



Can I travel with my child after separation?

Date: Monday November 30, 2020

As school holiday periods approach at various times during the year, there is no doubt many parents will plan to travel with their children either intra-state, inter-state or overseas (once borders re-open). If you are separated, however, there are some things you need to know about travelling with your children, including what consent if any, you require from your former partner or from the courts.

Travelling within Australia (intra-state or inter-state travel)

If your travel plans do not involve leaving Australia, then you have much more flexibility as there are no restrictions for travelling with children within Australia during the time the children are in your care, unless specifically dealt with in your Family Court Orders.

If a parent breaches those orders by not returning the children as required, there are options to have the children returned to your care.

It is common courtesy and a good example of co-parenting practice, to let the other parent know where you are planning to travel to and for how long.

Travelling overseas with children

To travel overseas you will require either:

- formal written consent from the other parent; or
- a Family Court Order permitting you to depart Australia with your children.

If neither of these is obtained and you travel with the children overseas, it becomes a criminal offence under section 65Y of the Family Law Act (1975) which carries a penalty of up to three years imprisonment.

What if we cannot reach an agreement?

If both parents are unable to reach an agreement for the children to travel overseas then an application to the court will need to be made seeking an order allowing your children to travel with you.

If you have discovered your ex-partner intends to travel with the children overseas without your consent, you can make an urgent application to the court preventing the children from travelling by placing their names in the Australian Federal Police's Family Law Watchlist.

These types of urgent applications are taken seriously and Family Courts will usually hear these matters *ex parte*, meaning the other party does not need to be present for the matter to proceed.

What if I already have Family Court Orders in place?

Depending on your personal circumstances you may already have family law orders in place which permit you to travel with your children overseas according to the conditions stated in those orders.

Standard conditions could include:

- providing a detailed itinerary of the travel to your former partner;
- providing suitable contact details while you are away;
- ensuring you have return flight bookings; and
- obligations to have appropriate vaccinations etc.

You will be permitted to travel with the children as long as you have fully followed your orders. It is also advisable to take a certified copy of your family law orders away with you, just in case you are required to provide it to authorities.

What if I do not have current Family Court Orders?

If you do not have Family Court Orders in place which permit you to travel with your children, then you will need to make an application to the court.

The court will, among other things, consider:

- the purpose of travel;
- any threat to the welfare of the child from travelling to the proposed country;
- the duration of the child's proposed travel plans;
- the credibility of your promise to return to Australia;

- the effect on the child of any deprived time with the other parent; and
- of course, the best interests of the children.

The court will ultimately need to be satisfied that the travelling parent will very likely return to Australia due to their permanent employment, assets, extended family and so on.

In some cases, a court may order a security bond to be paid prior to departure. This money could then be used by the non-travelling parent for legal costs, travel costs and other associated fees if the child has to be returned to Australia.

The Hague Convention and international child abduction

The Hague Convention is an agreement about international parental child abduction and international child access. Many, but not all countries are signatories to the Convention.

If you are intending to travel to a country which is a signatory to the Hague Convention, your security bond could be reduced and the prospects of your application to the court will, of course, be vastly improved. This is because countries who are part of the Convention agree between each other to uphold child custody orders and will return children if they are moved or kept overseas without the appropriate consents.

[You can see a list of Hague Convention signatories here.](#)

If a court considers the 'risk of flight' of the travelling parent to be too great, it may order that the children not be removed from Australia and their names placed on the Australian Federal Police watch list.

In particular, if the travelling parent does not have the means to pay a security bond, the court will also consider if the intended country of travel is a signatory to the Hague Convention.

A word of caution...

If you have Final Parenting Orders which provide you with sole parental responsibility for the children, unless those orders specifically allow for you to also arrange international travel for the children without reference to the other parent, then section 65Y of the *Family Law Act (1975)* still applies and will require both parents consent prior to your departure.

This clearly emphasizes the importance of having properly drafted orders and the importance of having sound legal representation in your family law matters.

Hall Payne no longer provides services in family law

If you require assistance with your family law matter, we recommend you contact the relevant Law Society in your State or Territory for a referral:

- **Queensland:** [1300 367 757](tel:1300367757)
 - **NSW:** [02 9926 0333](tel:0299260333)
 - **Victoria:** [03 9607 9311](tel:0396079311)
 - **Tasmania:** [03 6234 4133](tel:0362344133)
 - **South Australia:** [08 8229 0200](tel:0882290200)
 - **Western Australia:** [08 9324 8600](tel:0893248600)
 - **Northern Territory:** [08 8981 5104](tel:0889815104)
 - **ACT:** [02 6274 0300](tel:0262740300)
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