

How do I put my child on the Family Law Watchlist?



What is the Family Law Watchlist?

The Family Law Watchlist is designed to prevent children from being unlawfully removed from Australia. The Watchlist operates at all international sea ports and airports within the Commonwealth of Australia and is maintained by the Australian Federal Police.

How do I place my child's name on the Watchlist?

You will need to apply to the Court for an order asking that your child's name be placed on the Watchlist.

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 or mediation 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 or Local 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.

Your child's name can be placed on the Watchlist as soon as you have filed these documents with the Court.

It is your responsibility to provide the Federal Police with a copy of your application as soon as it is filed for the child's name to be placed on the Watchlist – the Court will not do this for you.

Once you have filed your court documents, you will need to:

- Complete a **Family Law Watchlist Request Form** available from www.afp.gov.au/sites/default/files/PDF/FamilyLawWatchlistRequestForm.pdf
- Email or fax a copy of the sealed (stamped) **Initiating Application** or any court orders made limiting or preventing your child's overseas travel and the **Family Law Watchlist Request Form** to the Federal Police:

AFP Operations Coordination Centre Family Law - Family Law Watchlist Alerts

Fax Number: 02 6148 9609

Email: A OCC-Alerts@afp.gov.au

- Contact the AFP by phone on (02) 5127 0004 to make sure that they have received your email or fax.



Urgent After Hours: If your child is at immediate risk of being removed from Australia and it is outside of business hours, call the Family Law Courts on 1300 352 000 and ask to speak with a Duty Registrar to place your child's name on the Watchlist.

An application for your child's name to be placed on the Watchlist is dealt with by the Court in the same way as any other parenting application. The Court must make a decision based on the best interests of the child. [Section 60CC of the Family Law Act 1975](#) outlines the factors the Court considers when deciding what is in the best interests of a child.

Sample court orders

Your **Initiating Application** (or **Application in a Case** if you have an open family law case) is the document where you list the orders you want the Court to make.

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 that your child's name be placed on the Watchlist and is the wording preferred by the Federal Police. For more information, see the Federal Police's 'Family Law Kit' www.afp.gov.au/what-we-do/crime-types/family-law-kit.

If there are no current parenting orders for your child, then usually you will need to apply for parenting orders at the same time that you apply for your child's name to be placed on the Watchlist. Parenting orders deal with things such as parental responsibility (responsibility for major long-term decisions about your child), who your child will live with, and what time your child will spend with the parent they are not usually living with. For sample parenting orders, see www.ag.gov.au/Publications/Pages/Parenting-orders-what-you-need-to-know.aspx.

If your child is at immediate risk of being removed from Australia, 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 orders should be included under the heading **Final Orders** and **Interim Orders** (if necessary) in your **Initiating Application**.

- **Placing your child's name on the Family Law Watchlist:** An order placing a child's name on the Watchlist can be **absolute** or **conditional**.
 - An absolute order prevents your child from travelling altogether until a further order is made. If no further order is made, 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.
 - A conditional order will allow your 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.

Sample wording – absolute

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.

Sample wording – conditional

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.

You should get legal advice about which Watchlist order is most appropriate for your situation. You can seek legal advice from a legal aid office, community legal centre or private law firm.

Absolute

If the order made by the court is absolute and refers to the parties or a party having an 'injunction' against them, then written consent **will not** override the order. You will need to apply to the court for your child's name to be removed from the Watchlist and should get legal advice about this.

Conditional

If the order made by the court 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.

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.

For more information, see Factsheet 2 'How do I remove my child's name from the Family Law Watchlist?'

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 born DOB] or the mother/father [name born DOB] 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 first 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.
- **Risks to your child:** any concerns for your child's safety or welfare, including any involvement by the Department of Communities and Justice (DCJ, previously known as FaCs or DoCS) either in the past or the present.
- **Passports:** whether your child has a passport (either Australian or from another country), where the passport is located, whether your child may be travelling on a foreign passport, whether your child is eligible for a foreign passport and if so whether only one parent's signature is required to obtain such passport.
- **Risk of removal:** why you think that your child is going to be removed from Australia; whether the other party has any links/connections to any particular country or countries, where your child is likely to be taken overseas and why.
- If asking for short service, include details of any urgency in your matter.

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, namely, that you have a genuine concern that your child will be removed from Australia by the other party and that there is a real risk of this happening.
- 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.
- 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.
- Anything else which you think is relevant.

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

You do not have to tell the other parent that you intend on making an application but usually 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 above under the heading 'Service and procedural orders'.

If you are concerned that the other parent will go into hiding with the child and the Court allows your application to proceed 'ex parte', then you do not have to serve them first with a copy of your court documents or tell them you have filed an application, unless and until you are ordered by the Court to do so.

How do I confirm that my child's name is on the Watchlist?

To check whether your child's name has been placed on the 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: A OCC-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

Can the other parent get a passport for my child without me knowing?

To obtain an Australian passport for a child, the Australian Passport Office will usually require:

- Each person with parental responsibility (this is usually the parents but can also include grandparents or other family members) for a child to sign the application for the child's passport OR
- An order made by an Australian Court allowing one parent to obtain a passport for the child without the other parent's consent.

If the other parent applies to the court for an order allowing them to obtain a passport for your child, that parent is usually required to serve you with a copy of their court documents for you to be able to respond to the application.

The Passport Office can issue a passport to a child without the other parent's consent or a court order, but this is only where they have found that there are special circumstances and the parent applying for the passport can show that they have made all efforts to obtain the required consent from the other parent.

If you do not want your child being issued with a passport, you can create a Child Alert which is a warning to the Department of Foreign Affairs and Trade that there are circumstances that need to be looked into before they issue an Australian passport or other travel document to a child. To request a Child Alert, you will need to complete and submit a Child Alert form (PC9). For more information, see www.passports.gov.au/passports-explained/childrens-passports/child-alert-requests.

If your child is or may be eligible for a foreign passport, you should contact the relevant High Commission or embassy for that country based in Australia for information about their requirements to issue a passport to your child.

If:

- Your child is eligible for a foreign passport AND
- Only one parent's signature is required for a passport to be issued AND
- You have genuine concerns that the other parent has applied and will attempt to remove your child from Australia

Then you may want to think about applying to the court for your child to be placed on the Watchlist.

I tried placing my child's name on the Watchlist but they have already left Australia

Australia is a signatory to the *1980 Hague Convention on the Civil Aspects of International Child Abduction* (the Hague Convention) which is the main international agreement that deals with international parental child abduction. The Hague Convention provides a way for parents to seek to have their child returned to their home country. The Hague Convention is currently in force between Australia and over 80 countries. There is also a bilateral agreement in force between Australia and Egypt, and Australia and Lebanon, which aims to assist parents to resolve their parenting dispute across international borders.

If your child has been removed from Australia, you should get legal advice as soon as possible about the legal options available to you for your child's return. You may wish to contact International Social Service Australia for free legal advice.

Important contact details

Family Law Courts National Enquiry Centre (After Hours Number) Phone number: 1300 352 000

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

Australian Passport Information Service Phone number: 131 232

International Social Service Australia Phone number: 1300 657 843
Email: issnsw@iss.org.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