

Taking Your Child Overseas

Overseas Travel with children: What do you need to know?

With the lifting of international borders and travel slowly returning to normal, more parents are hoping to travel overseas with their children – sometimes for the first time. This can be a complicated and confusing process when there has been a relationship breakdown, and especially when family violence has occurred and a Family Violence Intervention Order is in place.

I. Passports

To travel outside of Australia, all people, including children must have a passport. To apply for a child passport written consent is needed from both parents (as well as any other people with parental responsibility). If both parents agree, an application can be made.

If one parent does not agree or cannot provide consent, the parent seeking a passport can apply under 'special circumstances' for a passport to be issued without the consent of the other parent. Special circumstances can include:

- the existence of a Family Violence Intervention Order against the non-consenting parent; or
- there has been a 'substantial period' of no contact between the non-consenting parent and the child.

More information on applying for children's passports can be found at: [How to get a child passport \(passports.gov.au\)](https://www.passports.gov.au/how-to-get-a-child-passport).

2. Written Consent from both parents

Parenting orders in place

It is important for parents to be aware that if parenting orders are in place (or an application is on foot) that does not mention travel outside of Australia (or explicitly prohibit/limit travel outside of Australia) and both parents have not given authenticated written consent for the travel to occur, it is a criminal offence to take a child outside the country. Consent is still needed from the other parent where one parent has full parental responsibility but the parenting orders do not mention travel.

As such, if there are parenting orders in place it is essential that a parent wishing to travel overseas with their child/children abides by the parenting order.

Where a parent wants to undertake travel that is not covered in or varies from the parenting orders, communication should be made with the other parent (through safe channels such as a lawyer) informing them of the intention to travel and seeking their written consent.

No parenting orders in place

If there are no parenting orders in place, it is best practice to still inform the other parent, if it is reasonable and practical, of intentions to travel and to seek their consent. The presumption of 'equal shared parental responsibility' requires for parents to consult with each other over major decision in their children's lives.

3. Dispute Resolution

Where parents cannot agree or one parent will not consent, negotiation (with the aid of lawyers if appropriate) through Family Dispute Resolution is the first step. Only once negotiation occurs and parties have taken genuine steps to resolve their disagreement (e.g. mediation, arbitration) is it appropriate to apply to the Federal Circuit and Family Court of Australia for parenting orders to be made or amended to allow for the travel.

More information on consent and the steps to be taken can be found at:

Children: Relocation and travel | Federal Circuit and Family Court of Australia ([fcfcoa.gov.au](https://www.fcfcoa.gov.au))

Example 1:

Aliah and her children have had no contact with their father, Mehmet, since a Family Violence Intervention Order was put in place in 2019 following significant family violence. There are no parenting orders in place and Mehmet is not involved in the children's lives. Aliah wants to travel with her children to visit her sister in New Zealand. Aliah wants to know if she needs her husband's permission to travel overseas with the children.

Aliah is required to apply for a passport for her two children to travel outside of Australia and could apply under 'special circumstances' for a passport to be issued without Mehmet's consent on the grounds that a Family Violence Intervention Order is in place and there has been a 'substantial period' of no contact. Because there are no parenting orders in place, Aliah is not legally barred from removing the children from Australia and while it is best practice to still inform the other parent and seek their consent, due to the circumstance it may be considered unreasonable for Aliah to contact Mehmet.

Example 2:

Sonia and Fredrick have a 4-year-old son Lachlan who resides with Sonia. She has been separated from Fredrick since 2019 due to ongoing family violence. A Family Violence Intervention Order and parenting orders are in place. Fredrick has regular contact with Lachlan, including weekly phone calls and sleepovers every fortnight. Sonia wants to take Lachlan to France for a 6 weeks holiday to meet her family. When Sonia mentions this to Fredrick in passing he agrees. Fredrick later sends a message saying he does not approve of Lachlan travelling to France. Sonia wants to know if she can travel to France with Lachlan without Fredrick's permission.

Sonia is required to apply for a passport for Lachlan to travel outside of Australia. Whether Sonia is able to travel outside of Australia without Fredrick's consent will depend on the terms of the parenting order. Sonia must follow any conditions set out in the parenting order regarding overseas travel, if the parenting order does not mention or prohibits overseas travel, Sonia needs written consent from Fredrick.

If you are a parent or guardian dealing with a dispute about overseas travel or wanting more information, please contact NCLC on (03) 9310 4376 or via our website: [Northern Community Legal Centre](https://www.nclc.org.au)