

INTERNATIONAL FAMILY LAW & CHILDREN

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Families who are living in different countries face a unique set of challenges. When a relationship breaks down, questions relating to the parenting arrangements for the children are often the most challenging to resolve.

INTERNATIONAL PARENTING DISPUTES

International care arrangements for children is a particularly complex area of law.

If you are living in Australia and want to relocate to another country with your child or children, you will need the consent of your spouse or partner. If you and your spouse or partner cannot agree on the matter, you will have to apply for a court order to allow the child to live with you outside Australia. In order to obtain a court order, you will have to persuade the court that it is in the child's best interests to reside with you in that overseas country.

It is also important to be aware that if you move to a new country with your child or children, you may have to remain in that jurisdiction if the other parent with parental responsibility refuses to consent to you returning to Australia with the child or children.

Under the *Hague Convention on the Civil Aspects of Child Abduction* (Hague Convention), you will be 'wrongfully removing' the child if, without the permission of the other parent, you take the child from the country where they were 'habitually resident'.

For this reason, if you are thinking of moving your child from Australia or another country and have not obtained the other parents consent, it is imperative you seek legal advice first. Otherwise, the situation could escalate quickly and you could find yourself being ordered to return to that country with the children and may even face criminal charges.

INTERNATIONAL PARENTAL CHILD ABDUCTION

International parental child abduction occurs when a parent or guardian takes a child out of Australia without either parental permission or authorisation by a court.

It can also occur when a foreign child is removed from their country of origin to Australia.

If you are based in Australia and believe that your child has been abducted by your spouse, partner or other person, and you believe they may be taken overseas, there are a number of steps you can take:

- If your child has not yet left Australia, you can apply for a court order to have your child placed on the Family Law Watchlist.

- If your child has been taken to a country that is a member of the Hague Convention, you can apply for the return of your child.
- If your child has been taken to a country that is not a member of the Hague Convention, there may be other legal steps you can take to have your child returned to you.

It is also worth noting that Australia has bilateral agreements with Egypt and Lebanon regarding cooperation on protecting the welfare of children.

SEEKING ACCESS TO A CHILD BASED OVERSEAS

If you are a parent or guardian and you live in a different country from your child, you may still need to seek access arrangements to ensure that you can spend time with your child. This may include:

Face to face visits

Telephone and video calls.

If your child or children are habitually resident overseas and the other parent is refusing to allow you to spend time or contact the child or children, this can sometimes be resolved through legal correspondence. Alternatively, it may be necessary to issue court proceedings in that country. There may be other legal avenues to explore depending on the country in question.

It is always advisable to seek legal advice if you wish to seek access to a child based overseas. Obviously, we are happy to assist in these kinds of cases.

INTERNATIONAL CHILD SUPPORT

Child support is an issue that can cause difficulties if one of the spouses or partners is based overseas.

The reality is that the process associated with obtaining child support when parents and children are living in different countries can be difficult.

Nevertheless, steps can be taken to obtain child support in the following situations:

- If the parent resides overseas and is liable to pay child support to a parent/child who lives in Australia
- If the parent liable to pay child support lives in Australia but the child lives overseas
- If the parent resides overseas with the child but wishes to claim child support from a parent who resides in Australia
- If a child support agreement is already in place and the payer moves overseas.

In order to maximise your chances of obtaining child support in one of the above situations, you should seek legal advice before lodging an application.

HOW CAN WE ASSIST?

If you are facing an issue that relates to parenting arrangements, child abduction or child support, and your case has an international aspect, you should seek legal advice from an experienced international family lawyer as soon as possible.



At Barry.Nilsson., we have particular expertise in issues relating to international family law and children. Geoff Sinclair is an internationally renowned family lawyer and an expert in child abduction cases.

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