

Child relocation in family law

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Moving to a new home is a significant change for a child, especially for children involved in family law matters. In this blog, we look at how child relocation is considered after separation or divorce (intrastate, interstate and overseas) and the different options available to parents for reaching an outcome in their child's best interests.

Can I relocate with my child without going to Court?

It is possible for you and the other parent to agree to relocation without initiating proceedings in Court. If you and the other parent have made an informal agreement but would like to formalise it, you can contact one of our family lawyers to discuss if a parenting plan or consent orders is best suited to your situation.

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However, one parent will often not agree with the proposed relocation. In situations where parents cannot reach an agreement about where the child will live, an application may need to be made to the Court to make a determination.

Why relocation is a significant issue in family law parenting disputes

In family law matters, 'relocation' refers to moving a child to a new home, either in Australia or overseas.

There are many reasons why a parent may want to relocate with their child. Employment opportunities and affordability may be a reason to relocate to a new suburb while moving closer to extended family networks and support may motivate someone to move interstate or even overseas.

Example cases that considered child relocation disputes

In *Nemcova &McLeod* [2024] FedCFamC1F 752, the Court considered how the mental well-being and parenting capacity of one parent supported their application to relocate internationally with their children.

In *Estes &Estes* [2024] FedCFamC2F 189, the parents had historically been successful in co-parenting and making joint decisions regarding their children. However, when one parent proposed to relocate, the parties could not come to an agreement on their own, so an application was made to the Court.

The Court found that while the relocation would be beneficial in some ways, the parent wishing to relocate had underestimated the negative effect relocation would have on the children's relationship with the other parent.

Although any of the reasons for relocation (e.g. employment, family ties, etc.) may be a positive argument for relocation, the Court must make orders that are in the best interests of your child.

Whether moving to a new town or state is in your child's best interests in the eyes of the Court is dependent on numerous factors and is different for each family.

The best interests of the child - considering your child's views and wishes

The *Family Law Act* includes a child's views as a consideration for determining the best interests of the child.

If you and the other parent have already commenced proceedings in the Federal Circuit and Family Court of Australia, the Court may appoint an Independent Children's Lawyer ('ICL') to represent your child's best interests. The ICL is required to meet with the child and give them an opportunity to express their views and wishes, which will then inform the ICL's submission to the Court for any parenting orders.

The ICL's position is another way for your child's views about relocation to be heard by the Court, and be taken into consideration in making any orders regarding relocation.

The Court may consider other factors to contextualise your child's views or assist them in making a determination. These may include the child's safety, the benefit of maintaining their relationship or proximity to the non-relocating parent, and the relocating parent's capacity to care and provide for the child.

What can I do if I think the other parent wants to unilaterally relocate with my child?

If you think the other parent may relocate your child without your consent, you should seek legal advice immediately.

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Some families are able to come to an agreement about child relocation through dispute resolution processes such as child-inclusive mediation. In other cases, families may need the assistance of the Court to determine a child relocation issue. Speaking to a family lawyer can assist you understand your options.

The Airport Watch List and family law orders

The Australian Federal Police ('AFP') are able to act on some family law orders relating to travel or relocation with children, both domestic and international. In general, the AFP can only become involved in a family law matter if the Federal Circuit and Family Court of Australia makes an order for them to act, including recovery orders or preventing international travel of a child.

The Court can also make orders that a child be placed on the AFP's 'Family Law Watchlist'. If your child is placed on the watchlist, the AFP can delay or prevent travel involving a child depending on the type of orders made by the Court.

Involving the AFP in family law matters can be complex and particular. You should seek legal advice if you are concerned about or planning to travel with your child, whether for a holiday or permanent relocation. Our experienced family lawyers can assist with making applications to the Court permitting travel or relocation with children.

Seek help from a family lawyer

Child relocation in family law is often tricky to navigate alone, as each parent often has different and strongly conflicting reasons as to why a child should or should not relocate.

If you are considering if relocation is in your child's best interests and need assistance with navigating the process either in or out of Court, a family lawyer can help.

Contacting Smith Family Law

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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.