



Removing a child from Australia – issues if parents are separated

Australia is a multi-cultural society, one of the most ethnically diverse countries in the world. Australians also tend to be well-travelled. It is not surprising, therefore, that parents will want to take their children overseas.

How does that work when those parents have separated?

Functions of the Australian Customs and Border Protection Service

Unless the child or children have been placed on the Airport Watch List by an Order of the Court there is no restriction on either of the parents from taking the child out of the country if they hold a valid passport. Even if there is a parenting order in place, unless the child is placed on the Airport Watch List then the authorities at the airport will not prevent one parent and the child travelling without the other parent present.

Generally it should not be done

In the absence of parenting orders, both parents have parental responsibility for their children. In addition, parenting orders or a parenting plan usually provide the parents with equal shared parental responsibility. That is, both parents have the right to be consulted about and decide issues regarding the children's long-term welfare. That would include a decision to take the children out of Australia, even temporarily.

If either party removes the child from the country, and indeed fails to comply with a Court Order whereby the other party was to spend time with that child, then this will be a breach of a Court Order, however, this prevent the child being removed at first instance.

Whether the child can be recovered or not via an Order of the Court will depend on whether the child has been removed to a country that is a signatory to the Hague Convention.

Family law watchlist

If a parent has a reasonable fear that the children might be taken overseas and not returned, that parent can apply for a Family Law Watchlist Order notwithstanding a pre-existing Court Order or Application for an Order. Such an Order operates to place the children's names on a watchlist at all points of departure from Australia, whether by sea or air. Australian border control officers and the Federal Police will then be alerted if

someone attempts to remove the children from Australia and that removal will be prevented.

The children's names will remain on the watchlist for the period specified in the Court Order, or until the Court makes a new Order removing their names from the list.

Passports

If your children have passports (Australian or otherwise) and you are concerned that the other parent might try to take the children overseas without your permission, you would be wise to ensure that those passports remain in your possession after separation or seek an urgent Airport Watch List Order.

Sometimes neither parent trusts the other parent, and they agree that the children's passports will be held by an independent third party.

An application for an Australian passport for a child must be made with the consent of all people having parental responsibility for the child. Usually that means that a parent cannot obtain or renew an Australian passport for a child without the other parent's consent. However, if you are concerned that the other parent might try to obtain passports for the children without your consent, you can submit a Child Alert Request form to the Department of Foreign Affairs. That will warn the Department of circumstances to be considered before it issues passports for the children. Such an alert remains valid for 12 months.

Holidays

In light of the above, how does a separated parent take their children on an overseas holiday? After all, it is not uncommon for Australians to want to take their children to Fiji, Bali or Disneyland, or to the parents' home country to visit relatives, for example.

The answer is that it is possible to take the children without the other parent's consent provided that parent has passports for the children. However, it is recommended that the other parent's written consent be secured. If there are parenting orders in place then it is quite prudent to secure consent otherwise you may be breaching the Court Order by not allowing the other party to spend time with the children as ordered.

International child abduction

What if, despite all of the above precautions, the other parent manages to remove the children from Australia without your permission? This is many separated parents' worst nightmare.

Such a situation is treated very seriously by the Family Court, the Federal Police and relevant international authorities. The outcome in such a case will depend on whether the children can be found and, if so, the country to which they have been taken.

If the children are found to be living in a country which is a signatory to The Hague Convention on International Child Abduction, then the relevant authorities in both Australia and that country have the power to bring the children back to Australia so that the Court here can determine where and with whom the children should live, including whether they should live in Australia or overseas. The Court will also determine the consequences for the international abduction of the children, which can include imprisonment.

The Hague Convention on International Child Abduction is in force between Australia and some 84 countries. However, there are almost 200 countries in the world. In other words, the Convention does not apply in more than half of the world's countries, making recovery of the children from such countries difficult, if not impossible.

Conclusion

In general, even in the absence of Court orders, a parent should not take a child out of Australia without the other parent's permission. In addition, one parent cannot obtain an Australian passport for a child without the other parent's consent.

There are steps that parents can take to prevent their children being removed from Australia, such as filing a passport alert with the Department of Foreign Affairs and obtaining an order placing the children's names on the Family Law Watchlist.

Notwithstanding the possibility of obtaining the children's return through the mechanism set out in The Hague Convention, depending on the country to which the children have been taken, when it comes to international child abduction prevention really is better than a cure. As you can imagine the process is very time consuming and stressful for all parties involved.

If you or someone you know wants more information or needs help or advice, please contact us on 03 9387 2424 or email info@rrrlawyers.com.au.