# Recovery order kit

A recovery order is a court order telling the Australian Federal Police (AFP) to find, recover and deliver a child to:

* a parent
* 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 of the child.

If you are concerned for the safety or welfare of a child, contact your State or Territory child welfare service or your local police.

If you have immediate concerns that a child is in danger or at risk of abduction, contact the police in your State or Territory on Triple Zero (000).

## Who can apply for a recovery order?

* 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;
* A grandparent of the child; or
* A person concerned with the care, welfare and development of the child eg: you may be the person who the child lives or spends time with but there is no parenting order that says so.

## Purpose of this kit

To provide information for parents without a lawyer to prepare and file an application to the Federal Circuit and Family Court for a recovery order.

**This kit is a general guide to preparing your application. It is not legal advice. You should talk to a lawyer about your specific situation.**

Important: If you decide to go to court and are unsuccessful, the court may order you to pay the other party’s legal costs. As such, it is important that you get legal advice before continuing with this matter.

## Contents of kit

This kit explains the process of applying for a recovery order.

The kit includes links to court forms and brochures from the Federal Circuit and Family Court website at: [www.fcfcoa.gov.au](http://www.fcfcoa.gov.au) The kit also has examples to help fill in the paperwork.

Kit Contents:

1. court form – [initiating application](https://www.fcfcoa.gov.au/fl/forms/initiating-app-kit)
2. court form – [notice of child abuse, family violence or risk](https://www.fcfcoa.gov.au/fl/forms/notice-cafvor)
3. court form – [blank affidavit](https://www.fcfcoa.gov.au/forms/affidavit)
4. court form – [genuine steps certificate](https://www.fcfcoa.gov.au/fl/forms/genuine-steps-fl)
5. court form – [parenting questionnaire](https://www.fcfcoa.gov.au/fl/forms/questionnaire-parenting)
6. court form – [service kit](https://www.fcfcoa.gov.au/forms/service-kit)
7. court brochure - [marriage, families & separation](https://www.fcfcoa.gov.au/fl/pubs/marriage-families-separation)
8. court brochure – [preparing an affidavit](https://www.fcfcoa.gov.au/pubs/preparing-affidavit)
9. orders to seek in your application – *see attached*
10. Example affidavit – *see attached*
11. List of people who can witness your affidavit – *see attached*
12. [AFP Recovery Order Family Law Information Sheet](https://www.afp.gov.au/sites/default/files/PDF/RecoveryOrderInformationSheet-04092020.pdf)

## Summary of necessary steps

To apply for a recovery order you need to:

1. Fill in court documents.
2. File documents at Court.
3. Serve the other parent.
4. Fill in proof of service documents.
5. Attend the hearing.
6. Arrange service of court order on the Australian Federal Police.
7. Advise the Court.

### Step 1: fill in court documents

#### The initiating application

The *Initiating application* *form* tells the court what orders you want. See the example wording you can use; and complete the missing details required.

In addition to a Recovery Order, you should also seek Parenting Orders for who the child lives with and the time (if any) they should spend with the other parent or person.

Complete the other pages of the form. Make sure all the details are accurate and you understand what orders you are asking for.

You must sign the *Initiating application form* on the last page in the declaration of truth.

**The parenting questionnaire**

Complete this questionnaire by following the instructions on the form. Once completed, use the information in this form to help you complete the affidavit. It is important both of these documents are consistent in what they tell the court.

**The affidavit**

An *affidavit* is a written statement setting out the facts of a case in your own words. The purpose of this document is to tell the court your evidence in support of the orders you want. Your affidavit must not be longer than 10 pages.

Your affidavit must include:

* The reasons why you believe the child needs to be returned to you urgently, eg: in order to protect the child from physical or psychological harm from being subjected to , or exposed to abuse, neglect or family violence.
* Issues that affect the other parent or person’s capacity to care for the child, eg: drug and alcohol use, mental health issues or a history of family violence.
* The address where you believe the child is, or where the other parent or person who has the child can be found so the AFP can be directed to attend this address.
* Whether there were care arrangements or court orders in place for the child before the child was removed or retained.

Use the suggested paragraphs in the example affidavit as a guide to write your affidavit. Read the brochure *preparing An affidavit*.

An affidavit must contain facts and observations only. It should not contain belief or opinion. You cannot put in anything that is not true. Swearing an affidavit that contains false statements is a serious offence called perjury. It carries a maximum penalty of 15 years imprisonment.

You must sign the *affidavit* in front of an authorised witness. Refer to the list of authorised witnesses included with this kit.

