence), and
- the benefit of them having a meaningful relationship with both of their parents.

While both primary considerations are important the most important consideration, above anything else, is the need to protect a child’s safety. The law makes this clear.

For more information, see the Infosheet [Best interests of children](#).

## Do I have to talk to the person who has kept my child before asking for a recovery order?

In most cases the court will expect you to try to talk to the person who has your child and ask them to return your child before you ask the court for a recovery order.

This could include calling them and sending messages asking them to return your child. You should keep a record of all your attempts to have your child returned to you. If your child is not returned and you apply for a recovery order, you will need to tell the court about the attempts you have made.

If a recovery order is made the police may become involved which is usually traumatic for the child and other people involved and the court will want to know you have tried all other options first.

However, if there has been family violence or child abuse, or you are worried there is a risk of these, it may not be safe for you to try to organise your child’s return yourself.

**If you feel unsafe about talking to the person who is keeping your child and are worried about how they might react, you should get legal advice before trying this.**

If you feel unsafe about talking to the person who is keeping your child and are worried about how they might react, you should get legal advice before trying this. A lawyer can give you advice about your situation and your options.

You can find information about where you can get legal help with recovery orders at the end of this infosheet.

## Do I have to tell the person who has kept my child that I'm asking for a recovery order?

Sometimes, in very urgent cases, you can ask the court to hear your application for a recovery order without having to tell the person who has your child. 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 recovery order 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 a recovery order.

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

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## How can I make an application to the Family Court of WA for a recovery order?

To make an application to the Family Court of WA for a recovery order, you will need to fill in a number of court documents 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](#).

## What if I live in regional WA?

If you live in regional WA (outside of the Perth metropolitan area) you can ask for your recovery order application to be heard by the Family Court of WA or a regional Magistrates Court. However, most urgent recovery order applications will be heard by the Family Court of WA in Perth.

If you want to try and have your case heard in a regional Magistrates Court you need to lodge your application at that court. You will also need to ask for permission to lodge your documents by hand with the court (rather than on the eCourts Portal of WA). You can ask for permission to do this in your letter to the court which you lodge with the court at the same time as your other documents.

If your court hearing is in the the Family Court of WA in Perth, you can ask for permission to attend by telephone. You need to ask the Respondent if they agree to you attending the court hearing by telephone (you don't need to ask them if it is an *ex parte* hearing). You then need to complete a Request to Attend By Electronic Communication form and lodge this on the eCourts Portal of WA.

If your Family Court of WA case is ongoing, future court hearings may be heard by the court when it travels on circuit. The Family Court of WA travels on circuit to Albany, Broome, Bunbury, Geraldton and Kalgoorlie.

## Where can I find the court forms?

You can find the court forms you need to complete for a recovery order application on the Family Court of WA website: [www.familycourt.wa.gov.au](http://www.familycourt.wa.gov.au)

On the top right handside 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 for a recovery order application can be found under the heading 'Parenting' and the forms to ask for an exemption for the court filing fee can be found under the heading 'Fees'. The form to request to attend by telephone can be found under the heading 'Electronic Attendance'.

## What documents do I need if I already have court orders?

If you already have orders which were made by the Family Court of WA which say that your child is to live with you, you will need the following:

1. A letter to the court asking for an urgent hearing of your recovery order 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.
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 any risk issues for your child. Your Affidavit must be sworn or affirmed before a Justice of the Peace or Lawyer.
4. A copy of your Family Court of WA orders (attach these to your Affidavit).

## Example orders for Form 2 – Application in a Case

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

1. That as and by way of enforcement of paragraph [insert the paragraph number of the order that say your child is to live with you] of the orders dated [insert date of orders] a recovery order issue in the usual form for the child [insert FULL NAME and date of birth] to return to the care of the Applicant.
2. These proceedings be otherwise dismissed.

## What documents do I need if I don't have court orders?

If you don't already have court orders 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 wish to apply for a fee exemption.
5. A letter to the court asking for an urgent hearing of your recovery order 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).

## Example final orders for Form 1 – Initiating Application

The following are some example final 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 to put in place).

## Example interim orders for Form 1 – Initiating Application

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

1. The matter be dealt with on an urgent *ex parte* basis (if you are asking for this).
2. A recovery order issue in the usual terms for the child, [insert FULL NAME and date of birth] to return to the care of the Applicant.
3. The child [insert FULL NAME and date of birth] to live with the Applicant.
4. The Respondent be restrained, and an injunction be granted restraining them from removing the child from the care or control of the Applicant, any school attended by the child, and any third person or other agency with whom the Applicant entrusts the child's care.

## What if I am missing 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 writing that you will get the missing document and provide it to the court as soon as possible.

## Do I have to pay a filing fee?

If you are lodging a Form 2 – Application in a Case, you do not need to pay a filing fee.

If you are lodging a Form 1 – Initiating Application, there is a filing fee of **\$515** unless the court approves an exemption or deferral of 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,
- you are aged under 18 years.

If you don't fit in to any of the above, 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.

If you are asking for a fee exemption by completing a Fee Exemption General or Financial Hardship Form, 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 recovery order application.

## 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 stamped 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.

## 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 recovery order application, you need to serve the Respondent with your documents after the court hearing.

If a recovery order is made by the court, you should wait for your child to be returned to your care before you serve the Respondent with your court documents.

## 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, if you filed one of these),
- the letter you wrote to the court, and
- the court orders.

You can print your sealed documents directly from your eCourts Portal of WA account. Print two copies of the documents, one for yourself and one to serve on the Respondent.

## 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 permission for you to do this.

You will need to arrange for someone else to serve the Respondent with your court documents. 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 server. You would need to pay for this service so it is best to contact a few different services to check their fees.

### What will the person serving the documents need?

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, the server needs to place the documents as close as possible to the Respondent and try to tell them what the documents are. The server must leave the documents with the Respondent and not 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 your attempts to serve the Respondent the next time your case is in court.

If you are having trouble serving the Respondent you should also get legal advice and assistance, if possible.

## 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 swear or affirm 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 recovery order 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 of 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 that 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.

## What happens with my court case after my child is back in my care?

If you have filed a Form 2 – Application in a Case, whether the court proceedings will be ongoing will depend on if you have interim or final orders in place. If you already have final orders about your child, the proceedings will usually end once your child is back in your care.

If you have interim orders, 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.

If you have filed a Form 1 – Initiating Application, at the recovery order hearing, the court will set another court date in the future. The proceedings will be ongoing.

## Where can I get help with a recovery order?

Legal Aid WA can give legal advice about recovery orders and provide assistance, including 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 recovery orders.

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

# LEGAL AID WA OFFICES



**Infoline:** 1300 650 579



**Translating & Interpreting Service:**  
131 450



**Website/InfoChat:**  
[www.legalaid.wa.gov.au](http://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  
(08) 9164 7529

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