



# Recovery Order Kit

FAMILY COURT OF WESTERN AUSTRALIA

## You need this kit if:

- The Court has made an order that the children are to live, contact, or spend time with you.
- The other party has refused to let this happen.
- You want the Court to make the other party follow the order.

## Do I need to go to Court?

Before you begin you should consider whether there may be a better way of approaching the problem.

There are many services in the community to help people resolve their disputes without involving the Court.

Contact a Family Relationship Centre or call the Family Relationship Advice Line on 1800 050 321 for more information about Dispute Resolution Services.

## What forms do I need to fill in?

There are two forms:

- Form 2 (Application in a case);  
AND
- Affidavit.

## How do I fill in the Form 2?

The Form 2 does not need to be typed. Please handprint clearly.

You will need to fill in these parts:

- 1 Box at the top corner – print your Family Court file number. Court staff will help if you do not know the number.
- 2 Part A – tick the type of orders you are seeking.
- 3 Part B - print your name under the heading ‘Applicant 1’ and the name of the other party under the heading ‘Respondent 1’. Fill in the address and telephone number of both parties.
- 4 Part D - write down the orders you want the Court to make.

## Part D: What orders should I ask for?

If you think the other party will obey an order that the children be returned to you, you should print the following words in Part D of the Form 2:

“The respondent forthwith deliver up the children (*include full names and dates of birth of each child*) to the applicant”.

If you think the other party will obey the order only if the Police are involved, you should print the following words in Part D of the Form 2:

“A Recovery Order issue in the usual terms for the delivery up of the children (*include full names and dates of birth of each child*) to the applicant”.

If you ask for a Recovery Order you must understand that the Police will collect the children and give them to you. This may be very upsetting for the children - think carefully before asking the Court to make such an order.

## How do I complete the affidavit ?

This is the form that tells the Court the facts.

- The affidavit must contain all the facts. The Judicial Officer will not have time to hear more evidence in Court.
- The affidavit must be split into small paragraphs (no more than six lines). Each paragraph must be numbered.
- The affidavit must be typed, not hand written.
- Each paragraph must deal with only one part of the evidence.

The following information should be included in the affidavit.

(Tick off this list after you have finished making sure you have not forgotten anything.)

- |  |   |
|--|---|
| <input type="checkbox"/> The dates between which you and the other party lived together.   | <input type="checkbox"/> The attempts you have made to have the children returned.  |
| <input type="checkbox"/> The date of your marriage (if you were married).  | <input type="checkbox"/> Anything your partner has said to explain why he/she has refused to give the children back.                                    |
| <input type="checkbox"/> The names and dates of birth of the children.   | <input type="checkbox"/> Anything the children have said to you since they were last in your care (for example telephone calls you have had with them). |
| <input type="checkbox"/> The date on which the Court order was made. (You must provide a sealed copy of the order if the order was not made in Perth). | <input type="checkbox"/> Changes in the arrangements for the children since the Court order was made.   |
| <input type="checkbox"/> The contact the children have been having with the other party since the order was made.                                      | <input type="checkbox"/> Details of any Restraining Order proceedings.  |
| <input type="checkbox"/> The date on which the children were last in your care.  | <input type="checkbox"/> Details of any involvement by the Department for Child Protection.   |
| <input type="checkbox"/> How the children were removed from your care.   |   |

## How do I sign the affidavit?

You will need to have your Affidavit 'witnessed' by a Justice of the Peace (JP), Lawyer or Notary Public.

A Notary Public is an officer appointed by the Supreme Court of WA. Generally it is their job to draw up and authenticate documents of a quasi-public character. They are mainly used in commercial situations to authorise international documents. A Notary Public can endorse documents with an official seal, but unlike a JP they will charge for their services.

Your affidavit must be signed by yourself and the JP next to the signing clause at the end of the affidavit and at the foot of each page.

## Where do I find a Justice of the Peace?

There is usually a JP at the Family Court of WA between 9.30am and 1.00pm. If a JP is not available you may find one at the Justices' Association at 25 Barrack Street, Perth. For a JP near your home, telephone the Justices' Association on 1300 657 788 or visit their web page [www.justice.wa.gov.au](http://www.justice.wa.gov.au).

## What if I want a quick hearing?

If you want the case listed earlier than 28 days from the date of filing, you should write a short letter to the Duty Registrar to help them decide when the case should be listed. You will need to refer to the following matters:

- The reason why you want an early hearing.
- The day on which you would prefer the case to be heard.
- The estimated hearing time (10 minutes is usually sufficient).
- Whether you intend serving the documents on the other party before the hearing.

