

## Chapter 13.2.1 > <sup>s 47E(d)</sup> > Child provisions under the Passports Act - overview

Australia is a signatory to the Hague Convention on the Civil Aspects of International Child Abduction (the Hague Convention). In accordance with its obligations under the Hague Convention, Australia has incorporated certain requirements into the Australian Passports Act 2005 (the Passports Act) that must be met before a passport may be issued to a child.

### Child applications with full consent or an Australian court order

- The Minister for Foreign Affairs (or an officer delegated under sections 7 or Sections 9 of the Passports Act) must not issue an Australian travel document (ATD) to a child unless one of the following apply:
  - each person who has parental responsibility for the child consents to the child having an ATD (paragraph 11(1)(a) of the Passports Act) or
  - an order of an Australian court (Commonwealth, State or Territory) permits the child to have an ATD, travel internationally or live or spend time with a person outside Australia (paragraph 11(1)(b) of the Passports Act).

### Child applications considered under special circumstances

- Alternatively, a person with parental responsibility may request that a child application be considered under the special circumstances provisions set out in section 11 of the Passports Act and section 10 the Australian Passports Determination 2015 (the Determination).
- Even when considered under special circumstances, there is no guarantee that a child application without full consent or an Australian court order will be approved.
- The delegate assessing the case may decide to issue, not to issue (usually because no special circumstances exist) or to refuse to exercise their discretion to issue under special circumstances because the matter should be dealt with by a court.
  - Only certain delegates may issue or refuse to issue an ATD under each of the special circumstances.
  - The delegation to refuse to exercise the discretion to issue under special circumstances because the matter should be dealt with by a court is limited to certain delegates at the EL1 level and above only.
- Child passport applications considered under special circumstances generally take six to eight weeks to process. Normal turnaround times do not apply.
- If an ATD is not issued to a child under special circumstances, either because no special circumstances exist or because the delegate considers the matter better dealt with by a court, the application fee is generally not refunded.

- If an ATD is issued to a child, even under special circumstances, it **does not equate to permission for the child to travel internationally**. The Passports Act is concerned only with the issue of a travel document.

s 47E(d)

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## Related content

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s 47E(d)

## Legislation

Section 11 of the Australian Passports Act 2005

Section 10 of the Australian Passports Determination 2015

Minister's Authorisations and Delegations instrument s 47E(d) (searchable PDF version

s 47E(d) )

## Policy

Delegations and Authorisations (Chapter 26)

## Process

Child Abduction – Responding to allegations from customers s 47E(d)

Child Abduction – Managing applications involving child abduction recovery (SCM only) s  
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## Resources

SCM Referral – Possible Child Abduction – Allegation Notification (email template) s 47E(d)

SCM Referral – Possible Child Abduction – Alleged Fraud (email template) s 47E(d)

s 47E(d)



## Chapter 13.2.4 > [s 47E\(d\)](#) > Complex child application - definition

Specialised Case Management (SCM) child applications are applications without full consent and without an Australian court order that permits the child to have an Australian travel document (ATD), travel internationally or to live or spend time with a person outside Australia.

- A request for consideration under special circumstances will be indicated by one of the following B forms lodged with the application:
  - B8 One parent only on child's birth certificate (B8) form
  - B9 Child without full parental consent or Australian court order permitting issue of a travel document (B9) form
  - B10 Child subject to an order made under state or territory child welfare law (B10) form.
- All the following applications are also considered complex, even where full consent or an Australian court order is provided. Applications for or involving:
  - children in out-of-home care (subject to a child welfare order)
  - children born through surrogacy
  - first time applications for children born overseas and adopted
  - unaccompanied humanitarian minors (UHMs)
  - international child abductions and recovery
  - allegations or suspicions of forced marriage.
- These applications must be managed according to the relevant procedure and in consultation with the Specialised Case Management section (SCM) as instructed by that procedure.
- Priority (2-day processing) and Fast Track (5-day processing) are not offered or accepted in these cases because of their complex nature.
- Child passport applications considered under special circumstances generally take six to eight weeks to process. **Standard turnaround times do not apply.**
- Cases will be handled as quickly as possible, particularly in compelling or compassionate circumstances.

