

How do I remove my child's name from the Family Law Watchlist?

If your child's name has been placed on the Family Law Watchlist and you agree to your child travelling out of Australia or want to take your child out of Australia yourself, you will need to remove their name from the Watchlist.

How you do this will depend on how your child's name was first placed on the Watchlist. An order placing a child's name on the Watchlist can be **absolute** or **conditional**.

Absolute

An absolute order prevents the child from travelling altogether. It may look like this for example:

That until further order each party, (given names, second name, surname and date of birth of each party) their servants and/or agents be and are hereby **restrained by injunction**, and irrespective of authenticated consent as contemplated in Part VII of the *Family Law Act 1975*, from removing or attempting to remove or causing or permitting the removal of the said child/children (given names, surname and date of birth of each child) from the Commonwealth of Australia **for a period of (x) months/years**;

AND IT IS REQUESTED that the Australian Federal Police give effect to this order by placing the name/names of the said child/children on the Family Law Watchlist in force at all points of arrival and departure in the Commonwealth of Australia and maintain the child's/children's name/names on the Watchlist for the said period, or until the Court orders its removal.

If the order placing your child's name on the Watchlist is absolute, you will need new court orders discharging (cancelling) or varying (changing) the Watchlist order and asking the Federal Police to remove your child's name from the Watchlist.

Otherwise, your child's name will be removed from the Watchlist at the end of the period of time stated in the order or when they turn 18.

Conditional

A conditional order will allow the child to travel overseas if the parents provide 'authenticated consent'. This consent is a signed statutory declaration by both parties which can be provided to the Federal Police and shows that the parents consent to the child leaving Australia for a particular period.

That until further order, or else **subject to the authenticated consent of all parties** required to provide consent by Part VII of the *Family Law Act 1975*, each party, (given names, second name, surname and date of birth of each party) their servants and/or agents be and are hereby restrained from removing or attempting to remove or causing or permitting the removal of the said child/children (given names, surname and date of birth of each child) from the Commonwealth of Australia for **a period of (x) months/years**;

AND IT IS REQUESTED that the Australian Federal Police give effect to this order by placing the name/names of the said child/children on the Family Law Watchlist in force at all points of arrival and departure in the Commonwealth of Australia and maintain the child's/children's name/names on the Watchlist for the said period, until the Court orders its removal, or with consent of all parties.

If the order placing your child's name on the Watchlist is conditional and all the parties – usually the parents – are willing to give consent, you should not have to apply to the Court for your child to travel overseas.

The order allows for travel with authenticated consent

1

Both parents should:

- Complete a Commonwealth **Statutory Declaration** (blank forms are available from www.ag.gov.au)
- The **Statutory Declaration** should include information like:
 - a. That they are the mother/father of the child, include the child's full name and date of birth
 - b. That they give their consent for the child to travel with the other parent or another person, include the travelling adult's full name and date of birth
 - c. The time/date/location of travel
 - d. Their contact number so they can be contacted by the Federal Police if they need more information
- If you have a **Parenting Plan** describing your agreement, attach it to the **Statutory Declaration**
- Sign the **Statutory Declaration** or letter in front of a person on the list of 'authorised witnesses' in the [Statutory Declarations Regulations 1993](http://www.ag.gov.au/Publications/Statutory-declarations/Pages/List-of-authorized-witnesses.aspx) (A list of authorised witnesses is available at www.ag.gov.au/Publications/Statutory-declarations/Pages/List-of-authorized-witnesses.aspx).

2

You need to provide the Federal Police with a copy of Statutory Declarations as soon as possible (at least 10 days before the planned date of travel).

3

Important: In practice the Federal Police will keep your child's name on the Watchlist but change the alert to note the consent. This means that the alert will still trigger at the airport and most likely Federal Police officers will speak to the person trying to travel with your child.



The Federal Police will want to make sure that your child is only travelling with the person who has been given consent and that the travel dates and destination (if included in the order or consent) match up with the plane tickets. If the consent has been properly given, your child should still be able to travel, but the Federal Police make that decision on the day.