#### The notice of child abuse, family violence or risk

The *notice of child abuse, family violence or risk* tells the court any concerns about abuse or family violence you may have for the child. You must complete this form even if you have no concerns about the child. Refer to Affidavit and parenting Questionnaire to ensure that the information across all 3 documents is consistent.

You must sign the *notice of child abuse, family violence or risk* on the last page.

**The genuine steps certificate**

Complete this certificate by following the instructions on the form. If your matter is urgent, pay attention to question four in Part B of this form. Address the reasons for urgency in your affidavit. In matters of urgency, the court is more understanding if its usual requirements for negotiation are not met.

You must sign the *genuine steps certificate* on the last page.

### Step 2: file documents at court

Once you have filled in and signed the *Initiating Application, Notice of Child abuse, family violence or risk, Affidavit, Parenting Questionnaire* and the *Genuine Steps Certificate,* then you file these documents in the Federal Circuit and Family Court.

Options to file your documents:

Ideally, especially if the matter is urgent, personally attend the court to file your completed paperwork. Before you attend, make two photocopies of each completed document and take the originals and all copies with you to the court.

If you live in or are close to the Melbourne Metropolitan Area, the Federal Circuit and Family Court registries are located at:

* 305 William Street in Melbourne and
* 53-55 Robinson Street in Dandenong.

Before attending a court registry, check first it is not closed due to COVID lockdowns.

Where your matter is urgent, arrive at the court registry in the morning. Tell the counter staff your matter is urgent and why so that your documents can be processed quickly and given an earlier hearing date than normal.

If you are unable to file your documents in person, and your matter is urgent, then scan each document and email all to the court at:

* melbourne@fcfcoa.gov.au (Melbourne registry); or
* dandenong@fcfcoa.gov.au (Dandenong registry)

Type in your email subject line: *URGENT – Application for a recovery order, matter to be heard ex parte, [YOUR FULL NAME*]. This helps your matter get the attention of court staff monitoring the court inbox and a quicker response. Include details explaining the reasons for urgency. Refer to this sample below:

*Dear Sir or Madam,*

*Please see attached court documents for filing, being an Application for a recovery order. I have provided Initiating application; Affidavit; Notice of child abuse, family violence or risk; Genuine Steps Certificate; Parenting Questionnaire and Fee exemption form.*

*I seek that my child [FULL NAME born DOB]be immediately returned to my care. The child’s [MOTHER/FATHER] has withheld the child since [DATE].*

*This matter is urgent because [SET OUT REASONS]*

*Please provide a copy of the sealed court documents by return email.*

*Kind regards*

The third way to file your documents is online via the Commonwealth Courts Portal at: [www.comcourts.gov.au](http://www.comcourts.gov.au/). To use the portal, you will need to first register. Follow the instructions on the portal website to open an account. Use the chat function to seek any assistance with this task. If you matter is urgent, then include a letter explaining the reasons why when uploading your documents to the portal.

Whichever way you file, there is a fee for filing your paperwork. Ask court staff how much it costs or check the [court website](https://www.fcfcoa.gov.au/fl/fees/fl-fees). If you have certain government concession cards you may not have to pay the filing fees. Download the [*Application for exemption of filing fees (general)*](https://www.fcfcoa.gov.au/fl/forms/app-fee-exemption-gen) *form* to see if you are eligible.

If you do not have one of those concession cards you may not have to pay on financial hardship grounds. Download the [*Application for exemption of filing fees (financial hardship)*](https://www.fcfcoa.gov.au/fl/forms/app-fee-exemption-fin) form to check if you are eligible.

Once received, the Court will assess the urgency of your application and list it for hearing on the same day (if considered sufficiently urgent), or on another date.

If you file your documents in person, then the Court will keep the originals and hand you back two stamped copies of your paperwork and tell you your hearing date. That is the date you come back to court and the court decides whether to make the orders. Keep one copy of the documents. The remaining copy must be given to the other party (see Step 3). If you file via email, then the court registry will email you stamped copies of your paperwork. If you file on the portal, then email confirmation is sent once the process is completed.

### Step 3: serve the other parent

You must notify the other parent that:

* You have made an application to the court
* When the hearing is to be held

This is called ‘service’ or ‘being served’. Somebody must hand deliver (called ‘personal service’) to the other parent:

* The *initiating application, notice of child abuse, family violence or risk, affidavit, parenting questionnaire* and *genuine steps certificate.*
* *copy of the Marriage, Families and Separation brochure.*

You **must not** serve the other parent yourself. Organise for another person aged 18 years or older to do it on your behalf. For a fee, you can get a process server to serve the documents on your behalf. Process servers are listed in the Yellow Pages. See the Service kit for more information.

