



Generally, most people can come to appropriate arrangements in regards to their future parenting responsibilities without the Court's intervention. However, after separation, the parent with whom the children live may decide to unilaterally move the children away from the other parent, without their consent or without the permission of the Court. Unilateral relocation is often, if not always, frowned upon by the Courts, which ultimately ends with an Order being made for the return of the children to the area they were taken from or failing which, an Order for the children to live with the other parent. As a general rule, relocation is deemed to have occurred if you move more than one hour away from your usual place of residence or the family home.

The removal of children (or even a threat to do so) within a state, interstate or internationally, each have different responses. In short:

1. If the child/ren are unilaterally taken to some place WITHIN Australia, you can apply for a **Recovery Order**;
2. If the child/ren are unilaterally taken to some place OUTSIDE Australia, you may be able to apply for a **Hague Application**; or
3. If you believe that the child/ren will be removed from the Commonwealth of Australia, then you can apply for an **Airport Watch List Order**.

Recovery Orders

What is a Recovery Order?

A Recovery Order is an Order made by the Court requiring the child/ren to be returned to a parent, a person who has parental responsibility in relation to the child/ren, or to a person who has an existing parenting order that provides for the child/ren to live with or spend time with that person. This extends to not only the parent with whom the child/ren are currently living but to parents who by law have parental responsibility for the child/ren.

In the event that a parent absconds or removes the child/ren from the child/ren's usual surroundings, the other parent will usually have standing to bring an Urgent Application to Court for a Recovery Order. If the Court is satisfied that the children have been removed unilaterally by that parent, the Court can Order that parent and the children to return by a certain timeframe (usually within 1-7 days) and in the event of non-compliance, a Recovery Order is issued. This will involve an Order authorising State Police Officers and the Australian Federal Police (AFP) to take any appropriate action to find, recover and deliver the child/ren to the other parent.

A further Order is usually sought in the Application to prohibit that person from removing or taking possession of the child/ren again. In the event that a parent again removes the child/ren, a Recovery Order can authorise the arrest (without warrant) of the person who removes or takes possession of the child/ren.

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Who can apply for a Recovery Order?

It is a general misconception that only the biological parents of the child/ren can bring a Recovery Order Application. Persons who have standing to bring a Recovery Order Application include: a person who the child/ren live with, a person who the child/ren spend time with, a grandparent of the child/ren, a person who is concerned with the care, welfare and development of the child/ren (even where there is no parenting order in place that provides for this arrangement).

How do I apply for a Recovery Order?

Firstly, contact **Michael Sing Lawyers Pty Ltd** to obtain urgent advice.

Although it is a requirement that both parents participate in Compulsory Family Dispute Resolution (and obtain a Section 60I certificate) before commencing any Application relating to parenting matters; however there are certain exceptions to proceeding to Court without the required certificate. You may file an application without a certificate in circumstances where the matter is urgent, there is family violence or child abuse or if there is a risk of family violence or child abuse.

If, after taking your instructions, we believe you should commence an Application for a Recovery Order, we would seek an urgent hearing and rely on the 'urgency' exception to proceed without the certificate. If this is the case, then a further Affidavit is completed to outline the reasons why a certificate is not attached and the exception that is relied upon.

What is the process?

After taking your instructions, we would urgently prepare your Application for a Recovery Order and obtain a statement from you regarding the relationship history, the parenting arrangements since separation, attach any orders that have been contravened and state the urgency of the matter.

We then file the Application, usually in the Federal Magistrates Court of Australia, seeking an urgent listing of the matter. It is out of our control as to when the Court can list your matter for hearing. Depending on the Court's schedule, the hearing can be set down anytime from three days to two months after the date of filing the application.

In the event the other parent's location is known, then the Court will require that the other parent be served with the Application to allow them natural justice to respond to the Application. However, if the address of the other parent is not known, then the Court may make a location order or list the matter to proceed 'ex parte' (in the absence of the other party) depending on the urgency of the matter.

