



## Relocating with children after separation

**Date: Monday October 25, 2021**

E&A Lawyers has made the decision to no longer provide family law services. While we no longer take on any new family law matters, we are happy to assist by referring you to lawyers specialising in this area. Please don't hesitate to contact us if you would like a referral.

[CALL US IF YOU'D LIKE A REFERRAL TO A FAMILY LAWYER: 02 9997 2111](tel:0299972111)

It is not unusual, following separation, for one parent to consider relocating either intrastate, interstate or even overseas. Sometimes both parties can come to an agreement about child relocation. However, if agreement cannot be reached, parents can approach the Federal Circuit and Family Court of Australia to request permission to relocate with children or to prevent a relocation.

### What to do before relocating with a child

The *Family Law Act* provides that unless there are Court orders stating otherwise, and if it is safe to do so, parents are encouraged to consult each other about major long-term issues in relation to the child, having regard to the best interests of the child as the paramount consideration (s61CA introduced by the Family Law Amendment Act 2023)

Major long-term issues include “*changes to the child's living arrangements that make it significantly more difficult for the child to spend time with the other parent*”.

Therefore, if one parent has communicated to the other about a potential relocation, the parties should:

1. consider what arrangements can be made for the other parent to spend time with the child. For example, often parents reach agreement about a relocation on the basis that the child will spend a lot of time with the left-behind parent during school holidays, to make up for not spending much time during school terms.

2. discuss these issues with the other parent with the aim of coming to an amicable agreement.

If there are parenting orders in place that provide for joint-decision making by parents in relation to major long-term issues, then the parties are required to consult each other in relation to such decisions and make a genuine effort to come to a joint decision.

If the parties have **agreed** to a relocation and related arrangements, they can formalise the agreement by Consent Orders to be filed with the Federal Circuit and Family Court of Australia.

If the parties **cannot agree**, they can ask the Court to make parenting orders, including:

1. If you want to relocate with a child, seek an Order which allows you to do so; or
2. If you want to stop the other party from relocation, seek an Order restraining the child from relocating from a residence or an area.

## Action to be taken if you believe your child may be relocated without your permission

1. If you want to stop the other party from relocating with a child, apply to the Court for an order prohibiting the other party from relocating the child's residence outside of a certain area (for example, that the child's residence is not to be further than 30 kilometres from the child's current school, or that the child's residence is to be within a specific metropolitan area).
2. Apply to Court for an Order restraining the child's removal from Australia or a State; and
3. If the proposed relocation is overseas, apply to have the child's name placed on the [Family Law Watchlist](#).

If the children have already been moved to another country, then you can invoke the provisions under the [Hague Convention on the Civil Aspects of International Child Abduction](#) if the country which the children were removed to is a signatory to the Hague Convention.

## What do Courts consider in child relocation matters?

The Courts apply principles and considerations applied to every other [parenting case](#). These principles include the best interests of the child as set out in section 60CC of the *Family Law Act* and include:

1. The benefit to the child of being able to have a relationship with the child's parents and other people who are significant to the child, where it is safe to do so;
2. Any [views expressed by the child](#);
3. Anything else that is relevant to the particular circumstances of the child, for example, the practicality of the child having to travel from one parent to the other.

## The Court must also take into account

1. The childrens' views and factors which might affect those views, such as the child's maturity and level of understanding.
2. The level of involvement of the other parent in the childrens' lives (a Court may be more inclined to allow relocation where the other parent has little or spends no time with the children;
3. Whether there is a history of [family violence](#) in the relationship.
4. The stability of the relocating parent.
5. The competing proposals of the parties. The Court will balance each of the proposals for the childrens' living arrangements.
6. Practical reasons for the parent wanting to relocate which incorporates employment opportunities, accommodation, family support and medical treatment needs.

## What action can the Courts take?

The Court's paramount consideration is the best interests of children.

The Courts can:

1. grant or refuse relocation;
2. issue an Injunctive Order preventing the relocating parent from leaving with children;
3. order childrens' names to be placed on the [Family Law Watchlist](#);
4. where a Parenting Order has been issued, and it is breached, and the parent cannot be found, issue a Location Order;
5. make a Recovery Order if a parent breaches the Parenting Order by failing to return the children as ordered by the Court.

## Get help from a family lawyer

If you require legal assistance, including urgent assistance, in relation to child relocation, our team of family lawyers are able to assist you and help you determine the best course of action.

### Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

[02 9997 2111](tel:0299972111)

[info@ealawyers.com.au](mailto:info@ealawyers.com.au)

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