

Travel Overseas with Children



This fact sheet summarises the Ask LOIS webinar on this topic, presented by Melissa Nicol, Solicitor, Women's Legal Services NSW on 15 September 2015. This webinar can be viewed for free at www.asklois.org.au/webinars/past-webinars

This factsheet looks at:

- What are your client's options if she wants to travel overseas with the children?
- What if your client doesn't want the children to go overseas?
- Family Law Watchlist, Hague Convention & passports

Your client wants to travel overseas with the children?

- A child should not travel overseas unless both parents consent or there is a court order permitting travel overseas
- Your client should get consent in writing from the other parent as early as possible before travelling overseas. Your client should also seek legal advice before travelling overseas with the child
- It is a Commonwealth offence under **section 65Y** and **section 65Z** of the *Family Law Act 1975* to travel or send a child overseas when:
 - There is an order preventing or restricting a child's overseas travel; or
 - There are court proceedings pending; or
 - There is an appeal about a parenting order.
- If your client travels overseas without the consent of the other parent and there are parenting orders in place, your client may be held in contempt of court

What if your client cannot get consent?

- If your client cannot get consent to travel overseas with the child they will need to:
 - Attempt Family Dispute Resolution (FDR); or
 - Apply to the Federal Circuit Court of Australia (FCCA) for a parenting order permitting the child to travel overseas where FDR is not successful or the matter is urgent

What if your client needs to go to court?

- The '*Best Interests of the Child*' is the paramount consideration of the Court when making decisions about children and overseas travel.
- If your client needs to apply for a parenting order, they will need to show why the trip is in the best interests of the child. Some of the factors a Court may take into consideration include:
 - Details and length of the proposed trip
 - The child's habitual place of residence
 - Travel alerts associated with the destination country
 - Level of conflict between the parents
 - The impact on the child if the order is denied
 - Risk of the child not being returned to Australia
- If there is a high risk that the parent may not return to Australia, the Court may order that a parent pay a bond as security that they will return with the child or order that a detailed itinerary be produced

What if your client doesn't consent to the other party taking the child overseas?

- If your client's child does not have a passport, they can lodge a Child Alert Request with the Australian Passports Office
- A Child Alert Request will not prevent a child from being taken overseas. It only notifies the Australian Passports Office that a parent has not provided consent to issue an Australian passport for the child



- If the child has a foreign passport, your client can contact the embassy of the country of issue to determine what procedures they have in place to prevent the child from travelling overseas
- If the child has an Australian passport or there is a serious flight risk, your client can apply to have the child named on the Family Law Watchlist

Family Law Watchlist (Known as the Airport Watchlist)

- The Family Law Watchlist is maintained by the Australian Federal Police (AFP) and is designed to alert the AFP of the movement of children or any flight risks
- Your client will need to apply to the FCCA for an order, which prevents a child from travelling overseas and empowers the AFP to name a child on the Family Law Watchlist
- The steps a parent can take to have a child named on the Family Law Watchlist include:
 - Submit a Family Law Watchlist Request form (this can be obtained online through the AFP); and
 - Provide a copy of a final parenting order, application for parenting orders or an appeal application relating to travelling overseas with a child.
- A child cannot be taken off the Family Law Watchlist until further court order or until the child is 18 years of age

What if a child travels overseas without consent or stays overseas longer than expected?

- A parent can apply through the Attorney General's department for an international recovery order to have the child returned to Australia if:
 - The child is taken to a Hague Convention country; or
 - A country with a bilateral agreement (Egypt or Lebanon)
- If the child is taken to a non- Hague country, your client will need to seek assistance from the Department of Foreign Affairs & Trade (call **1300 555 135, 24/7**)

Hague Convention Countries

- If the child is taken to a Hague convention country the parent will need to show the child was taken from their habitual place of residence and that the person applying has the legal right to determine where the child lives
- Court orders are not necessary to seek an international recovery order when the child is taken to a Hague convention country (see: *Garning v DCCSDS and Anor [2011] FamCA 485*)

Non-Hague Convention Countries

- If the child is taken to a country that is not a signatory of the Hague Convention, it can be difficult to have the child returned to Australia
- Your client may need to seek legal assistance in the country where the child has been taken

What if the other parent does not consent to a child's passport?

- A passport cannot be issued for a child without the consent of both parents (section 11, *Australian Passports Determination Act 2005*)
- The minister (usually their delegate, i.e., someone working at the Passports Office) can issue a passport for a child in special circumstances. There is a high threshold to establish consent should be dispensed with. The client will need to show that all avenues have been exhausted
- If your client can not obtain consent from the other parent they may need to apply to the Family Courts for an order authorising a passport to be issued for the child.

Useful Resources



- Ask LOIS past webinar on International Child Abduction & the Hague Convention: www.asklois.org.au/webinars/past-webinars#hague
- AFP Family Law Kit: www.afp.gov.au/policing/family-law/family-law-kit
- Attorney General's Department: www.ag.gov.au/FamiliesAndMarriage/Families/InternationalFamilyLaw/Pages/Internationalparentalchildabduction.aspx
- Australian Passports Office: www.passports.gov.au/Web/Newppt/Consent.aspx