

Children’s Passports in Family Court Matters

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Immediately following separation, there may be uncertainty as to parenting arrangements for you and your children. During this time, it is important to turn your mind to important documentation in respect of your child, such as their passport. This includes:

whether or not your child has a passport and whether one needs to be obtained; and

who currently has possession of your child’s passport and who should retain your child’s passport.

Who can apply for a passport for a child?

The *Australian Passports Act 2005* (Cth) sets out that the Minister for the Department of Foreign Affairs and Trade must not issue an Australian travel document (including a passport) to a child unless either:

each person who has parental responsibility for the children consents to the child being issued a passport; or

Court Orders have been made that specifically permits:

the child to have a passport issued to them;

the child to travel internationally (and thus requires a passport to be issued to them to facilitate the international travel); or

the child to live with or spend time with another person who is outside Australia (again, requiring a passport to be issued to them to facilitate the cross-border “live with or spend time with" arrangements).

This means that it must first be established who has parental responsibility for the child.

If no Court Order has been made in respect of parental responsibility, both of the child’s biological parents will have parental responsibility as a starting point. In this case, both parents must consent to the issue of a passport for their child. Practically, this means that both parents must sign the child’s passport application for it to be accepted by the Department of Foreign Affairs and Trade.

Simply put, where there is no Order varying parental responsibility, one parent cannot unilaterally make a passport application for a child and have a passport issued in that child’s name.

However, in circumstances where one parent or a single person has sole parental responsibility for a child, by virtue of a Court Order (or in some circumstances, the death of a parent), a passport can be obtained for a child by providing the necessary evidence to establish sole parental responsibility. This evidence may include:

a Court Order;

the child’s birth certificate; and/or

the parent’s death certificate.

Who should keep my child’s passport?

When a passport is issued for a child, only one copy is issued.

There is no rule as to which parent must retain the child’s passport following separation. Who retains the child’s passport will be subject to any agreement reached between the parents or, alternatively, an Order from the Court.

When considering who is the appropriate parent to retain the child’s passport, the following factors should be considered:

Is either parent a “travel” risk? Meaning, is there any concern that a parent may travel overseas with the child without the consent of the other parent? For example, does either parent have a connection to another country, such as family members or real property in another country, or has either parent expressed a desire to travel or relocate with the children after separation?

> If there is a travel risk, a child’s passport should be held for safekeeping by the other parent to ensure that travel does not occur without agreement. A child cannot travel

internationally without a valid passport.

Who does the child live with? There may be merit to the child's passport being retained by the parent with whom they live. A passport is an identification document and may be needed by the child for purposes other than travel, such as enrolments.

What is practical? For example, it may not be practical for a parent who works on a fly-in, fly-out basis to hold a child's passport in circumstances where they will not have access to the passport when they are away for work. If the situation arises where access to the child's passport is needed, this may create practical difficulties in retrieving it.

Whilst family law proceedings are on foot, the Family Court Registry may also hold a child's passport for safekeeping. This will ensure that parents do not travel with a child without consent or an Order of the Court, where there is a discernible risk of this occurring.

What if my ex-partner will not return my child's passport?

If one parent has retained a child's passport after separation and will not return it, and there is a concern that the parent may facilitate the removal of the child from Australia without the other parent's consent, consideration should be had to obtain a Watchlist Order.

Without possession of a child's passport or a Watchlist Order in place, there is little risk that a child will (or can) be removed from the jurisdiction of Australia.

You can read more about watch list orders in our blog, "How to put a child on the Family Law Watchlist (formerly the airport watch list)"

What do I do if my ex-partner will not consent to the issue of a passport for my child?

There are two paths if a parent does not consent to the issue of a passport for a child. These paths include:

Making an application to the Minister for the Department of Foreign Affairs and Trade that special circumstances exist that should mean that the child is issued a passport. These special circumstances may include:

The existence of child welfare orders;

The inability to contact the non-consenting person for a reasonable period of time;

The absence of contact with the non-consenting person for a substantial period of time;

a Court Order from a country that has signed the Hague Convention on the Civil Aspect of International Child Abduction, permitting a child to have a passport, travel internationally, or to have contact with a person outside the country where the Order was made.

Making an application to the Family Court.

Get help from a family lawyer

If you've separated from your partner and have concerns about the use of your child's passport, you should seek advice from a lawyer experienced in family law.

Our team of family lawyers can assist you with any parenting issues after separation or any other questions you may have about your family law matter.

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.