

# Relocating & Recovery Orders

Can you relocate with your children?

What do you do if the other parent has taken the children without your consent?

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PRINCIPAL



# Guideline

For general information purposes only

The following guide is given as general information only and may or may not be suited to your specific needs. Always seek legal advice to ensure that your particular circumstances are met.

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# What is Relocation in Family Law?

Relocation refers to the act of one parent moving a child to a different location, either within Australia or internationally, in a way that significantly affects the existing parenting arrangement or the other parent's ability to spend time with the child.

If you wish to move with your child and the other parent disagrees, or if the other parent has moved without your consent, you may need to seek court intervention.

## Seeking Permission to Relocate

If you want to relocate with your child and the other parent does not agree:

### 1. Attempt Negotiation or Mediation:

- You must make a genuine effort to reach an agreement. Family Dispute Resolution (FDR) services, like mediation, can help you discuss options in a neutral setting. In many cases, attending FDR is required before going to court.

### 2. Apply to the Court:

- If mediation is unsuccessful, you can apply for a relocation order. The court will decide based on what is in the best interests of the child, which includes factors such as:
  - The child's relationship with each parent and other family members.
  - The reasons for the relocation (e.g., job opportunity, closer to family support).
  - How the move will impact the child's stability, education, and emotional well-being.

### 3. Present Your Case in Court:

- Prepare documents and evidence showing why the relocation is necessary and how you will facilitate the child's relationship with the other parent. This might include visitation plans, travel arrangements, or virtual contact options.

# Responding to an Unauthorized Relocation

If the other parent has relocated without your consent or a court order, you can:

- Apply for a Recovery Order: If the move breaches an existing order, a Recovery Order can return the child.
- Seek a Relocation Order: You may also ask the court to specify the child's living arrangements, ensuring they remain in their current location or return if already moved.

The court may assess both parties' arguments and decide where the child should live and what arrangements will best support the child's welfare and relationships.

## What is a Recovery Order?

A Recovery Order is a legal order issued by the Family Court of Australia or the Federal Circuit and Family Court of Australia. It allows law enforcement, typically the Australian Federal Police (AFP), to locate and return a child who has been unlawfully removed or retained by one parent or another party without proper consent.

If your child has been taken by the other parent or another person in a way that breaches your custody arrangement or prevents you from having lawful contact, you may be eligible to seek a Recovery Order.

# When Can I Apply for a Recovery Order?

You may apply for a Recovery Order if:

- You have parental responsibility for the child, or
- There is an existing parenting order or parenting plan that the other person has violated by relocating or withholding the child.

The court will assess whether issuing a Recovery Order is in the child's best interests, focusing on factors like:

- The welfare, safety, and needs of the child.
- Any history of family violence or abuse.
- The reasons for the child's removal or retention.

# Steps to Apply for a Recovery Order

## 1. Complete Your Application:

- If you already have a case in Family Court, use Form 2 – Application in a Case, along with an Affidavit explaining the circumstances of the child’s removal or retention, your current relationship with the child, and why a Recovery Order is necessary.
- If there are no current proceedings and you want to apply for a recovery order, you need to include your application for a recovery order in an Initiating Application where you will seek final and interim parenting orders.

## 2. Prepare Supporting Evidence:

- Provide any evidence that helps the court understand your relationship with the child and the situation leading to the application. Include court orders, text messages, emails, and documents showing your existing rights to custody or visitation.

## 3. File the Application:

- File your application with the court. You can do this online through the Commonwealth Courts Portal or in person at a family court registry.

## 4. Serve the Documents:

- After filing, you must serve the documents on the other parent or person holding the child. This is required so they are aware of the proceedings.

## 5. Attend the Hearing:

- The court will set a date for a hearing, where both parties can present their arguments. Be prepared to explain why the recovery of your child is in their best interests.

## Where to Get Help

- Family Court of Australia: [www.familycourt.gov.au](http://www.familycourt.gov.au)
- Legal Aid Services: Free or low-cost legal advice and assistance.
- Community Legal Centres: Many centres offer free or low-cost advice for family law issues.
- Family Dispute Resolution (FDR) Services: Mediation and conflict resolution support for separated families.

# Important Tips for Self-Represented Litigants

- **Gather Detailed Evidence:** Clear, organized evidence strengthens your case. Include supporting documents such as parenting plans, records of communication, and anything showing the child's best interests.
- **Stay Focused on the Child's Needs:** The court's priority is the child's well-being, so focus your argument on how the child will benefit from your proposed arrangement.
- **Understand Legal Requirements:** Both Recovery Orders and relocation applications involve strict legal processes. Review Family Court guidelines and consult resources available online.

## Faq

1. Can I stop my ex from moving away with our child?

If you believe relocation would harm the child's relationship with you or is against their best interests, you can file an application to prevent the move. The court will review the situation and make a decision.

2. What if my child has already been moved?

You can apply for a Recovery Order to have the child returned if the move was without proper consent or court permission.

3. What should I do if I am concerned for my child's safety?

If safety is an immediate concern, contact the police. You may also apply to the court for an urgent hearing or interim orders to ensure your child's protection.



**Questions?  
Contact us.**

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