



Separated – Can you relocate the children?

Relocation is a difficult and complex issue for separated and divorced parents to resolve. Relocation may arise, for example, as a result of work, financial, family or health and safety reasons.

The move affects the way the other parent spends time with the children, and can give rise to uncompromising conflicts between two competing ideas about how post separation family life should operate.

A Court cannot prevent a parent from relocating. However, it can prevent the parent who has the care of the children from taking the children with them.

If a parent wishes to relocate with the children, the agreement of the other parent, or failing agreement, an order of the Family Court to allow the relocation, should first be obtained.

If the relocation takes place without either, the other parent can apply to the Family Court for a recovery order that requires the children to be returned. A recovery order can authorise or direct a person or persons, such as police officers, to take appropriate action to find, recover and deliver a child to the other parent. The recovery order can also prohibit the parent from again removing or taking the child.

The Family Law Act does not contain any specific provisions in relation to relocation. The Court will consider what is in the “best interests of the child” as the paramount consideration in each application for relocation.

There are 2 types of considerations which must be taken into account when determining the “best interests of the child”. They are primary considerations and additional considerations.

There are 2 primary considerations, namely:

1. The benefit of the child having a meaningful relationship with both of the child’s parents. This requires the Court to consider whether the relocation will impede the child’s ability to maintain a relationship with the non-relocating parent. Their relationship may suffer because of the distances and difficulties in communication and organising direct contact.
2. The need to protect the child from physical or psychological harm, from being subject to or exposed to abuse, neglect or family violence.

Whilst the best interests of the child remain the paramount consideration, they are not the sole consideration. The additional considerations include:

1. What are the child’s views?
2. Where is the intended location? The greater the distance between the two parents’ homes, the greater the effect on the time the child spends with the other parent.



3. What is the reason for relocation? The parent wishing to relocate does not need to show compelling reasons, but needs to show good reasons.
4. Is the relocation permanent, or for a defined period?
5. Is there a family or support network available to the children and the parent proposing to relocate?
6. Are the children familiar with the destination and the people living there?
7. In what accommodation will the children and the relocating parent live?
8. What schools are available for the children to attend and how do they compare with the children's present school?
9. What amenities are there for the children's sporting, cultural and extra-curriculum activities?
10. What are the new proposals for the non-relocating parent's time with the child, ie longer face to face periods less frequently, video conferencing, phone calls etc.
11. The financial implication or career implications of the move.
12. The costs and practical difficulty of the non-relocating parent spending time with and communicating with the child.
13. The competing proposals of the parents.

Whilst the Family Law Act requires the Court to consider many factors, it does not state the order in which such factors are to be considered, or what weight is to be attached to each factor. Each case is based on the unique facts of the particular case. The discretionary nature of determining what are the "child's best interests", means the relocation process is a difficult process to navigate.

Relocation issues are particularly difficult and hard fought. If you or anyone you know requires assistance because you or your former spouse intends to relocate the children, or you require assistance with recovery orders or any other family law issue please contact one of our experienced family lawyers, [Oliver Hagen](#) and [Ken Gray](#) on 02 4731 5899 or email familylaw@batemanbattersby.com.au.