

Travelling with my child overseas

This factsheet:

- Provides information for people who want to apply for a passport for a child and/or take a child overseas but the other parent disagrees
- Is intended for situations where there are no current court orders about the child
- May not apply if a court has already made orders about the child

In general, a child should not be taken overseas without the consent of both parents or a court order.

You may need to apply to the court if:

- You want to take your child overseas but the other parent disagrees
- The other parent will not sign a passport application for your child



If there are court orders about a child (or someone has applied for court orders) and you take a child overseas without the written consent of each party or permission from the court, you may be committing a criminal offence.

Applying for a passport

To obtain an Australian passport for a child, the Australian Passport Office will usually require:

- Each person with parental responsibility for a child (usually the child's parents) to sign the application for the child's passport OR
- An order made by an Australian court allowing one parent to obtain a passport for the child without the other parent's consent.

If the other parent will not sign the passport application, you may be able to make an application to the Australian Passports Office for a passport to be issued under 'special circumstances'.

Special circumstances can include, but are not limited to, situations where the child has not seen the other parent for a substantial period or where there is a family violence order against the other parent. Even if an application meets the special circumstances criteria, there is no guarantee that the application will be approved, as it is up to the Minister's discretion.

To make a special circumstances application, you need to complete and submit the **B9 - Child without full parental consent** form along with the passport application. For more information, contact the Australian Passport Information Service on 131 232 or go to www.passports.gov.au.

Applying to the Court

You may make an application to the court for an order allowing you to obtain a passport for the child without the other parent's consent.

If you have a current family law case, you will need to:

1. Make a reasonable and genuine attempt to settle the issue first unless an exception applies. (See Rule 4.03 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*.) Exceptions only occur in limited circumstances (including urgency) and you should seek legal advice first.
2. Prepare and file an **Application in a Proceeding** and an **Affidavit**. The Affidavit should either:
 - outline the reasonable and genuine attempts you have made to settle the issue; or
 - the exception that applies and the factual basis for the exception.

If you are seeking your application be dealt with urgently, you will also need to file a **Cover Letter** addressing the nature of the application and why you want it dealt with urgently. This **Cover Letter** should reference paragraphs of your **Affidavit** that explain your situation more fully.

In some circumstances it may also be appropriate to file an updated **Notice of Child Abuse, Family Violence or Risk** and any allegations made in this Notice should be outlined in your **Affidavit**.

If you do not have a current family law case, you will need to:

1. Make a genuine attempt to resolve your dispute by following the pre-action procedures required before starting a case. These include obtaining a section 60I certificate and giving notice to the other party of your intention to commence court proceedings;

OR

Apply for an exemption from this requirement. You will need to explain in your **Affidavit** and the **Genuine Steps Certificate** why you cannot comply with the pre-action procedure requirements. Exemptions will only be granted in limited circumstances and you should get legal advice first.

For more information about pre-action procedure requirements, see: www.fcfcoa.gov.au/fl/pubs/pre-action-parenting

2. Prepare and eFile:
 - **Initiating Application (Family Law)** – Attach to this application your section 60I certificate, parenting plan or parenting orders;
 - **Notice of Child Abuse, Family Violence or Risk;**
 - **Genuine Steps Certificate;**
 - **Parenting Questionnaire;** and
 - **Undertaking as to Disclosure.**

You will also need to file an **Affidavit** if:

- you are asking for your application to be dealt with urgently;

- your **Notice of Child Abuse, Family Violence or Risk** contains allegations of child abuse, family violence or a risk of harm to the child/ren;
- you are seeking interlocutory (interim or procedural) orders; or
- you are seeking ex parte orders (orders made without the other party being present)

Urgent matters also require a **Cover Letter** addressing the nature of the application and why an urgent listing is required.

Filing Fees

There is a filing fee for both an **Initiating Application (Family Law)** and an **Application in a Proceeding**. See: www.fcfcoa.gov.au/fl/fees/fl-fees

You will need to pay the relevant filing fee before the court will accept your application. Alternatively, you may apply for a fee exemption by completing the **Application for Exemption of Fees – General Form** or **Application for Exemption of Fees – Financial Hardship Form**.

