



LOCATION OF CHILDREN

Sometimes, for various reasons, a parent will lose touch with their former partner and therefore with their child or children. It can be daunting to think about resuming your relationship with your children if you do not know where they are or how to contact them.

Fortunately the *Family Law Act 1975* contains provisions that can help locate a child. Specifically, the Court has the power to make Orders that require a person or a Commonwealth Department or instrumentality to provide the Court with information they may have about the whereabouts of the child. They are known as '**Location Orders**', but the Orders directed to the Commonwealth body are referred to as '**Commonwealth Information Orders**'. So if, for example, the child's carer receives a Child Support Payment for the child, then an application can be made to the Department of Human

Services to advise the Court of the child's address. Commonwealth Information Orders can be sought from any Commonwealth Department or instrumentality that may have the required information. However, a party may only apply to one Department at a time.

Access to these provisions is not limited to parents only. The provisions may be invoked by grandparents who have lost contact with their grandchildren, any person who is a party to a parenting order, or any other person who is concerned with the care, welfare or development of the relevant child.

For the application to be successful, the Court must:

- be satisfied that information about the child's location is likely to be contained in or come into the records of the person, Commonwealth Department or instrumentality;

- regard the best interests of the child or children as the paramount consideration.

The Court makes this assessment based on the documents that are filed in support of such an application. The application itself must be clear about the person, Commonwealth Department or instrumentality is requested to provide the information. The accompanying affidavit should also inform the Court about:

- the applicant's personal circumstances;
- the background or history of the applicant's relationship with the child or children;
- an explanation of how the applicant lost contact with the child or children, what steps have been taken to locate them and the outcome of those attempts;
- why it is likely the nominated person, Commonwealth Department or

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instrumentality will have information about the child's whereabouts;

- why it is in the child's best interests for the Court to make the Location Order.

Once the application for the Location Order is filed, and the information is sought from a Commonwealth Department or instrumentality, the application must be served on the relevant Department or instrumentality, at least 7 days prior to the hearing. At the Court hearing, the presiding judicial officer will decide whether to make the Location Order. If the Location Order is made, then the matter will be adjourned to allow time for it to be served on the relevant person, Commonwealth Department or instrumentality and to give them time to provide the information to the Court.

On the adjourned date, if the information has been produced, it will be released. However, it will not be released to the applicant directly. The information can only be released to specific people, such as the applicant's lawyer or a process server engaged by the applicant's lawyer or the Court to serve the documents on the other party. Usually the Court will request the recipient of the information (such as the lawyer representing the applicant) to promise not to disclose it to anyone, including their client, or may even make an Order restraining them from doing so. Once the child's whereabouts is known, then the child's carer is served with the Court documents, and the usual Court process for determining contact arrangements applies.

Location Orders can be invaluable in commencing a case when the whereabouts of the carer of the child and/or the child is unknown. However, for an application to be successful, there must be care taken with the preparation of the documents, and ensuring the Court's procedures are followed. Failure to do so will either result in the

application being dismissed, or the matter being adjourned to permit the party time to remedy the deficiencies in their case.

If you require assistance with preparing or finalising an application for a Location Order, feel free to contact any of our Family lawyers.



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