

International travel with children from separated families

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Many families look to explore international travel to allow their children to soak up the various cultures, experiences and opportunities that come with purchasing a plane ticket. While travel comes with many benefits, the travelling experience may pose difficulty for some separated parents, most importantly obtaining consent from the non-travelling parent.

Can one parent decide to travel overseas without the consent of the parent?

Generally no, but there are exceptions where one parent has sole parental responsibility, or an order has been made providing for the international travel to occur.

Decisions related to arrangements for children of separated parents are determined by parental responsibility and/or parenting orders. Travelling overseas with a child is often considered a decision requiring both parents to consent (or an order of the Court dispensing with this consent).

Who has parental responsibility?

You can read about what parental responsibility means here. This looks at the definition of parental responsibility and what equal shared parental responsibility means.

If there are parenting orders in place, the orders will explicitly set out whether parental responsibility is equal shared parental responsibility or one parent has sole parental responsibility.

If no parenting orders are in place, the *Family Law Act 1975* (Cth) states that both parents have parental responsibility. This means

that both parents can jointly make decisions about their child and also independently, without the input of the other parent, make decisions about their child.

Parents without parenting orders in place and who share parental responsibility jointly and severally are always encouraged to attempt to reach decisions together to avoid conflict and tension.

Importantly, international travel is considered a long-term issue affecting the child's care, welfare and development. Regardless of whether parental responsibility is shared without existing parenting orders, these decisions should be made jointly.

Travelling overseas with children where parenting orders DO exist

To ensure the travelling parent does not breach existing parenting orders, it is important to consider various factors.

The travelling parent should consider:

- whether there are any conditions imposed on proposed international travel as set out in any parenting orders;

- the validity of the child's passport, and if not valid/current, obtain the consent and signature of the non-travelling parent on the child's passport application form. To read more, visit our blog "Children's Passports in Family Court Matters";

- any requirements to provide the non-travelling parent with documentation and information about the proposed travel. Orders may stipulate the non-travelling parent have copies of the itinerary, return airfare ticket, telephone numbers and addresses where the child is staying overseas;

- any stipulated period of advanced notice of proposed travel, for example, 4-6 weeks' notice;

- communication agreements with the non-travelling parent. If communication arrangements are explicitly defined in parenting orders, it is important for the travelling parent to consider whether the same applies while travelling overseas (and how they can be accommodated, for example, to reflect time zones) or whether specific provisions apply for international travel.

Travelling overseas with children where parenting orders DO NOT exist

Where there are no parenting orders or where international travel has not been explicitly defined by existing orders, obtaining consent in writing from the non-travelling parent is important.

It is best practice to still provide the non-travelling parenting with proposed travel documentation, including an itinerary, copies of

return airfare tickets and also to facilitate a form of communication between the child and the non-travelling parent while overseas.

What if the non-travelling parent will not provide their consent?

Parents are encouraged to exhaust all avenues of communication with respect to proposed travel before approaching the court. This includes correspondence between legal representatives and mediation/family dispute resolution.

If separated parents cannot reach agreement on proposed international travel, the travelling parent can take an application to the Family Court to seek orders permitting the travel.

Parents who find themselves in a difficult position concerning international travel should carefully balance the possibility of protracted litigation (which is stressful and expensive) and the benefit of any travel when filing an application.

Finally, if you are concerned that a parent may attempt to travel overseas with your child without your consent, you can consider putting your child on the Family Law Watchlist. You can learn more about your options with regard to this in our blog "How to put a child on the Family Law Watchlist (formerly the airport watch list)".

Get in touch with a family lawyer for assistance

The expense of travel is a weight in itself. Coupled with potential tension and emotion that may arise between parents, the topic of international travel and family law proceedings can be overwhelming and stressful.

At Meillon & Bright, our family lawyers will work with you to advise on the avenues of redress for your circumstances and, if necessary, guide you through the parenting orders application process. Our lawyers are skilled at carefully considering the benefit of the travel against the best interests of the child while also ensuring your rights as a parent are supported.

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.