You can obtain the above forms from www.fcfcoa.gov.au/fl/forms, by calling 1300 352 000 or at your nearest Federal Circuit and Family Court of Australia registry.

How does the court decide?

An application for your child to travel is dealt with by the court in the same way as any other parenting application. The court must make a decision based on the best interests of the child. [Section 60CC of the Family Law Act 1975](#) outlines what factors the court considers when deciding what is in the best interests of a child.

Specific considerations for international travel

If you want to travel internationally with your child there are some further matters a court specifically considers in deciding whether to let the child travel:

- How long you and the child will be staying outside Australia.
- The reasons for travelling outside Australia eg holiday, visiting relatives.
- The impact on the child involved if not spending time with the other parent and how this can be addressed, eg having phone contact and allowing make-up time when the child returns.
- The circumstances in the country you are planning on travelling to: Are there significant travel warnings for the country?
- The court will need to be satisfied that you will be returning the child to Australia and will consider:
 - The reasons you may have for coming back to Australia, such as owning property or a business in Australia, having family and/or close friends in Australia.
 - The level of conflict between you and the other parent, especially over child-related issues.

- The reasons you may have for staying overseas, such as owning property or a business in another country, having family and/or close friends in another country

Payment of security

If you want to travel overseas and are applying to the court, you should also be prepared to offer a sum of money as security that you will return the child. This is called a 'bond'. In other cases, you may have to sign over the registration of your car or provide some other asset as security.

There are two reasons courts consider imposing a bond. The first is to provide a reason for a parent to return and the other is to help cover the other parent's legal fees and travel costs in enforcing a return if the child is kept overseas.

What is the Hague Convention?

Australia is a signatory to the *1980 Hague Convention on the Civil Aspects of International Child Abduction* (the Hague Convention) which is the main international agreement that deals with international child abduction. The Hague Convention provides a way for parents to seek to have their child returned to their home country. The Hague Convention is currently in force between Australia and over 80 countries. There is also a bilateral agreement in force between Australia and Egypt, and Australia and Lebanon that aims to assist parents to resolve their parenting dispute across international borders.

For more information about the Hague Convention, please go to
www.ag.gov.au/FamiliesAndMarriage/Families/InternationalFamilyLaw

Service

When you start a court case, the law says you must tell the other parent about the case by serving them with a sealed (stamped) copy of your court documents.

'Serving' means giving the documents to the other parent or bringing them to their attention. If you are filing an **Initiating Application (Family Law)**, you will need to follow the rules of 'special service'. You can find these rules in the **Service Kit** available from www.fccoa.gov.au/forms/service-kit, by calling 1300 352 000 or at your nearest Federal Circuit and Family Court of Australia registry.

If your case is urgent and/or you can't find the other parent or will have difficulty serving them, you may want to ask for special orders about service. See the section below under the heading 'Sample court orders'.

Sample court orders

You list the orders you want the court to make in your **Initiating Application (Family Law)** or **Application in a Proceeding**. Below are some of the types of orders you can ask for and some suggested wording. Remember that each case is different and that the type of orders you should ask for will depend on the circumstances of your case. These orders should be included under the heading **Final Orders** and **Interlocutory Orders** (if necessary) in your **Initiating Application (Family Law)**.

Substantive orders

You will need to ask the court for final orders allowing you to obtain a passport for your child and to travel overseas with them.

- **Travel order** – this order is asking for permission to travel with your child overseas and to make all decisions about overseas travel for your child without the other parent’s consent.

Sample wording

For the purposes of s65Y of the *Family Law Act 1975 (Cth)*, the mother/father is permitted to take or send the child [full name] born on DD Month YYYY, from the Commonwealth of Australia.

If your child does not have a current and valid passport, then you may want to ask for:

- **Passport orders** – these orders are asking for permission to obtain a passport for your child without the other parent’s consent.

Sample wording

1. For the purposes of s 11(1)(b)(i) of the *Australian Passports Act 2005 (Cth)*, the child/children [full name] born DD Month YYYY, is permitted to have an Australian Passport.
2. The mother/father is permitted to apply for an Australian Passport for the child/children [full name] born DD Month YYYY, and the father’s/mother’s consent to the child having an Australian Passport is not required.