Haague Applications – International Child Abduction

In the event that, following separation, there are concerns that one parent will attempt to leave Australia with the child/ren, you should obtain urgent legal advice. In these circumstances time is of the essence.

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To ensure consistency regarding laws that govern child abduction, there is what is called 'The Hague Convention'. The Hague Convention is a treaty between countries on the issue of international child abduction. Australia is a signatory to the Convention.

What countries are members of 'The Hague Convention'?

The Convention on the Civil Aspects of International Child Abduction 1980 ('the Hague Convention') will only apply to countries that have voluntarily signed up to the convention.

There are a number of Hague Convention Countries including, but not limited to, Brazil, Canada, France, Denmark, Italy, Ireland, New Zealand – just to name a few. You can view a complete list of all the countries that are signatories to the Convention, on the Hague website http://www.hcch.net/index_en.php?act=conventions.authorities&cid=24

Who can apply?

The Regulations specifically provide that the applicant can either be the Central Authority or a Natural Person. In Queensland, the central authority is the Department of Communities (Child Safety Services). Applications for orders for return of a child/ren will be heard and determined in the Family Court of Australia, not the Federal Magistrates Court. You must apply within twelve months from the date of removal.

What are the Requirements?

These types of applications are not determined based on the 'best interests' principle in Part VII of the *Family Law Act*. They are determined according to strict requirements as outlined in the *Family Law (Child Abduction Convention) Regulations 1986* ('the Regulations').

There are three important elements that need to be proved for the Convention to apply and they are:

1. The child must be under 16 years of age;
2. The child must be ordinarily resident in a country (that has signed up to the convention); and
3. The removal of the child is unlawful.

Although a country may be a signatory to the Hague Convention, most parents wish to do everything in their power to stop the children being removed in the first place. This process involves filing an urgent application for the child/ren to be placed on the Airport Watch List. The Watch List is in effect at all international seaports and airports.

If you intend to relocate out of Australia, you need to be aware that if an order is in place in relation to the child/ren, then it is an offence to remove the child/ren without consent. It is also an offence to remove the child/ren whilst there are parenting proceedings on foot.

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Airport Watch List Orders

Essentially, the Airport Watch list is a system designed to prevent a child/ren from being removed to outside of Australia without the Consent of the Court or the other parent. In the event, that a parent removes or attempts to remove the children from Australia, they can be sentenced to up to three years in prison.

First, you need to seek urgent legal advice from one of our experienced family lawyers. We can prepare an urgent application to the Court asking that the names of your children be placed on the Airport Watch list. Of course, the Court will need to be satisfied that there is a serious risk of removal of the child/ren from the Commonwealth of Australia. These types of Applications will usually proceed ex parte. This is because the best interests of the children are the Court's paramount consideration and given the recent family law amendments, there is now a presumption of equal shared parental responsibility and the children do have a right to have a meaningful relationship with both parents.

Once an Application is filed, a sealed copy of the Application is then sent to the AFP requesting them to temporarily place the children's names on the Airport Watch list until the Court determines the matter at the first Court hearing. If an Order is made by a Federal Magistrate or Judge, then the children's names will remain on the watch list until they are ordered off. If the Court does not make an Order then the children's names are usually taken off the list after written confirmation is exchanged between the Courts and the AFP. However, it is advised that an Order is still obtained for the children's names to be removed, if the Applications to have the names placed on the list are unsuccessful.

Removal of the children's names from the Airport Watch List

The children's names can only be removed from the Airport Watch list with a Court Order. That Order will discharge the Order or the Specific Paragraph which initially restrained the party from removing the children outside the Commonwealth of Australia.

The Court can make Orders which will allow the children to travel for a certain period of time with one of the parents. We strongly advise you to obtain legal advice before allowing the other parent to travel outside Australia with the children.

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