



Child relocation in family law

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It's not uncommon for individuals to relocate after [separation from a partner](#); either intrastate, interstate or even overseas. If you have been wondering whether or not you or your former partner are able to relocate with the children, this article will assist you to understand your obligations and options.

Relocation is a possibility that arises for many separating couples. Perhaps a party moved from overseas or interstate to be closer to their partner at the commencement of the relationship. Some families may have relocated during their relationship because of one parent's employment. Others may feel the need to be closer to family support once they find themselves solo parenting without the support of their former partner.

What constitutes “relocation” under family law?

Relocation cases involve a party who wishes to move, with the children, to another country, state or region. Relocation is not expressly defined under the *Family Law Act*.

Of course, if a parent moves overseas or interstate that would be considered relocation, but even a case where one parent moves towns or moves only from one side of a city to the other, can be deemed a relocation case.

In a practical sense, one would expect that a parent is only going to oppose another parent's relocation if it affects their ability to spend time and communicate with the children. Looking at it from this perspective means that any geographical change to a parent's residence could be considered a relocation by that parent.

Do I need the other parent's consent to relocate with our children?

Relocating without consent is generally frowned upon by the Courts.

If you intend to relocate, you should not do so without the other parent's consent. There are very few exceptions to this; for example, if you are fleeing [family violence](#).

At the outset, you should talk to the other parent and try to get their consent. Ideally, you would obtain the express written consent of the other parent so that it could be used as evidence if that consent was ever in question at a later date. If you do not feel comfortable approaching the other parent, you can engage a lawyer to write to them on your behalf or initiate [Family Dispute Resolution](#) (FDR).

It may be that the other parent will consent to the relocation provided that appropriate arrangements are made in relation to their time and communication with the children. For example, they may want longer time periods spent together during school holidays, frequent video calls, an agreement as to how expenses such as the children's flights will be shared moving forward, etc.

If you need help negotiating these arrangements, you can do so using FDR or by having a [lawyer negotiate](#) with the other parent on your behalf.

What happens if I relocate without getting consent from the other parent?

Often parents who relocate without the permission of the other parent or the Court will be ordered to return with the children, at least on an interim basis until it is determined whether they have permission to relocate permanently.

Sometimes the Court will order that the children be returned to their origin with or without the parent who relocated. This would see them going into the care of the other parent.

If a parent relocates without the consent of the other parent, it could reflect poorly on them as it could demonstrate a disregard for the other parent's place in the children's lives. This could affect the decision that the Court ultimately makes.

What happens if I can't get consent of the other parent?

If you wish to relocate and cannot get the consent of the other parent, you should obtain legal advice regarding your options.

If necessary, you can make an application to the Court seeking permission to relocate. The Court may or may not grant the permission you seek. You will only be granted permission to relocate if the Court deems that it is in the child's best interests.

What happens if there are Court Orders in place in relation to parenting arrangements?

If there are Parenting Orders in place regarding the children, you must follow the orders. If the other parent agrees to your relocation that is not provided for in your current Parenting Orders, you should seek legal advice about how to document this to avoid any uncertainty about your legal position in the future. If you contravene Parenting Orders, a Court may find you had a reasonable excuse to do so, but this is in no way guaranteed.

Where there are Parenting Orders in place and the other parent is opposed to your proposed relocation, you would need to apply to the Court for a variation of the orders. You may or may not have grounds to make such an application and should [seek legal advice](#) before doing this.

Also, if there are Parenting Orders in place, it's an offence under the *Family Law Act* to move a child/children out of Australia without the written agreement of the other parent (or other party to the Parenting Orders), or any further Court Orders.

You can be criminally charged if you commit this offence.

What will the Court consider if I seek permission to relocate?

Relocation cases are particularly difficult for Courts to decide. Ultimately a Court must determine what arrangement will be in the best interests of a child.

Some of the relevant matters to consider include:

- The relationship between each parent and the children and the age of the children, including whether they are old enough to sustain their relationship with the parent (i.e. very young children may need to see each parent more frequently to form and maintain close bonds);
- How expensive and difficult it would be for the other party to see the children if relocation was permitted;
- The reasons for moving, for example, better family support, a new partner, better employment prospects, schooling and lack of those things if the parent was to stay where they are;
- Whether the parent wanting to relocate has demonstrated a willingness to maintain the childrens' relationship with the other parent in the past;
- Whether the relocation will affect time between the children and another significant person (i.e. someone who is not a parent, such as step-siblings or grandparents) in their lives; and
- Whether it is reasonable for the other parent to also relocate.

Each case is different and the result will depend on the specific facts of each case. The important thing to remember is not to make any concrete plans to relocate until you have permission to do so.

What should you do if you are concerned the other parent has intentions to relocate?

If you are worried about a possible relocation within the country (whether interstate or intrastate), a Court application can be made seeking that the other parent be restrained from relocating with the children.

Keep in mind that just because the Court may make an order restraining a parent from relocating with the children in the short term, if that parent seeks permission to relocate permanently, the Court may still make an order permitting relocation on a final basis, at a later date.

If you have real concerns that your child will be removed from the country, you can make an urgent application to the Court for a [“Family Law Watch List Order”](#). Once served on the Federal Police, the child's name will be placed on a database so that airport officials are alerted if there is an attempt to remove the child from the country.

If your child does not have a passport and you suspect that your former partner may apply for one, you can complete a [“Child Alert Request form”](#). By submitting this form, you are asking the Passports Office to alert you in the event that an application is made for your child's passport without your knowledge or consent. This should provide some protection against the other parent obtaining a passport for the children without your consent.

What do I do now?

If you need any assistance with relocation issues, we can help you. Please contact us to set up an obligation-free appointment if you:

- wish to relocate with your children; or
- have concerns that the other parent intends to do so without your consent; or
- have given consent to the other parent or obtained consent of the other parent to relocate, but you need help working out future parenting arrangements.

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.