

Relocation issues in family law

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Relocation cases involve a party who wishes to move with the child/children to another country, state or region and they have not been able to get the consent of the other party.

You should not make plans to relocate without the express written consent of the other parent. Such action is generally frowned upon by the Federal Circuit and Family Court of Australia ("the Court") and in most cases parties who relocate without the permission of the Court or the other parent will be ordered to return.

The correct approach to relocation matters is to obtain legal advice regarding your options and seek permission from the Court to relocate if the other party will not agree. Relocation cases are notoriously difficult to decide. Ultimately a Court must determine what arrangement will be in the best interests of a child and make Orders accordingly.

Some of the relevant matters to consider include:

- The relationship between each parent and the children and the age of the children;
- How expensive and difficult it would be for the other party to see the children;
- The reasons for moving e.g. family support, family, new partner, employment; and
- Whether it is reasonable for the other parent to also relocate or make appropriate adjustments to accommodate the relocation.

Each case is different and the result will depend on the specific facts of each case. The important thing to remember is not to make any concrete plans to relocate until you have permission to do so.

How far away can someone move after separation before it is considered a ‘relocation’?

A move is generally considered to amount to a formal ‘relocation’ when one parent wants to move far enough away that it would significantly impact the time that the children spend with the other parent.

While there is no one-size-fits-all approach or particular distance that gives rise to a ‘relocation’ issue, moving 20 minutes down the road is not likely to be disruptive enough to amount to a ‘relocation’. However, depending on the circumstances, it may amount to a relocation if the move significantly impacts the children’s time with the other parent.

Whether a move significantly impacts the children’s time with the other parent can also be dependent on the usual travel time or how much it will cost for the child to spend time with each parent. For example, a ‘relocation’ could amount to a parent moving from the West side of Melbourne CBD to the East side, as the travel time for a child who would usually do multiple changeovers a week would increase significantly.

Alternatively, if one or both the parties usually lived rurally (or far apart from the other) and the child would usually travel significant distances for changeover/a parent ordinarily incurred additional expenses for longer travel (i.e. a train or plane ticket), a parent could move hundreds of kilometres away (much further than the other side of the city), but the practical effect on the child is minimal. This might not amount to a ‘relocation’ depending on the circumstances.

A parent who wishes to ‘relocate’ or has concerns that a move may impact the child should explore ways they can mitigate any disruption to the usual care arrangements, for example increasing electronic communication, modifying the usual changeover arrangements, or providing ‘make-up’ time if a disruption is inevitable.

When will the Court allow a relocation?

The Court can only make orders in relation to children that are determined to be in their best interests. This includes determining whether a relocation should be allowed or not.

The Court will take a number of different considerations into account when determining whether to allow a relocation, and each case is different.

The Court has previously granted relocations in circumstances where:

- The relocation would benefit the relocating parent’s career, ability to obtain employment or financial circumstances (i.e. if a parent sought to relocate from a rural area closer to a city with more job opportunities);
- The relocating parent has limited support following the breakdown of the relationship and would be able to obtain further support by way of the relocation (i.e. moving closer to family);
- The relocating parent has re-partnered, and their current partner lives/is established elsewhere; or

- The relocating parent is suffering from the effects of family violence and/or mental health issues and the relocation would allow the relocating parent safety and/or support.

The Court has previously refused to grant relocations in circumstances where:

- The relocation would significantly reduce the child's time with the other parent or their extended family, or make it too difficult and costly to maintain the relationship.
- The relocation is not considered to be in the child's best interests. This could be for a number of reasons, and could include a disruption to their current routines, distance from friends or community, distance from extra-curricular activities etcetera.
- The child has expressed a clear and strong view that they do not want to relocate, and the child is of an age and maturity that the Court places significant weight on their views. While a child's view is not a decisive factor, it can carry significant weight in certain circumstances, for example, if an older child indicates they will run away from home rather than relocate.
- If there could be a risk of harm or failure to comply with usual parenting arrangements in the new location – this is more relevant where parties wish to relocate overseas to a particular country, such as a country that is not a member of the Hague Convention.

How do the 2024 Family Law Act changes affect relocation?

In May 2024, a number of changes were made to the Family Law Act 1975 (Cth) that may impact whether a parties' application to relocate will be successful. In short, the main changes that affect relocation matters include the following:

1. There is a greater importance or emphasis on family violence and ensuring the safety of children and people with caring responsibilities for children.
2. The Court is no longer required to consider a child having a 'meaningful' relationship with both parents as a primary consideration in determining what is in their best interests.
3. There is no longer a presumption of equal shared responsibility (this has been replaced by long-term decision making), and following on from this, there is also no longer a link between equal shared responsibility/long-term decision making and a child spending equal time with each parent.
4. There is no longer a concept of a child spending 'significant and substantial time' with a parent.

While we are still yet to see if and how these changes might affect how the Court determines relocation matters, ultimately each case will need to be considered on its own specific set of circumstances.

Generally, the changes suggest that the Court will be more inclined to consider 'bespoke' orders for each family, which may give rise to more relocation applications being successful.

How a family lawyer can help

Smith Family Law can assist in relocation proceedings and putting in place mechanisms to prevent a child from relocating.

If you are the parent that wants to relocate and you do not have the consent of the other parent, the best option is to make an application to the Court seeking to relocate before taking any other substantive steps. We can also assist with this application and give you detailed advice about the prospects of success.

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