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S O L I C I T O R S

## LawTalk Blog



# Do you need to seek a “Recovery Order” to have your child returned by your ex-partner?

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## Scenario

Hamish and Rebecca have been in a relationship for six years and have a four year old son together, Travis. Six months ago, Hamish left the former relationship home ending his relationship with Rebecca. Rebecca was devastated but has remained focused on raising Travis and being the best possible role model for him.

Rebecca has always been Travis' primary carer. Following her separation with Hamish, Travis has only spent very limited time with Hamish. This has been frustrating Hamish who has started making threats to Rebecca that Hamish would be better off living with him.

One afternoon when Travis was at kindergarten, Rebecca received a text message from Hamish stating that he had collected Travis from kindergarten and that Travis would not be coming home to Rebecca. Rebecca was distraught after receiving this text message, she spoke to the kindergarten who confirmed that Travis was collected by Hamish.

Rebecca has tried to contact Hamish but his mobile telephone has been switched off. Unfortunately, Rebecca is not sure where Hamish has been living since their separation and she does not have contact with Hamish's family.

## What can Rebecca do to get Travis back?

Presuming there are no current court orders in place between Rebecca and Hamish regarding the [care arrangements](#) for Travis, then Hamish is not in breach of a court order.

This means that unless Rebecca is able to contact Hamish and negotiate the return of Travis into her care she may have no option but to file urgent court proceedings in the [Federal Circuit Court of Australia](#) for the return of Travis into her care.

If Rebecca was to file urgent proceedings in the Federal Circuit Court, she would need to request that an urgent order, known as a 'recovery order' be made regarding the return of Travis into her care.

In urgent situations, the other party does not always have to be made aware of the urgent court proceedings and in these circumstances an urgent hearing would be conducted *ex parte* (meaning, in the absence of the other party).

If the application is heard *ex parte* the recovery order is likely to involve the Australian Federal Police who will be requested, by order of the court, to find and return the child into the care of the party as ordered by the court.

When making any order regarding children, including a recovery order, the court is required to consider "[the best interests of the child](#)".

It is important to seek legal advice from a lawyer experienced in Family Law if you have separated, to discuss care arrangements for your children amongst other matters.

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