4

On the day of travel, the travelling parent should:

- Bring a copy of the order and consent to the airport
- Arrive at the airport with lots of time before boarding
- Make sure the other parent is also there at the airport or can to speak to the Federal Police over the phone

I need a new court order

You can apply to the Family Law Courts to change a court order. The Court must make a decision based on the best interests of the child. [Section 60CC of the Family Law Act 1975](#) outlines what factors the Court considers when deciding what is in the best interests of a child.

The other parent and I agree

If you and the other parent agree to remove your child's name from the Watchlist, you can prepare and file an **Application for Consent Orders**. A 'consent order' is a written agreement approved by the Court. A consent order has the same legal effect as an order made after a court hearing.

You will need to ask for an order discharging or cancelling the order placing your child's name on the Watchlist and ask for new orders (see the section below under the heading 'Sample court orders').

The **Application for Consent Orders** needs to be signed by both parents and filed with the proposed consent orders in the Family Court of Australia.

You can obtain the above forms from www.familycourt.gov.au, www.federalcircuitcourt.gov.au, by calling 1300 352 000 or at your nearest family law registry.

If the other parent does not agree or you cannot find the other parent, you may need to apply to the Court to remove your child's name from the Watchlist.

There is a filing fee for lodging a Consent Order. This fee is currently \$165 and is reviewed annually.

The other parent and I do not agree - Applying to Court

If you have a current family law case, you will need to:

- Prepare and file an **Application in a Case** and an **Affidavit**

If you do not have a current family law case, you will need to:

- Try family dispute resolution and obtain a section 60I certificate OR
Apply for an exemption from this requirement. Exemptions will only be granted in limited circumstances and you should get legal advice first.
- Prepare and file an **Initiating Application**, an **Affidavit** and a **Notice of Risk** usually in the Federal Circuit Court.
Attach the section 60I certificate and any parenting plans or court orders to the **Initiating Application**.
- Pay a filing fee or apply for a fee exemption by completing the **Application for exemption from fees**.

You can obtain the above forms from www.familycourt.gov.au, www.federalcircuitcourt.gov.au, by calling 1300 352 000 or at your nearest family law registry.

Do I have to tell the other parent what I'm doing?

Generally, yes. When you start a court case, the law says you have to tell the other parent about the case by serving them with a sealed (stamped) copy of your court documents.

‘Serving’ means giving the documents to the other parent or bringing them to their attention. If you are filing an **Initiating Application**, you will need to follow the rules of ‘special service’. You can find these rules in the **Service Kit** available from www.familycourt.gov.au, www.federalcircuitcourt.gov.au, by calling 1300 352 000 or at your nearest family law registry.

If your case is urgent and/or you can’t find the other parent or will have difficulty serving them, you may want to ask for special orders about service. See the section below under the heading ‘Sample court orders’.

Sample court orders

These are some of the types of orders you can ask for and some suggested wording. Remember that each case is different and that the type of orders you should ask for will depend on the circumstances of your case.

Substantive orders

These are examples of orders asking the Court for permission to travel overseas with your child and for removing your child’s name from the Watchlist.

If you need to travel urgently you may also need to apply for interim orders and service and procedural (relating to the court process) orders. You should not apply for interim orders unless you need to as there are extra filing fees that apply.

These substantive orders should be included under the heading **Final Orders** and **Interim Orders** (if necessary) in your **Initiating Application**.

- **Discharging the initial order** – this order is asking the Court to discharge or cancel the initial order that placed your child’s name on the Watchlist. You will need to find the original order placing your child on the Watchlist. It is best to also attach these orders to your application.

Sample wording

That order [number] of the orders made by Justice [name]/Judge [name] at the [location e.g. Parramatta] Registry of the Family Court/Federal Circuit Court on DD Month YYYY be discharged.

- **Travel order** – this order is asking for permission to travel with your child overseas. For more information, see Factsheet 3 ‘Travelling with my child overseas’.

