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LawTalk Blog



New child abduction laws in parenting cases

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A recent amendment to the [Family Law Act 1975](#) means that a parent who abducts their child internationally could be imprisoned for up to 3 years.

What is Parental Abduction?

Parental Abduction occurs when one parent takes or detains a child without the permission of the other parent or the permission of the Court. Unfortunately, it is a common occurrence when parents are in dispute over parenting arrangements that one party may abscond with the child.

The new laws surrounding child abduction

When specific orders have been made regarding overseas travel or court proceedings are on foot in relation to a child, it is an offence to **take** the child overseas without the consent of the other parent or the Court. However, previously when a parent had permission to take a child overseas for a certain period of time, it was *not* an offence for that parent to **keep** the child overseas and fail to return them on time back to Australia. If that occurred, the abductor parent would be liable and face possible penalty for breaching the court orders, but they would not be criminally liable. This has now changed.

If there are no orders in place in relation to care arrangements for a child, and no application to the court for orders has been made, then it is not an offence for one parent to **take or keep** the child overseas without permission.

What happens when a parent takes or keeps a child overseas without consent?

When a parent takes or keeps a child overseas without consent, regardless of whether there are proceedings on foot, the other parent can seek the government's assistance under the [Hague Convention](#) for the child to be returned. For this process to occur the country where the child is located at the time must also be a signatory to the Hague Convention, or must have a similar agreement in place with Australia. Many countries in the Middle East and South East Asia are not signatories, and unsurprisingly these are also popular destinations for abductor parents.

Australian parents make around 100 applications under the Hague Convention each year. In 2015-16, only 63 out of the 137 abducted children were returned. Some experts have estimated that the real figure for children actually abducted per year is closer to 1,000.

The penalties of child abduction

The new laws have effectively closed the loophole for parents who have permission to take a child overseas, but fail to bring them home by the agreed date. Doing so is now a criminal offence under the *Family Law Act*, as long as there are orders in place or proceedings on foot in relation to that child. The abductor parent may now be punished by a prison term of up to 3 years.

The Court will also be able to suspend payments of child support to the abductor parent.

The amendment also expands the powers of the Australian Federal Police to enable them to monitor telephone activity and bank account transactions, as well as work with their overseas counterparts to locate the abducted child. As this kind of abduction will now be a criminal matter, it is expected that foreign law enforcement will take it more seriously than they did in the past.

With this change to the law there are also some new defences available to abductor parents, such as fleeing from violence and protecting children from imminent harm.

Opinions of the new child abduction laws

Some critics of the new laws suggest that they do not go far enough as the Australian Federal Police and Courts do not in fact gain any additional powers overseas. However, we see this as a positive change to the law as it should act at least as an effective deterrent to help protect children and to assist the Federal Police and other authorities to enforce orders made by the Federal Circuit Court or the [Family Court of Australia](#).

Despite this change to the law, the fact remains that if there are ***nocurrent court proceedings*** in relation to the child and no orders in place then a parent will *not* have committed an offence if he or she takes or keeps a child overseas without the other parent's permission. Until a Court says otherwise, both parents are assumed to have parental responsibility for the child and are able to take them overseas, if the child has a current passport. The other parent can still apply for the child to be returned, but the abductor parent cannot be charged with an offence.

What do the new child abduction laws mean for parents?

Our advice to parents is always to comply with any agreements you have made with your former partner or the Orders of the Court regarding your child travelling overseas. This will now be even more important in light of these amendments to the law, as you may find yourself criminally liable for staying longer overseas than permitted or travelling overseas without the permission of the other parent or the Court. If you are concerned that your child may be at risk of parental abduction, you should seek urgent legal advice.

If you have any questions about child abduction in parenting cases [contact our Family Law team](#) today.

This blog post was written by [Eva Bailey](#) and [Keryn Hickmann](#).

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