If your child’s name is on the Family Law Watchlist, then you may want to ask for:

- **Discharging the initial order** – this order is asking the court to cancel the initial order that placed your child’s name on the Watchlist. For more information, see Factsheet 2 ‘How do I remove my child’s name from the Family Law Watchlist?’ You will need to find the original order placing the child on the Watchlist and attach a copy to your application.

Sample wording

That order [number] of the orders made by Justice [name]/Judge [name] at the [location eg Parramatta] Registry of the Federal Circuit and Family Court of Australia on DD Month YYYY be discharged.

- **Removing the child’s name from the Watchlist** – this order is asking the court to direct the Australian Federal Police to remove your child’s name from the Watchlist.

Sample wording

If you want your child’s name to be permanently removed from the Watchlist: That the Australian Federal Police be directed to remove the name(s) of the child/children [full name] born on DD Month YYYY from the Family Law Watchlist in force at all points of arrival and departure in the Commonwealth of Australia.

If you want your child’s name to be temporarily removed from the Watchlist: That the Australian Federal Police be directed to remove the name(s) of the child/children [full name] born on DD

Month YYYY from the Family Law Watchlist in force at all points of arrival and departure in the Commonwealth of Australia for the period DD Month YYYY to DD Month YYYY.

If you are willing and able to offer a sum of money as security that you will return the child, you may want to ask for:

- **Payment of bond**

Sample wording

Within [insert period of time] the Applicant pay a security bond of \$X by bank cheque to be held on trust by the Respondent's lawyer (or Respondent – if not legally represented) and disbursed:

- By repayment in full to the Applicant within 5 business days of the Applicant and child's return to Australia; or
- To the Respondent on account of any legal and other appropriate fees incurred by the Respondent if the Applicant fails to return the child to Australia by [add date of anticipated return].

Service and procedural orders

These are examples of service and procedural orders and should be included under the heading **Interlocutory Orders** in your **Initiating Application (Family Law)**.

If your case is urgent, then you may want to ask for:

- **Dispensing with the requirement for a section 60I certificate** – this order is asking for permission to file your application without first going to family dispute resolution and getting a section 60I certificate.

Sample wording

That the requirement for a section 60I certificate be dispensed with.

- **Urgent listing/short notice** – this order is asking the Court to deal with your application on the earliest possible date.

Sample wording

That the matter be listed urgently on short notice.

If you cannot find the other parent or will have difficulty serving them, then you may want to ask for:

- **Substituted service** – If you do not have an address for the other party, or will have difficulty serving them, you may need to ask for permission to 'serve' the other party through a different method – for example via email, text message or social media, or sending it via registered post to someone who you know is in contact with the other party. To 'serve' someone essentially means to provide them with a copy of the court documents you have filed.

Sample wording

That the rules for service be dispensed with provided that the Applicant send the Initiating Application, Affidavit and Notice of child abuse, family violence and risk to the Respondent by eg private Facebook message, email, text message, etc.

- **A location order** – If you are unable to locate the other parent and do not have a way of contacting them, then you may need to ask for a location order. This is an order that requires a person or government department like Centrelink or a school to provide information to the court about a child's location. If this is required, you should get further legal advice.

Sample wording

That pursuant to s67N(2) of the *Family Law Act* that the Chief Executive Officer of Centrelink furnish forthwith to the Federal Circuit and Family Court of Australia at [state where court is situated] information about the location of the child [child/ren name/s and date of birth/s] or the mother/father [name and date of birth] that is contained or comes into the records of Centrelink.

That pursuant to section 67P(1)(d) of the *Family Law Act* leave be granted to disclose the information provided to the Registrar of the Federal Circuit and Family Court of Australia at [state where the court is situated] and that the court arrange for a process server to effect service of the documents on the respondent and that the applicant pay the costs associated with such service.

- **Ex parte listing** – If there are concerns that a child is at risk of serious harm, and the matter needs to be heard urgently, or there are concerns that the other parent will go into hiding with the child, then you may ask for an order that your application be dealt with 'ex parte'. This is asking for permission not to serve the other parent first and for the application to be heard by the court without the other parent being there. If this is required, you should get further legal advice.

