



My ex-partner hasn't returned the kids. What can I do?

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Your ex has had the children for the weekend but he/she hasn't returned them to you as agreed. It's an emotional and sensitive time for all. This doesn't happen often but when it does, it is best to be prepared. Depending on your individual circumstances there are different approaches to have your children returned to your care.

Since the topic of recovery is somewhat individual and circumstances will vary from case to case this topic will be broken down into three blogs.

1. Dealing with the recovery of a children while you have current court proceedings;
2. Dealing with the options available to you if your family law matter is finalised and you have parenting orders; and
3. Discussing options available to you if do not have parenting orders and have not begun proceedings in the Federal Circuit Court of Australia.

Dealing with the recovery of children when you have current family court proceedings

If you are faced with this unfortunate and worrying situation it is best you act quickly by seeing an experienced family lawyer as soon as possible or making an application to the court for a recovery order.

If you have a current case with the [Family Court or the Federal Circuit Court of Australia](#) you are able to make an urgent application to the court for a recovery order. This application can be heard *ex parte* if you believe there is a risk of harm to the children. Having the application heard *ex parte* means your application will be heard in the absence of your former partner without providing any notice of the application to them.

Section 67K of the *Family Law Act (1975)* provides for the following people to apply for a recovery order:

- A person who the child lives with, spends time with or communicates with as stated in a parenting order;
- A person who has parental responsibility for the child in a parenting order;
- A grandparent of the child; or
- A person concerned with the care, welfare and development of the child.

Where there are current court proceedings, your former partner will have their contact details filed with the court or their legal representative, therefore contact between the parties should not be an issue. About 80% of the time miscommunication between the parties is the issue which has led to your former spouse not returning the children back to your care on time.

What should I do as soon as I become aware the children have not been returned as agreed?

The best approach is to initially call or text your former partner to find out why the children haven't been returned and to reach an agreement to have the kids returned to your care as soon as possible. A simple text message providing a deadline for the return of children and insisting that an application for a recovery order will be made otherwise.

Alternatively, if you have a mutual friend or family member who has a good relationship with both parties, it might be fruitful to ask them to assist with achieving an agreement to have the child returned to you.

These initial steps can often be sufficient for your ex to either explain a misunderstanding or begin a meaningful dialogue with you and hopefully reach an agreement.

Ultimately, since there are current court proceedings in place it would be foolish for a party to deliberately attempt to relocate the children without consent as this course of action will severely jeopardise their current parenting case.

If attempts to negotiate directly with your ex fail, the last resort would be to file an urgent application for the court to grant a recovery order for the children to be returned to your care. In determining whether to grant a recovery order, the court will always consider the best interests of the child as the paramount consideration. Accordingly, your affidavit filed with your application should reflect this.

A recovery order will usually request the Australian Federal Police to locate and recover the children. As a matter of practice, the Federal Police will in most cases want to return the child back to you as soon as possible. Therefore it is imperative that you are able to travel on short notice during this time, should your children be at a location some distance away, including interstate.

It is important to be aware that this blog topic specifically relates to relocation within Australia. If your child is taken overseas or outside of Australia, it becomes a whole different ball game.

Hall Payne no longer provides services in family law

If you require assistance with your family law matter, we recommend you contact the relevant Law Society in your State or Territory for a referral:

- **Queensland:** [1300 367 757](tel:1300367757)
- **NSW:** [02 9926 0333](tel:0299260333)
- **Victoria:** [03 9607 9311](tel:0396079311)
- **Tasmania:** [03 6234 4133](tel:0362344133)
- **South Australia:** [08 8229 0200](tel:0882290200)
- **Western Australia:** [08 9324 8600](tel:0893248600)
- **Northern Territory:** [08 8981 5104](tel:0889815104)
- **ACT:** [02 6274 0300](tel:0262740300)

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