

Relocation with children after separation

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After separation, there may be a point in time when a parent would like to relocate with a child to another town, state or country. In this article, we will look at when and how child relocation can occur, together with what the courts consider when determining relocation matters.

A parent may desire a move for a magnitude of reasons:

To be closer to family. This may be particularly relevant where a parent has moved away from family during the relationship due to their spouse's work opportunities or for any other reason;

For work opportunities, career development or further education;

Due to visa/residency requirements; or

Simply because they want to - whether that be for a sea change or fresh start.

Relocation can be intrastate, interstate or overseas. Generally, a matter is considered to be a "relocation" matter, where a parent proposes to change a child's primary place of residence a distance that would impose significant practical difficulties on the other parent.

Importantly, there is no specific distance which categorises a matter as being a relocation matter. There may be a proposal to move a child's principal place of residence 2 hours' drive away or across international borders. Either may be considered a relocation

matter.

Do I need my partner's consent to relocate the children?

In order for a parent to relocate with a child, where there is equal shared parental responsibility, they must either have the other parent's consent or an order of the Court.

So simply put, yes – consent of both parents is necessary.

If the other parent does not consent, relocation may still be possible if the Court determines that it is in the best interests of the child and, accordingly, makes an order permitting a parent to relocate with a child.

If a parent does not seek consent prior to relocating, the Court can make orders that the parent and the child return.

Penalties for breach of Court orders

If the Court finds a person has breached a parenting order without reasonable excuse, it may impose a penalty.

Depending on the situation and the type of contravention, the Court may order that the person who breached the order:

- pay the other party's legal costs;
- compensate the other party for lost time with a child;
- attend a post-separation parenting program;
- undertake a community service order;
- pay a bond;
- pay a fine; or
- face imprisonment.

What does the Court consider when determining relocation matters?

Relocation matters are determined in the same manner as any parenting matter. The paramount consideration is what is in the child's best interests.

Consideration is also given to what is reasonably practicable in all the circumstances. This is particularly relevant for relocation matters, given distance naturally creates a practical burden on one parent.

In relocation matters, the question the Court is asked to determine is:

'*Is it in the child's best interests to relocate to Country X or City Y or State Z*?'

The court must then consider whether the orders proposed are reasonably practicable in all the circumstances.

What is in a child's best interests?

In determining what is in a child's best interests, the Court turns its mind to the primary and additional considerations set out in Section 60CC of the *Family Law Act 1975* (Cth) ("the Act").

The primary considerations are:

> The benefits to the child of having a meaningful relationship with both of the child's parents. In relocation matters, consideration must be given to how a meaningful relationship with both of the child's parents can be facilitated, given any barriers that distance may create.

> The need to protect the child from physical or psychological harm and/or from being subjected to, or exposed to, abuse, neglect or family violence.

The Court is to give greater weight to the second consideration; the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.

The additional considerations are discussed in detail in our article "Parenting orders for spending time with children".

The additional considerations that are particularly relevant in relocation matters may include:

> Any views expressed by the child and any factors (such as the child's maturity or level of understanding) that the Court thinks are relevant to the weight it should give the child's view. You can read more about this in our article "Are the views of the child considered in family law?"

> What is the child's view in relation to moving town, state or country?

The likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from:

either of his or her parents; or

any other child, or other person (including any grandparent or other relative of the child), with whom he or she has been living;

The practical difficulty and expense of a child spending time with and communicating with a parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with both parents on a regular basis.

What is considered to be reasonably practicable?

The factors the Court takes into account in determining what is reasonably practicable, include:

how far apart the parents live from each other;

the parents' current and future capacity to implement an arrangement for the child spending equal time, or substantial and significant time, with each of the parents;

the parents' current and future capacity to communicate with each other and resolve difficulties that might arise in implementing an arrangement of that kind;

the impact that an arrangement of that kind would have on the child; and

such other matters as the Court considers relevant.

These factors are especially relevant in relocation matters.

Naturally, in relocation matters, the major practical difficulty will be travel and the costs associated with that travel.

Questions to ask when considering relocating with children

Will the other parent or the child have to travel by car, bus, train, boat or plane to spend time with the other parent?

Can the child travel unaccompanied by the other parent?

How much will any travel cost?

Who will pay for additional travel and accommodation expenses?

If you are considering relocation or if you'd like to discuss your divorce with a lawyer or arrange an initial consultation, feel free to get in touch with one of our team members.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.