If you have problems serving the other parent, contact the VLA Legal Help advice line on 1300 792 387 for further advice.

If your application is listed for hearing the same day it is filed, then service will happen after the court hearing and not before.

### Step 4: fill in proof of service documents

When they are served, the other parent may sign an [*Acknowledgment of service*](https://www.fcfcoa.gov.au/forms/acknowledgment-service)form*.* This confirms that they have been served. The other parent may not agree to this.

The person who hand delivers the documents for you must also complete an [*Affidavit of service*](https://www.fcfcoa.gov.au/forms/affidavit-service)form*.* In this they swear that they served or attempted to serve the other parent. This form must also be sworn or affirmed like your affidavit.

These documents are proof of service documents. They prove to the court that you have served the other parent as required by the court rules. If you get a process server to do this, they should prepare these documents as part of their fee.

You will need to file the *acknowledgement of service form* if you have one, and the *affidavit of service form* in court prior to the hearing. Follow the same steps you used to file your original documentation.

If you are unable to serve the other parent or person, and you have taken all reasonable steps to do so, then you may consider scanning the court paperwork and sending to them by email or private Facebook message. At the least, try to send a text message, WhatsApp message etc, telling the other parent or person of the date of the court hearing. Bring with you to court printed copies of your attempts to contact that other parent or person electronically.

### Step 5: attend the hearing

Whether your application is listed for hearing the same day you file or on a later day, make sure you attend the court hearing. Check whether it is to happen online or in person.

If in person, then be at the correct court room at least 30 minutes before the scheduled hearing time and advise the court staff that you are appearing without a lawyer. Court staff will call your matter. This is when you go into the courtroom. The judicial officer will read your documents and may ask you further questions about your application.

In deciding whether or not to make a recovery order, the court must consider the best interests of the child as the paramount consideration.

 If the court makes the order you want, the court will prepare the recovery order the same day. Wait at court until the order is ready for collection. The court may also make orders for the day to day care of the child until the child is returned or until the next hearing date. The court will order an adjournment (put off) your case for further hearing.

### Step 6: arrange service of court order on the afp

Once you have the recovery order from the court, then it is your responsibility to notify the AFP of the order.

 As soon as practicable send by fax or email to the AFP:

* A completed AFP Recovery Order Family Law Information Sheet form;
* An original sealed copy of the Recovery Order;
* A certified copy of your ID (usually your passport or driver’s licence)

AFP contact details: Phone: (02) 6126 7777 Email: AOCC-Family-Law@afp.gov.au

Include a cover letter explaining what the matter is about. It is also helpful to send photographs of the child as well.

Court staff may provide you with a copy of the AFP form to complete at court. At Melbourne registry, check if court staff may assist by sending the order to the AFP on your behalf.

Important: if the child is found interstate, it is not the responsibility of the AFP to return the child to you in Victoria. You need to make your own travel arrangements to be close to where the child is recovered from. Sometimes the Salvation Army and other charities can be contacted to provide some financial assistance if you have far to travel.

### Step 7: tell the court

When the child is returned to you by the AFP, you must tell the court staff as soon as practicable.

## Contacts for further assistance

### Victoria Legal Aid

For free information about the law and how we can help you, call Legal Help on 1300 792 387

Monday to Friday, 8 am to 6 pm, excluding public holidays.

### Djirra

Culturally safe legal advice and representation on family law matters for Aboriginal people.

Tel: 1800 105 303

[www.djirra.org.au](http://www.djirra.org.au)

### Federation of Community Legal Centres

Call to find out your nearest community legal centre.

Tel: (03) 9652 1500

[www.fclc.org.au](http://www.fclc.org.au)

### Law Institute of Victoria

Referral to a private lawyer.

Tel: (03) 9607 9550

### Victorian Aboriginal Legal Service

Culturally safe family law assistance for Aboriginal and Torres Strait Islander peoples in Victoria.

Tel: 1800 064 865

[www.vals.org.au](http://www.vals.org.au)

 2021 Victoria Legal Aid. Reproduction without express written permission is prohibited. Written requests should be directed to Victoria Legal Aid, Research and Communications, 570 Bourke Street, Melbourne Vic 3000.

Disclaimer. The material in this publication is intended as a general guide only. The information should not be relied upon as legal advice, and should be checked carefully before being relied upon in any context. Victoria Legal aid expressly disclaims any liability howsoever caused to any person in respect of any legal advice given or any action taken in reliance on the contents of this publication.