



Overseas travel with children after a family law separation

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Overseas travel with children following separation is an issue we often need to deal with in family law matters. There may be various reasons why a parent is worried about allowing their former partner to travel overseas with their child, ranging from the child having never spent significant time away from the non-travelling parent to a genuine fear that the travelling parent will not return the child to Australia.

In this article, we look at overseas travel with children of separated parents from the perspective of:

- the parent wanting to travel with the child; and
- the parent who wants to prohibit their former partner from travelling with the child.

Who decides if the child can travel overseas?

In Australia, each parent has “*Parental Responsibility*” for their child. Parental responsibility refers to all the duties, powers, responsibilities and authority which, by law, parents have in relation to the child.

This means **both parents** are encouraged to consult each other about important decisions in a child's life (regardless of who the child lives with) and that they should have regard to the [best interests of the child](#) when doing so. These important decisions include overseas travel. You should not, therefore, make arrangements to travel overseas with a child without consent from the other party.

A passport for a child will not usually be issued without the consent and signature of both parents (and anyone else with parental responsibility).

My former partner won't let me obtain a passport for our child

If your former partner is refusing to consent to signing a passport application, then it will be necessary to make an application to the Court seeking Orders that a passport be issued for the child without the other parent's consent.

If the matter is not urgent, it may be appropriate to utilise the administrative process provided by the Passports Office. The Passports Office has the power to issue a passport without the other parent's consent in "special circumstances". Further information can be found at www.passports.gov.au.

If this process is unsuccessful, then a Court application will probably be necessary. You should seek advice from a family lawyer if you need to make a Court application.

[NEED ADVICE? SPEAK WITH A FAMILY LAWYER: 03 9006 8907](tel:0390068907)

My former partner won't let me travel overseas with our child

If your former partner is refusing to let you travel overseas with your child, the first thing to consider is the reason why they are not permitting you to do this.

Your options in responding to a refusal may differ depending on whether or not there is a [parenting plan or court order](#) in place.

Where there is no parenting plan or court order in place

Is this the first time the child has travelled overseas? Is your former partner (the refusing partner) worried about the child spending significant time away from them?

If so, there are ways in which these issues can be addressed, including:

- Providing a detailed travel itinerary, which includes travel destinations, flight details, accommodation details and contact details.
- Agreeing on regular and consistent contact, including telephone or video calls and sending photographs.
- Agreeing on "make-up" time for the non-travelling parent if they miss out on time with the child while you are travelling.
- Providing notice. Overseas travel should be planned well in advance, and permission from the non-travelling parent should be obtained as early as possible. It is common for parties to agree on a notice period to be provided to the non-travelling parent.
- Agreeing on the time of year that travel should take place. The non-travelling parent may not, for example, want the child to travel on special occasions (religious events, birthdays etc) or during school term etc.

Where there is a parenting plan or court order in place

A parenting plan or court order can include provisions that need to be followed if one parent intends to travel overseas with the child.

Breaching court orders has significant consequences. If you have breached any part of your court orders, your former partner may have a valid reason to prohibit the child from travelling overseas.

If you have complied with the Orders, are you intending to travel to a country that is not part of the [Hague Convention](#) or that has been declared a [Do Not Travel country by the Australian Government](#)? If so, your former partner may again have a valid reason to prohibit the child from travelling.

If your former partner does not have a valid reason to refuse your request to travel overseas with your child and court orders do not explicitly prevent this, you should invite them to attend [mediation](#) to see whether the issue can be resolved. If it cannot, a Court application may be necessary.

Notably, the *Family Law Act 1975* makes it a criminal offence to remove a child from Australia without the written consent of your former partner or in accordance with an order of the Court. This offence is punishable with a period of imprisonment of up to 3 years. It is, therefore, important that you follow the appropriate steps.

I don't want my former partner to travel overseas with our child

If you are concerned about your former partner travelling overseas with the child and not returning to Australia, you should consider the following.

Child passport alert

If the child does **not** have a passport and you suspect that your former partner may apply for one, you can request a "[Child passport alert](#)". You will need to complete a Child Request Alert form which you can obtain from the Passport Office or an Australian diplomatic or consular mission. The form can be submitted in person, by post or via email.

By submitting the form, you are asking the Passports Office to alert you if an application is made for your child's passport without your knowledge or consent. This does not, however, automatically guarantee that a passport will not be issued or that overseas travel won't take place, particularly if the child has a passport issued by another country.

Family Law Watchlist request

If your child has a passport (of any country), and you have concerns that your child will be removed from Australia, you can file a [Family Law Watchlist Request Form](#) with the Australian

Federal Police and make an urgent application to the Court for a Family Law Watch List Order.

The child's name will be placed on a database so that Australian airport officials are alerted if there is an attempt to remove the child from the country, and the child will be stopped at the airport and unable to leave.

You do not need to wait until the Court have made the Family Law Watch List Order. Once you have submitted your Application to the Court, this can be forwarded to the Australian Federal Police and the child will be listed on the Watchlist immediately.

How can a family lawyer help?

If you have questions in relation to overseas travel and/or need assistance with travel negotiations, get in touch with Emera Family Law for a free initial consultation.

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.