



What can I do if my former partner does not return the children to me?

Date: Monday February 7, 2022

Unfortunately, this is a question we commonly get asked during the holiday period, when one parent, after spending time with the children, unilaterally fails to return the children to the other parent. In this article, we explore options to apply for a recovery order.

If you experience such a situation, often the first thought is to contact the police. Generally, the powers of the police will be limited to conducting a welfare check to know and confirm the whereabouts of the children and that they are safe. The police will unlikely recover a child in the absence of a recovery order issued from the Family Court.

What is a recovery order?

A recovery order is an order of the Court which can require a child to be returned to:

a parent of the child;

a person who has a [parenting order](#) which states with whom the child is to live with, spend time with, or communicate with;
or

a person who has [parental responsibility](#) for the child.

A recovery order can direct the Court Marshal, officers of the Australian Federal Police, or officers of state or territory police to locate and deliver your children to you.

Who can apply for a recovery order?

You can apply for a recovery order if you are:

a person whom the child lives with, spends time with, or communicates with, according to a parenting order;

a person who has parental responsibility for the child according to a parenting order;

a [grandparent of the child](#), or

a person concerned with the care, welfare and development of the child. For example, you may be the person with whom the child lives or spends time with, even though there is no parenting order that states this.

How to apply for a recovery order?

If your former partner refuses to return your child or children to you despite a previous agreement between you or a court order, you will generally need to file an application for a recovery order in the family law courts as soon as possible.

There are different processes for applying for a recovery order, depending on whether or not you have a current parenting order or a parenting case pending in the Court.

If you have already commenced proceedings for parenting matters in the Court, and you wish to apply for a recovery order, you need to file:

an Application in a Case; and

an Affidavit setting out the facts in support of the application for a recovery order.

You will need to serve your application on your former partner unless the court allows your application to be determined in their absence. This would only occur in exceptional circumstances, for instance, your former partner [threatening to harm the children](#).

If there are no proceedings on foot in the Court for parenting matters and you wish to apply for a recovery order, you will need to make an application for parenting orders, including an order for a recovery order of your child or children.

Best interests of the child

When determining whether to make a recovery order, the Court will evaluate a number of factors to determine whether they will

issue the recovery order. However, the Court's paramount consideration is the "best interests of the children".

If the Court issues a recovery order, it may specify a date and time in which the children must be returned to you. You may, if needed, give a copy of the recovery order to your local police to enforce the order.

Get help from a family lawyer

If you find yourself in the stressful situation of having your former partner refuse to return the children to your care, please contact our family law team to discuss applying for a recovery order.

Meillon & Bright's team of experienced family lawyers have successfully applied for and obtained recovery orders on an urgent basis.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.