



LEGAL AID
WESTERN AUSTRALIA

Risk of children being taken out of Australia

The following information may be useful if:-

- your children are with somebody else you suspect may take them overseas;
- your children are in your care but you are afraid of them being taken from your care and then overseas; or
- you are concerned that the other parent may apply for a passport for your children without your permission.

It does not cover information about children who may be removed to another state or other location within WA.

Where the child does not have a passport

Consent is required

For a child to travel out of Australia, he or she will need a passport.

Unless the Family Court has made other orders, the written consent of all people with parental responsibility for the child will be needed to obtain a passport.

In most cases, the people with parental responsibility for a child will be the natural parents who are named on the child's birth certificate – their parental responsibility can only be removed by orders of an Australian court.

As well as natural parents, a person may have parental responsibility through Australian court orders such as parenting or guardianship orders.

What if the other parent is in another location or overseas?

If someone with parental responsibility is in another location or overseas, he or she can provide consent through his or her local passport office or Australian diplomatic or consular mission.

What if there is no father listed on the birth certificate?

Where a father is not named on a birth certificate but has formally acknowledged paternity by signing another document to that effect (for example, a child support document) his consent will be required.

Where there is no father named on the birth certificate and there is no other acknowledgment of paternity, a **Form B8** will need to be completed and lodged at a passport office.

Forms can be accessed at www.passports.gov.au, at a passport office or you can call the **Australian Passport Information Service (APIS)** on **13 12 32** and have one sent to you.

What if I can't get consent?

If the consent of someone with parental responsibility still cannot be obtained after all avenues have been exhausted and there are no Australian court orders permitting the child to travel outside of Australia, a written request for a passport on the basis of 'special circumstances' can be made. The request must include:

- A statement made on a **Form B8 or B9** stating why consent has not and cannot be obtained and what the special circumstances are; **and**
- The child's full birth certificate; **and**
- The originals of **all** court orders affecting parental responsibility for the child.

An approved delegate of the passports office will then consider the application. If the delegate is not satisfied that special circumstances exist, it may be necessary for the parent applying for the passport to seek orders from the Family Court. The passport fee is generally not refunded.

Are foreign court orders relevant?

You will need to seek legal advice about whether or not foreign court orders in relation to the parental responsibility of your child will apply in Australia. Even if they don't, you should submit them with your application for special circumstances as the approved delegate may take them into account in making a decision.

What if there is a risk of getting a fake passport?

Despite the conditions that must be satisfied in order to obtain a passport for a child there may still be a risk of a person obtaining a passport for a child, or of a child being taken overseas. For example, a person may attempt to get a passport by fraudulently telling the Department of Foreign Affairs and Trade (**DFAT**) that a previous passport was lost and lodging a fresh application, or by forging your signature.

If the other parent does NOT have a passport for your child but there is a risk of the child being taken overseas, you should take the following steps:

Step 1: Child stop alert

To prevent a person from fraudulently obtaining a passport for your child, you can make a **Child Alert Request**. This is done by completing a **Form PC9 – Travel Document Inquiry**. All forms are available online at www.passports.gov.au, at a passport office or by calling **APIS** on **13 12 32** to have one sent to you. All Form PC9s must be lodged with a passport office or by mailing it to the Canberra address on the form. These forms cannot be lodged at a post office. There is no fee for lodging the form. You should include with the form a statement to explain why you are requesting a child alert.

Once this form has been accepted, a **child stop alert** will be issued and you will be notified if any attempt is made to obtain a passport for your child. A notification may mean that someone is trying to take your child out of Australia. You must make sure that your contact details with DFAT are kept up to date while the child stop alert is in place.

A child stop alert will only last for 12 months. During this time the child will be unable to obtain an Australian passport, unless the parent who lodged the child stop alert consents or a court order is made for a passport to be issued. A child stop alert can be renewed every 12 months until the child reaches 18. A court-ordered child stop alert will automatically last until the child in question turns 18.

A **child stop alert** will not prevent someone removing the child from Australia. A child stop alert does not place a child on the Family Law Watch List

Step 2: Get legal advice

If DFAT or the passports office notifies you that someone has lodged an application for a passport for your child, you should immediately seek legal advice about whether or not you should seek an injunction against that person through the Family Court.

Where the child already has a passport

If the other person DOES have a passport for your child (or could obtain one) and there is a risk of the child being taken overseas, you should take the following steps:

Step 1: Urgent legal advice

Contact **Legal Aid WA** immediately on **1300 650 579** or attend one of our offices. We may be able to help you get the necessary court order if you don't already have one. We can also give you advice on other steps you may need to take.