Sample wording

For the purposes of s65Y of the *Family Law Act 1975* (Cth), the mother/father is permitted to take or send the child [full name] born on DD Month YYYY, from the Commonwealth of Australia.

- **Removing the child’s name from the Family Law Watchlist** – this order is asking the Court to direct the Federal Police to remove your child’s name from the Watchlist.

Sample wording

If you want your child’s name to be permanently removed from the Watchlist: That the Australian Federal Police be directed to remove the name(s) of the child [full name] born on DD Month YYYY from the Family Law Watchlist in force at all points of arrival and departure in the Commonwealth of Australia.

If you want your child’s name to be temporarily removed from the Watchlist: That the Australian Federal Police be directed to remove the name(s) of the child [full name] born on DD Month YYYY

from the Family Law Watchlist in force at all points of arrival and departure in the Commonwealth of Australia for the period DD Month YYYY to DD Month YYYY.

Service and procedural orders

These are examples of service and procedural orders and should be included under the heading **Interim Orders** in your **Initiating Application**.

If your case is urgent, then you may want to ask for:

- **Dispensing with the requirement for a section 60I certificate** – this order is asking for permission to file your application without first going to family dispute resolution and getting a section 60I certificate.

Sample wording

That the requirement for a section 60I certificate be dispensed with.

- **Urgent listing/short notice** – this order is asking that the Court deal with your application on the earliest possible date.

Sample wording

That the matter be listed urgently on short notice.

If you cannot find the other parent or will have difficulty serving them, then you may want to ask for:

- **Substituted service** – If you do not have an address for the other party, or will have difficulty serving them, you may need to ask for permission to 'serve' the other party through a different method – for example via email, texting message or social media, or sending it via registered post to someone who you know is in contact with the other party. To 'serve' someone essentially means to provide them with a copy of the court documents you have filed.

Sample wording

That the rules for service be dispensed with provided that the Applicant send the Initiating Application, Affidavit and Notice of Risk to the Respondent by e.g. private Facebook message, email, text message, etc.

- **A location order** – If you are unable to locate the other parent and do not have a way of contacting them, then you may need to ask for a location order. This is an order that requires a person or government department like Centrelink or a school to provide information to the Court about a child's location. If this is required, you should get further legal advice.

Sample wording

That pursuant to s67N(2) of the *Family Law Act* that the Chief Executive Officer of Centrelink furnish forthwith to the Federal Circuit Court of Australia at [state where Court is situated] information about the location of the child [child/ren name/s and date of birth/s] or the mother/father [name and date of birth] that is contained or comes into the records of Centrelink.

That pursuant to section 67P(1)(d) of the *Family Law Act* leave be granted to disclose the information provided to the Registrar of the Federal Circuit Court of Australia at [state where the court is situated] and that the Court arrange for a process server to effect service of the documents on the respondent and that the applicant pay the costs associated with such service.

- **Ex parte listing** – If there are concerns that a child is at risk of serious harm, and the matter needs to be heard urgently, or there are concerns that the other parent will go into hiding with the child, then you may

ask for an order that your application be dealt with 'ex parte'. This is asking for permission not to serve the other parent at all and for the application to be dealt with without the other parent being there. If this is required, you should get further legal advice.

Sample wording

That the service of the application be dispensed with and that the application proceed on an ex parte basis.

Your Affidavit

An **affidavit** is your written statement of evidence and tells the Court why it should make the orders that you are asking for.

You will need to include in your affidavit details about:

(Important: This is not a complete list and will differ depending on the circumstances of your case)

- Your personal history including your date of birth, date of marriage/relationship, and dates of separation and children's name/s and date of birth/s.
- All current court orders including any family violence orders. Attach copies to the **Initiating Application**.
- Circumstances of the care of your child since the court orders were made.
- The other parent's attitude to parenting and whether they pay child support.
- Any concerns for your child's safety or welfare, including any involvement by the Department of Communities and Justice (DCJ, previously known as FaCs, DoCS) either in the past or the present.
- Details about why there is no longer a need to have the child/ren's names on the Watchlist.
- Details about your proposed plans for travel if relevant.
- If asking for short service, include details of any urgency in your matter.
- If asking for a service order or location order, explain why you do not know where the other parent is, all reasonable attempts you have made to locate the other parent, and how you know the method you have selected is the best way of contacting the other parent.

