

Relocation

HARRINGTON FAMILY
LAWYERS



MOVING AWAY WITH YOUR CHILDREN:

A GUIDE TO RELOCATION

1. What is Relocation?

This is when the children's primary caregiver wants to move some distance from where the children now live. A proposal to relocate is often associated with a proposal that the other parent would spend less time with the children, or that the children change schools. As a result, proposals to relocate are looked at carefully by the court to determine what is in the children's best interests.

2. If You Wish to Relocate with Your Children

- **DO get legal advice first.** It might be very foolish to do otherwise. Even if you wish to relocate within the same district or metropolitan area it is important to get legal advice first.
- **DO tell the other parent** (except in some safety cases) as early as possible and seek their consent. If they do not give their consent, any delay may result in you being unable to relocate when you want to. You should obtain their consent in writing, and talk to us before you ask for it, so that you can be protected. In most cases it is best to tell the other parent of the proposed relocation and attempt to negotiate so that alternate proposals for them to spend time with the children can be negotiated. If the other parent doesn't give consent to you relocating, you may have to go to court.
- **DO NOT relocate** without getting the consent of the other parent. The court can prevent you from moving, and even require you to move back until a final hearing.
- **DO NOT breach any court orders.** If you move away and there is a court order for the children to spend time with the other parent or for decisions to be made as to the children's schooling, your moving might be in breach of that order.

- **DO NOT relocate overseas.** If you do so without certain technical consent of the other parent or court order, you could be committing an offence or find yourself at the end of a very expensive and trying case brought under the International Convention for the Recovery Abroad of Children (the Hague Convention) to have the children returned to Australia. Once those proceedings have started, it may be just the start of more cases in Australia.

3. If Your Former Partner has Relocated or Wishes to Relocate

- **DO get legal advice immediately.** It may be necessary to make an urgent application to the court to have the children returned or prevent their moving. In making that application, **any delay may affect your prospects of success.** You will need to consider carefully whether you will consent to or oppose the proposed relocation. You will also need to consider your former partner's proposal for alternative arrangements for the children to spend time with you and speak to you including via email, webgroups and webcam. You may have no choice but to go to court.

4. If your former partner intends to relocate overseas

- **DO get legal advice immediately.** Once they have left Australia, it may be very hard and extremely expensive to get the children back. We can advise you of steps to minimise the chances of the children being taken without your consent or court order, and to increase the chances of their being returned.

5. Position before 1st July 2006

There are a series of cases decided under the Family Law Act. The law has been changed by the Family Law Amendment (Shared Parenting Responsibility) Act 2006 which took effect on 1 July 2006. The principles from those cases include:-

- The best interests of the child are the paramount but not the only consideration.
- It is necessary for a court to evaluate each of the proposals advanced by the parties. However, the court is not bound by those proposals. The case can't be dissected first into a question of with which parent the child should live and second to the issue to whether the relocation should be permitted. The issue of relocation can't be separated from consideration of what is in the child's best interests;
- The court can't require a parent who wishes to relocate with the children to demonstrate compelling reasons for the proposed move. Neither party bears the onus of establishing that the proposed change or continuation of an existing situation will best promote the interests of the children;

- The evaluation of the competing proposals must weigh the evidence and submissions as to how each proposal would hold advantages and disadvantages for the children's best interests. The reasons for the proposed relocation will be weighed with the other matters that are raised in the case;
- The court must consider the arrangements that each party proposes for the children to see and talk with the other parent. The court will want to ensure that if a relocation is permitted that the child will have a right to know and spend time with both parents.

6. The Changes

The changes to the Family Law Act which took effect on 1 July 2006 include as an object to ensure the best interests of children are met by ensuring the children have the benefit of both of their parents having a meaningful involvement in their lives.

New sections of the Act also provide that the court must apply a presumption that it is in the best interests of the child for the child's parents to have equal shared parental responsibility which means that decisions in respect of major long term issues are to be made jointly. Those major long term issues include "*the child's education (both current and future)*" and "*changes to the child's living arrangements that make it significantly more difficult for the child to spend time with a parent*".

Obviously if the primary caregiver wants to move and the other parent opposes the move, the primary caregiver will then have to show the court why the presumption should not apply.

These provisions (and some other changes) are likely to make it significantly more difficult for the parent who is the primary caregiver to relocate. It is likely to be especially difficult if that parent is proposing to move some distance away. It does not mean that the court will automatically stop parents being allowed to relocate.

This area will be subject of much case law in the next few years. If you wish to relocate with your children or if you wish to prevent the other parent from relocating with the children, **it is important that you obtain legal advice as early as possible.**

Harrington Family Lawyers pride ourselves on our accurate advice to clients. This brochure is of a general nature only, and may not reflect your specific needs. For specific advice in your matter, you should contact us, so as to ensure that the advice for you is accurate.

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