**Please note - this letter will not be used as evidence in your hearing.**

## What do I do when I have finished filling in all the papers?

Make two photocopies of the Form 2 and the affidavit. There is a coin operated photocopy machine on the ground floor of the Family Court opposite the registry counter.

Then bring the papers you have prepared into the Family Court registry. We will attend to you as soon as possible. Registry staff have no legal training and cannot provide any legal advice.

The Customer Service Officer will take your documents to the Duty Registrar for approval of an early Court hearing, if requested. The Registrar will often be busy, so there may be some delay. When a date has been given you will be given two copies of the Court documents. These will show the date and time of the hearing. One copy is for you and one is for the other party.

## Are there any fees?

There are no fees to be paid to the Court.

## Do I have to notify the other party?

Normally the Court will not hear a case unless the other party has been given notice of the hearing and has received a copy of the Court papers.

In very urgent matters the Duty Registrar will allow the case to be listed without the other side being notified. This is called an *ex parte* hearing. The Judicial Officer (a Judge or Magistrate) who hears the case may still decide to delay the hearing until the other side has been advised.

If you are told that you must serve the papers on the other party, you should ask Court staff to give you the “Service Kit” that explains how to serve the papers.

If you do not know where the other party is living, you may apply for an Order for Substituted Service or a Location Order. You should get legal advice about this before proceeding.

## What happens on the day of the Court hearing?

Sometimes the case will be listed in Court on the same day that you file your application. Registry staff will tell you where to go. Take a seat in the Court and let the Court Officer know you are present. There may be some delay as the Judicial Officer will be dealing with many other cases.

If your hearing is listed for another day, make sure that you get to Court on time. Check the noticeboard to find where your case will be heard. Let the Court Officer know you are present and then take a seat in the Court and wait.

Move forward to the right hand microphone when your name is called. Remain standing unless asked to be seated. Listen to what the Judicial Officer says and answer any questions. You should refer to the Judicial Officer as “Your Honour”. If you are uncertain about what the Judicial Officer has ordered or what you should do next, ask them to explain.

## What do I do after the hearing?

The Judicial Officer will tell you when the Court order will be available for collection. Normally an order for the children to be returned will be available from the registry on the same day as the hearing. There will be some delay as the order must be typed and taken to the Judicial Officer for checking and signing.

If the Judicial Officer has made a Recovery Order authorising the Police to collect the children, you will be given written instructions about how to get the Police to assist you. It is your responsibility to get the order to the Police station closest to the child's location.

## Will I have to come back to Court again?

If the Judicial Officer adjourns the case to another day, you will have to return to Court on that day. If you are in doubt about whether you have to come back ask the Judicial Officer.

## Seek legal advice

You should get legal advice before deciding what to do. A lawyer can help you understand your legal rights and responsibilities, and explain how the law applies to your case. A lawyer can also help you reach an agreement with the other party without going to Court.

You can get legal advice from a:

- Legal Aid Office;
- Community Legal Centre; or
- Private law firm.

**Court staff can help you with questions about Court forms and the Court process, but cannot give you legal advice.**

## Need more information?

For more information about Family Dispute Resolution, or to find your nearest Family Relationship Centre:

- go to [www.familyrelationships.gov.au](http://www.familyrelationships.gov.au); or
- call the Family Relationships Advice Line on 1800 050 321, the line is open from 8:00am to 8:00pm Monday to Friday, and 10:00am to 4:00pm on Saturdays.

For more information about the Family Court of WA, including access to the legislation, forms or publications listed in this brochure:

- go to [www.familycourt.wa.gov.au](http://www.familycourt.wa.gov.au);
- call 08 9224 8222 or 1800 199 228; or
- visit the Family Court of WA registry.

## Personal safety

If you have any concerns about your safety while attending Court, please call 08 9224 8222 before your Court appointment or hearing. Options for your safety at Court will be discussed and arrangements put in place. By law, people must inform a Court if there is an existing or pending family violence order involving themselves or their children.

## Who else can help?

- **Legal Aid WA**  
www.legalaid.wa.gov.au  
1300 650 579
- **Community Legal Centres Association of WA**  
www.communitylaw.net  
08 9221 9322
- **Law Society of Western Australia**  
www.lawsocietywa.asn.au  
08 9322 7877
- **Aboriginal Legal Service of Western Australia Family Law Unit**  
www.als.org.au  
08 9265 6666 or 1800 019 900
- **Law Council of Australia – Family Law Section**  
www.familylawsection.org.au  
02 6246 3788

This brochure provides general information only and is not provided as legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to the Court. The Family Court cannot provide legal advice.  
The Family Court of WA respects your right to privacy and the security of your information.  
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