Tips for writing an affidavit

- Divide the affidavit into paragraphs.
- Number each paragraph.
- Keep each paragraph short and deal with one issue only.
- Be specific rather than general. Think about who, what, when, where, and how. Provide exact dates wherever possible. If you can't be exact, make your best estimate.
- Focus on the issues that are relevant (related) to your application.
- When you are writing about a conversation, quote it exactly, or write: 'On or around [DATE and TIME], [NAME] said to me words to the effect of "*I'm going to my Mum's. Don't call.*"
- Keep your affidavit under 10 pages.
- To attach a document, you should refer to it in your affidavit and then write "**Annexed to this affidavit and marked with the letter "A" is a copy of [DOCUMENT NAME]**". Write the letter "A" at the top of the front page of the document you are attaching to your affidavit. If you have more than one annexure, the second document should be marked "B" and the third document marked "C", etc.
- You can attach up to 5 annexures.
- Sign the bottom of each page of the affidavit in front of a Justice of the Peace (JP) or lawyer and complete and sign the "jurat" at the end of the affidavit. This is the statement at the end of your affidavit which sets out when, where and before whom you have signed the affidavit.
- If you have attached a document (annexure) to your affidavit, make sure the JP or lawyer who is witnessing the affidavit signs each document.
- If you need to correct any errors, cross out the error and put your initials next to the change. The JP or lawyer who is witnessing the affidavit must also put their initials next to the change. These changes can only be made prior to completing the jurat.

- If you do not have a section 60I certificate from a family dispute resolution practitioner, explain why you did not go to family dispute resolution, for instance, if it is an urgent matter.
- Anything else which you think is relevant.

What do I do once I have the new court orders?

Once the Court has made the orders removing your child's name from the Watchlist:

1

You need to:

- Send a letter to the AFP Operations Coordination Centre Family Law (phone number: (02) 5127 0004; fax number: (02) 6148 9609; email: AOCC-Alerts@afp.gov.au) **attaching:**
 - a. A sealed copy of the new court orders
 - b. A copy of all court orders made about the Watchlist
 - c. A copy of any other court orders made while your child's name was on the Watchlist.

2

If you are travelling overseas, you should:

- Provide a copy of the new court orders at least 7 days before you plan on travelling.

3

On the day of travel, you should:

- Bring a copy of the orders to the airport
- Arrive at the airport with lots of time before boarding

How do I know if my child's name has been removed from the Watchlist?

To check whether your child's name has been removed from Watchlist, you will need to:

- Complete a **Family Law Watchlist Enquiry Form** available from www.afp.gov.au/sites/default/files/PDF/FamilyLawWatchlistEnquiryForm.pdf
- Fax or email the completed **Family Law Watchlist Enquiry Form** to the AFP Operations Coordination Centre Family Law (fax number: (02) 6148 9609; email: AOCC-Alerts@afp.gov.au) along with:
 - a. A certified copy of your ID, such as your driver's licence or passport
 - b. A copy of the application or order (if available) that places your child's name on the Watchlist
 - c. Your email address as the Federal Police will only respond to you by email.

Australian Federal Police contact details

AFP Operations Co-ordination Centre Family Law – FLWL Alerts Phone number: (02) 5127 0004
Fax number: (02) 6148 9609
Email: AOCC-Alerts@afp.gov.au

This fact sheet is intended as a general guide to the law. It should not be relied on as legal advice and it is recommended that you talk to a lawyer about your particular situation. At the time of writing, the information shown is correct but may be subject to change. If you need more help, contact LawAccess NSW on 1300 888 529.

Family Law Early Intervention Unit: 1800 551 589 • **Legal Aid NSW** www.legalaid.nsw.gov.au