Step 2: Family Law Watch List

The **family law watch list** is an airport watch list system operated by the Australian Federal Police (**AFP**) and is designed to prevent children whose parents are involved in family law proceedings being removed from Australia without the consent of the court.

To have your child placed on the family law watch list, you must have an order or applied for an order from the Family Court stating that your child is not to be removed from Australia or an injunction preventing the child's removal **and** a specific order that your child be placed on the AFP family watch list.

The AFP will also need the following information:

- **personal details** for each person involved: full name, any previous name or alias used (including name before marriage), date of birth, nationality, residential address and passport number;
- **a detailed description of the child** together with a recent photo if possible: the child's full name, any other names used, date of birth, sex, height, build, visible marks, race, complexion, colour of eyes and hair, address, identity documents (eg. passports, with numbers), nationality, and country of birth;
- **a detailed description of the person or persons who may have the child** together with a recent photo if possible: physical description, full name, name before marriage, occupation, names of any other children, nationalities, and identity documents (if known);
- your **Family Court file number** and the names of any solicitors who may be involved;

- copies of all **Family Court orders**; and
- **24 hour contact telephone** numbers for you including work, mobile and home numbers. It is vital that the AFP can contact you at all times.

The information must be delivered to the AFP together with a copy of the **relevant court order or application** and a **covering letter** asking them to include the child on the family law watch list. The family law watch list request can be accessed at www.afp.gov.au.

The AFP will need to see all original court documents (that is, one with the red Family Court stamp on it). If you want to keep your originals, you should take copies as well.

The AFP will confirm with you when the child is placed on the family law watch list. Details of the child will then remain on the family law watch list for the period specified in the Family Court orders. The AFP prefers that Family Court orders include a defined period of 2 to 3 years.

While your child is on the family law watch list you need to contact the AFP if:-

- your circumstances change (for example, if you and your partner reconcile, or your contact telephone number or address change) or you wish to remove the child from the list. **Note** that if the AFP has been directed by a Court to place the child on the warning list, the child can only be removed from the list by another family court order.
- you intend to travel with the child, or you have given permission for the other person to do so (consents have to be in a particular format and you should get advice about this).
- the Family Court makes any relevant orders.

Even if you are the person who has placed the child on the list, it is an offence to try to remove the child from Australia without the written consent of the other party.

To contact the AFP in relation to the family law watch list unit you need to call the Canberra office on **(02) 6126 7999 (24 hours)** or fax **(02) 6126 7914** or email **AOCC-alerts@afp.gov.au**.

What if I don't have court orders?

If you believe there is a risk of your child being removed from the country and there are no Family Court orders or proceedings in place, you should contact the Family Court immediately. If you need to contact them after hours, the emergency number is **(08) 9224 8225**.

Once the AFP has added the relevant details to the list, the "alert" is active nationally at all land and seaports. It should be in place approximately 15 minutes after the AFP receive all the relevant details.

If your child has already been taken overseas

If your child has already been taken overseas and you want to have them returned to Australia you should get legal advice as soon as possible.

Where a passport may be issued for a child in another country

If you think a passport may be issued for a child in another country, contact the embassy of that country in the nearest Australian city to you.

Legal Aid Offices

TELEPHONE INFOLINE: 1300 650 579 (General Enquiries)

Translating and Interpreting Service 131 450
National Relay Service (for hearing and speech impaired) 133 677

www.legalaid.wa.gov.au

Perth Office

32 St Georges Terrace, Perth, WA 6000

Southwest Regional Office

7th floor, Bunbury Tower, 61 Victoria Street, Bunbury, WA 6230

Great Southern Regional Office

Unit 3, 43-47 Duke Street, Albany WA 6330

Goldfields Regional Office

Suite 3, 120 Egan Street, Kalgoorlie, WA 6430

Midwest & Gascoyne Regional Office

Unit 7, The Boardwalk, 273 Foreshore Drive, Geraldton, WA 6530

Pilbara Regional Office

28 Throssell Road, South Hedland, WA 6722

West Kimberley Regional Office

Upper Level, Woody's Arcade, 15-17 Dampier Terrace, Broome, WA 6725

East Kimberley Regional Office

98 Konkerberry Drive, Kununurra, WA 6743

Christmas/Cocos Islands Office

Administration Building 20 Jalan Pantai,
Christmas Island, Indian Ocean, WA 6798

This information contains a summary of the law and is correct at the date of publication. It is not legal advice. You should always seek legal advice about your individual situation. Any services referred to which are not operated by Legal Aid Western Australia are not endorsed or approved by Legal Aid Western Australia.

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