

Relocation of Children

This information is based on the law as at July 2010. It is written for the use and benefit of women who contact the Women's Legal Centre (ACT) and is to be read in conjunction with the specific advice given to those women when they contact the Centre.

You should read this tip sheet if you have a child and you wish to move with your child out of the ACT. This information will apply to you whether you are separated, divorced or were never married to your child's Father.

Can I just leave?

If you have a Court order about your child

If you have an order about your child you will need to look at the order to see whether it will still work after the move. For example, if the order says that your child is to spend time with his/her Father each weekend and you are moving to Brisbane, then the order will not work. If you move you will 'breach' the order. This means that you have not done what the order says. Before you move you and the Father will need to agree to the move and you will need to 'vary' (change) the order to reflect your new arrangement so that the order will work in your new situation.

If you don't have a Court order about your child

If both parents can agree about the move then parenting will simply go on as you have agreed and it is not necessary to go to Court at all. You could also make a Parenting Plan to reflect the agreement. However, if you want your agreement to be enforceable, you can apply for consent orders from the Family Court. A consent order saves problems and misunderstandings in the future.

Consent Order Kits are available from the Court and you can write them yourself although it is a good idea to get legal advice before signing. See the Centre's tip sheet *How do I get a Parenting Order by Consent?*

What if we can't agree?

If you and the Father cannot agree, there are family dispute resolution services which can help you come to an agreement (for example, the Family Relationship Centre at Woden). You are required to contact such a service and get a certificate before you file your application in the Court unless you are exempt. See the Centre's tip sheet *Parenting Orders in the Family Court and the Federal Magistrates Court*.

If the Father of your child will still not agree to you moving, and you do not have any orders about your child, you can apply to the Family Court or Federal Magistrates Court for an order that your child live with you wherever it is you want to move to. You should also include a proposal for when your child is going to spend time with and communicate with his/her Father. It is important that your proposals are reasonable.

If you already have a Court order about your child you can apply to the Court to vary (change) the existing orders. Your application should include new proposals for spending time with, and communications between, your child and his/her Father after the move. Again it is important that your proposals are reasonable.

What if I just move?

If you move your child out of the ACT without the Father's permission, and the Father wants him/her to come back to Canberra, he can immediately apply for a Recovery Order from the Family Court or Federal Magistrates Court. If the Court agrees with the Father, you will have to return your child to the ACT, usually within a short space of time. Alternatively, the order may be given to the police who can then find your child and return him/her. The order may also prevent you from taking your child again or from having your child live with you until your case has been decided by a Federal Magistrate or Judge.

If you take your child out of Australia without the Father's permission and there are Court proceedings or orders you may be committing a criminal offence. If you do take your child overseas without the Father's permission, he can usually apply to have him/her returned to Australia.

If the Father is worried that you might take the child overseas he can ask the Court to keep your child's passport or to notify the airports that your child is not to leave the country.

How are relocation cases decided?

If you go to Court both you and the Father will need to tell the Court about the move. Each of you will make a proposal to the Court about where your child should live and why. For example, your proposal might be that your child lives with you in Brisbane and spend additional holiday time and have frequent telephone calls with his/her Father. These days there are many options for communicating from a distance, for example, email and Skype. The Father's proposal might be that your child lives with him in the ACT.

The Court will listen to your proposal and the Father's proposal and then decide which proposal is in the best interests of your child. As there is a presumption of equal shared parental responsibility, relocation matters are difficult ones to decide.

Before deciding what is best for your child the Court will look at things like:

- how old your child is and any views which they might be expressing
- the relationship between you and your child
- the relationship between your child and the Father and how often he/she currently sees him
- how the move will affect your child, particularly the effect of moving away from school, friends and relatives
- the capacity of both parents to provide for the child's needs (the Court will also take into account the effect on your ability to cope if you cannot move to where you wish)
- the need to protect the child from physical and/or emotional harm
- whether there has been any family violence
- what is reasonably practicable in the circumstances

The Court will also think about other factors relevant to the move like:

- the attitude of both parents towards the ongoing relationship with the other party
- your freedom to live where you choose and your wish to live without interference from your former partner or from the Court
- the reasons for your move, for example, to pursue a new relationship, to return to family support and/or to pursue job opportunities (moving just to limit your child spending time with the Father is not a good enough reason)
- how far you want to move, whether the move is permanent, and how difficult and expensive the visits and communications with the Father are going to be
- both of your proposals for visits and communications

What sort of things do I need to tell the Court about?

When you are preparing for Court you will need to think about all the information relevant to the move.

You should tell the Court things like:

- the relationship between your child and each parent, including details of how much time he/she spends with each of you
- the reasons for moving, such as the importance of a better income for the long-term welfare of your child, for your career, for your new relationship, so you can re-marry or a desire to rejoin your family
- any advantages to your child such as better care facilities, better health care, better family support, a relationship with other relatives, better schooling opportunities, better lifestyle for your child
- how you will deal with possible problems such as missing or changing schools or loss of regular contact with important people such as grandparents
- your proposals for visits after the move, for example, you may want to think about giving the Father:
 - longer periods in the holidays
 - frequent telephone calls
 - email communication with your child
- who will be paying for the increased costs of facilitating the above
- evidence that you have obeyed Court orders before, or that you have a good reason for any times when you did not obey orders
- whether the proposed move has been explained to your child and what his/her wishes are
- expert evidence (such as a doctor's report) as to the likely psychological effect on you if you cannot move, and whether it is likely to lead to long term unhappiness which will affect the wellbeing of your child
- detailed evidence of the proposed new house, employment, school, child-care facilities etc

What if I plan to move overseas?

If you plan to move overseas you will need to address some extra issues like:

- the distance of the move and the details of a reasonable plan for immigration and your chances of success
- how the Court can be sure that your child will be returned for visits with the Father
- evidence about the schooling, health care, safety and economic opportunities for your child after leaving school (it may be necessary to get an expert to give this evidence, particularly if there are limited facilities in the country involved)

The conditions a Court may place on you if they grant your application to move overseas may be onerous. For instance, the Court might ask you to place an amount of money in a travel fund, which can be used for the Father to travel overseas once or twice a year, or for the child to travel back to Australia to see his/her Father. If the child is very young, the amount you may need to meet this condition could be tens of thousands of dollars. It is therefore much better if you can come to an agreement with your ex-partner about your move, either through mediation or informally, if you can.

About the Women's Legal Centre

The Women's Legal Centre (ACT & Region) Inc. is a community legal centre for women in Canberra and the surrounding area. The Centre is run by women and aims to improve women's access to justice. The Centre offers free, confidential telephone advice Monday to Friday from 9.30am to 12.00 noon, and face to face appointments, when appropriate.

The numbers for legal advice (weekdays 9.30am to 12 noon) are:

Local	6257 4499
Outside Canberra	1800 634 669

The Women's Legal Centre is funded by the Indigenous Justice and Legal Assistance Division, Commonwealth Attorney-General's Department.