

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 ("the 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, (full name 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 (full name 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, (full name 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 (full name 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.

Conditional - 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** 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-authorised-witnesses.aspx) (A list of authorised witnesses is available at www.ag.gov.au/Publications/Statutory-declarations/Pages/List-of-authorised-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).

AFP Contacts – Family Law Watchlist

Phone Number: (02) 5127 0004 | Email: alerts@afp.gov.au

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 speak to the Federal Police over the phone

I need a new court order

You can apply to the Federal Circuit and Family Court of Australia 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. If you and the other parent do not agree to change or vary final orders, in your application to the court you will need to demonstrate to the court a significant change in circumstances from the time the original orders were made.

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 Federal Circuit and Family Court of Australia.

Court forms are available at www.fcfcoa.gov.au/fl/forms, by calling 1300 352 000 or at your nearest Federal Circuit and Family Court of Australia 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. See: www.fcfcoa.gov.au/fl/fees/fl-fees

The other parent and I do not agree - applying to court

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

1. Make a reasonable and genuine attempt to settle the issue first unless an exception applies. (See Rule 4.03 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*.) Exceptions only occur in limited circumstances (including urgency) and you should seek legal advice first.
2. Prepare and file an **Application in a Proceeding** and an **Affidavit**.

The Affidavit should either outline:

- the reasonable and genuine attempts you have made to settle the issue; or
- the exception that applies and the factual basis for the exception.

If you are seeking your application be dealt with urgently, you will also need to file a **Cover Letter** addressing the nature of the application and why you want it dealt with urgently. This **Cover Letter** should reference paragraphs of your **Affidavit** that explain your situation more fully.

In some circumstances it may also be appropriate to file an updated **Notice of Child Abuse, Family Violence or Risk** and any allegations made in this Notice should be outlined in your **Affidavit**.

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

1. Make a genuine attempt to resolve your dispute by following the pre-action procedures required before starting a case. These include obtaining a section 60I certificate and giving notice to the other party of your intention to commence court proceedings.

OR

Apply for an exemption from this requirement. You will need to explain in your **Affidavit** and the **Genuine Steps Certificate** why you cannot comply with the pre-action procedure requirements. Exemptions will only be granted in limited circumstances and you should get legal advice first.

For more information about pre-action procedure requirements, see: www.fcfsa.gov.au/fl/pubs/pre-action-parenting

2. Prepare and eFile:
 - **Initiating Application (Family Law)** – Attach to this application your section 60I certificate, parenting plan or parenting orders;
 - **Notice of Child Abuse, Family Violence or Risk;**
 - **Genuine Steps Certificate;**
 - **Parenting Questionnaire;** and
 - **Undertaking as to Disclosure.**

You will also need to file an **Affidavit** if:

- you are asking for your application to be dealt with urgently;
- your **Notice of Child Abuse, Family Violence or Risk** contains allegations of child abuse, family violence or a risk of harm to the child/ren;
- you are seeking interlocutory (interim or procedural) orders; or
- you are seeking ex parte orders (made without the other party being present).

Urgent matters also require a **Cover Letter** addressing the nature of the application and why an urgent listing is required.

Filing Fees

There is a filing fee for both an **Initiating Application (Family Law)** and an **Application in a Proceeding**.

See: www.fcfcoa.gov.au/fl/fees/fl-fees

You will need to pay the relevant filing fee before the court will accept your application. You may apply for a fee exemption by completing the **Application for Exemption of Fees – General Form** or **Application for Exemption of Fees – Financial Hardship Form**.

You can obtain the above forms from www.fcfcoa.gov.au/fl/forms, by calling 1300 352 000 or at your nearest Federal Circuit and Family Court of Australia registry.

Service

When you start a court case, the law says you must 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 (Family Law)**, you will need to follow the rules of ‘special service’. You can find these rules in the **Service Kit** available from www.fcfcoa.gov.au/forms/service-kit, by calling 1300 352 000 or at your nearest Federal Circuit and Family Court of Australia 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.

Sample court orders

Your **Initiating Application (Family Law)** or **Application in a Proceeding** is the document where you list the orders you want the court to make.

Below are some of the types of orders you can ask the court to make. 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 Interlocutory orders about service and court procedure. Note, there is an extra filing fee where you apply for interlocutory orders along with final orders.

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

- **Discharging the initial order** – this order is asking the court to cancel the 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 Federal Circuit and Family Court of Australia 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 **Interlocutory Orders** in your **Initiating Application (Family Law)** or **Application in a Proceeding**.

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, text message, 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 (Family Law), the Affidavit, the Notice of Child Abuse, Family Violence or Risk, the Genuine Steps Certificate, the Parenting Questionnaire, and the Undertaking as to Disclosure to the Respondent by eg 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 and Family 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 and Family Court of Australia at [court

location] 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:

- Your personal history including your date of birth, date of marriage/relationship, date of separation, and children's name/s and date of birth/s.
- All current parenting plans or court orders, including any family violence orders. Attach copies to your **Initiating Application**. If you are filing an **Application in a Proceeding** and the court does not already have a copy of these documents, attach them to your **Affidavit**.
- 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 name/s 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 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.

Important: This is not a complete list. What you will need to include will depend on your circumstances.

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 – Family Law Watchlist (phone number: (02) 5127 0004; fax number: (02) 6148 9609; email: Alerts@afp.gov.au) **attaching**
 1. A sealed copy of the new court orders
 2. A copy of all court orders made about the Watchlist
 3. 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:

- take a copy of the court orders with you to the airport; and
- arrive at the airport with plenty 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-26032019.pdf.
- Fax or email the completed **Family Law Watchlist Enquiry Form** to the AFP Contacts – Family Law Watchlist (fax number: (02) 6148 9609; email: Alerts@afp.gov.au) along with:
 1. a certified copy of your ID, such as your driver's licence or passport;
 2. a copy of the application or order (if available) that places your child's name on the Watchlist; and
 3. your email address, as the Federal Police will only respond to you by email.

Australian Federal Police contact details

AFP Contacts – Family Law Watchlist

Phone number: (02) 5127 0004

Fax number: (02) 6148 9609

Email: 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