Sample wording

That the service of the application be dispensed with and that the application proceed on an ex parte basis.

Your affidavit

An **affidavit** is your written statement of evidence and tells the court why it should make the orders that you are asking for.

As a guide, your **affidavit** should include information like this:

- Your personal history including your date of birth, date of marriage/relationship, and dates of separation and children's name/s and date of birth/s.
- All current parenting plans or court orders, including any family violence orders. Attach copies to your **Initiating Application (Family Law)**. If you are filing an **Application in a Proceeding** and the court does not already have a copy of these documents, attach them to your **Affidavit**.
- Circumstances of the care of your child.
- The other parent's attitude to parenting and whether they pay child support.
- Any concerns for your child's safety or welfare, including any involvement by the Department of Communities and Justice (DCJ, previously known as FaCs or DoCS) either in the past or the present.
- Details of conversations with the other parent about your child's travel including whether consent for the child to travel was ever asked for or given.
- Any attempts to resolve the issue with the other parent.
- Reasons for travelling and the benefit to the child.
- The immigration status of the people travelling.
- Any views expressed by your child about travelling or not travelling.

Tips for writing an affidavit

- Divide the affidavit into paragraphs.
- Number each paragraph.
- Keep each paragraph short and deal with one issue only.
- Be specific rather than general. Think about who, what, when, where, and how. Provide exact dates wherever possible. If you can't be exact, make your best estimate.
- Focus on the issues that are relevant to your application.
- When you are writing about a conversation, quote it exactly, or write: 'On or around [DATE and TIME], [NAME] said to me words to the effect of *"I'm going to my Mum's. Don't call."*
- Keep your affidavit under 10 pages.
- To attach a document, you should refer to it in your affidavit and then write **"Annexed to this affidavit and marked with the letter 'A' is a copy of [DOCUMENT NAME]"**. Write the letter "A" at the top of the front page of the document you are attaching to your affidavit. If you have more than one annexure, the second document should be marked "B" and the third document marked "C", etc.
- You can attach up to 5 annexures.
- Sign the bottom of each page of the affidavit in front of a Justice of the Peace (JP) or lawyer and complete and sign the "jurat" at the end of the affidavit. This is the statement at the end of your affidavit which sets out when, where and before whom you have signed the affidavit.
- If you have attached a document (annexure) to your affidavit, make sure the JP or lawyer who is witnessing the affidavit signs each document.
- If you need to correct any errors, cross out the error and put your initials next to the change. The JP or lawyer who is witnessing the affidavit must also put their initials next to the change. These changes can only be made prior to completing the jurat.

- Whether the court can be assured you will return to Australia with the child. Facts that show you are likely to return to Australia include:
 - You own property in Australia.
 - You have a job in Australia.
 - You have family and/or close friends in Australia.
 - You are willing and able to provide a sum of money as security for your child's return.
- Whether the country of travel is safe for your child to travel to. Are there any current safety concerns in the country of travel? (For travel alerts, go to www.smarttraveller.gov.au)
- Whether the country you and the child are travelling to is a party to the Hague Convention (For more information and a list of countries, go to: www.ag.gov.au)
- If you have made any bookings (flights, accommodation etc.) attach a copy of your flight itinerary or accommodation booking.
- If the child will miss spending time with the other parent, set out the arrangements discussed/made for make-up time and for phone/Skype communication with the other parent.
- If your child will miss any school, set out the arrangements made with the school to catch up on schoolwork.
- If asking for short notice, include details of any urgency in your matter.
- If asking for a service order or location order, explain why you do not know where the other parent is, all reasonable attempts you have made to locate the other parent, and how you know the method you have selected is the best way of contacting the other parent.
- If you do not have a section 60I certificate from a family dispute resolution practitioner, explain why you did not go to family dispute resolution, for instance, if it is an urgent matter.

This fact sheet is intended as a general guide to the law. It should not be relied on as legal advice and it is recommended that you talk to a lawyer about your particular situation. At the time of writing, the information shown is correct but may be subject to change. If you need more help, contact LawAccess NSW on 1300 888 529.

Family Law Early Intervention Unit: 1800 551 589 • Legal Aid NSW www.legalaid.nsw.gov.au