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### Related content

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[s 47E\(d\)](#)

### Policy

B forms - child applications [s 47E\(d\)](#) (Chapter 13.7)

Priority (2-day processing) and Fast Track (5-day processing) - child applications [s 47E\(d\)](#) (Chapter 13.4)



Born overseas and adopted - Priority (2-day processing) and Fast Track (5-day processing)

s 47E(d) (Chapter 13.4)

Compassionate circumstances - definition s 47E(d) (Chapter 29.3)

Compelling circumstances - definition s 47E(d) (Chapter 29.3)

## Process

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SCM general processing 010 s 47E(d)

Processing of child application with a Form B8 008 s 47E(d)

PC5 eligibility guidelines

Overseas adoption - child applicant 018 s 47E(d)

Surrogacy in country of birth 009 s 47E(d)

Surrogacy - first time applicant outside country of birth or born in Australia s 47E(d)

Surrogacy subsequent 011 s 47E(d)

Management of HBJC applications 019 s 47E(d)

Hague Convention country court order 002 s 47E(d)

Medically incapable of providing consent 003 s 47E(d)

Child subject to welfare orders 001 - J cases s 47E(d)

Non-consenting person missing or presumed dead s 47E(d)

Management of Specialised Case Management applications (SCM sites only) 017 s 47E(d)

Child abduction - responding to allegations from customers 013 s 47E(d)

Child abduction - managing applications involving child abduction recovery (SCM only) 014 s 47E(d)

s 47E(d)

## Chapter 13.2.5 > <sup>s 47E(d)</sup> > Family violence

- Section 4AB of the Family Law Act 1975 (the Family Law Act) broadly defines family violence to mean violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the family member ), or causes the family member to be fearful.
- It also includes when a child is exposed to family violence, including if the child sees or hears family violence or otherwise experiences the effects of family violence.
- Examples of behaviour that may constitute family violence can be found in the Family Law Act.

### Background

In 2011, the definition of family violence in the Family Law Act was expanded to incorporate notions of coercion and control (which are not always accompanied by physical violence or threats). At the same time, the definition of child abuse was amended to include serious psychological harm arising from the child being subjected to or exposed to family violence. The Family Law Act contains a range of provisions designed to protect parties and children from family violence.

Successive governments, state, territory and federal, have committed to the National Plan to Reduce Violence against Women and their Children 2010-2022. The department's overriding policy in relation to family violence is to not put any victim of family violence at risk of further harm.

### Related content

<sup>s 47E(d)</sup>

### Legislation

Section 4AB of the Family Law Act 1975

<sup>s 47E(d)</sup>

## Chapter 13.7.8 > [s 47E\(d\)](#) > Application without full consent or an Australian court order - B9

An application without full consent or an Australian court order permitting issue must be supported by a 'B9 Child application without full consent or an Australian court order permitting issue of a travel document' (B9) form.

- If a person wishes to lodge an application without full consent or an Australian court order, the lodgement officer can't refuse the application but must:
  - check that the application includes the relevant B form(s) and supporting documents
  - ensure the key messages below are delivered.
- Key messages include:
  - there is no guarantee a passport will be issued
  - no firm travel bookings should be made until the delegate's decision is known
  - applications considered under special circumstances generally take six to eight weeks to process
  - the application fee is generally not refunded if a passport isn't issued
  - the department may attempt to locate and contact the non-consenting person (if a person objects to the non-consenting person being contacted, they must detail their reasons on the form)
  - Priority (2-day processing) or Fast Track (5-day processing) is only available once the delegate has made their decision or where compassionate or compelling circumstances are demonstrated.

It's the lodging person's responsibility to get the consent of all persons with parental responsibility for the child. If they can't make contact with or get consent from the other person(s), they should provide reasons for this including details of any attempts made.

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### Related content

[s 47E\(d\)](#)

### Policy

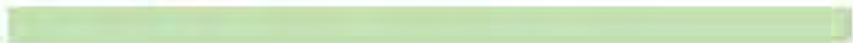


Non-consenting person contact - family violence s 47E(d) (Chapter 13.12)

Compassionate circumstances - definition s 47E(d)

Compelling circumstances - definition s 47E(d)

s 47E(d)





## Chapter 13.7.9 > s 47E(d) > Child subject to child welfare order - B-10

Applications for children in out-of-home care (subject to a child welfare order) must be supported by a Form B-10 - Child subject to an order made under state or territory child welfare law B-10 s 47E(d)

- The {{Form B-10s 47E(d)}} must be completed by the person allocated {{parental responsibilitys 47E(d)}} for the child in the child welfare order (or their delegate).
- Only a person with parental responsibility for the child (or their delegate) or a person authorised in the Form B-10 can lodge the child's application. Separate written authority from the child welfare agency for their representative to lodge is not required.
- The Form B-10 is a consolidation of a number of forms. There is no requirement for the {{lodging persons 47E(d)}} to complete an additional {{Form B-7s 47E(d)}} - No further court orders (child application) or a {{Form B-8s 47E(d)}} - One parent only on child's birth certificate or provide separate written authority from the child welfare agency to lodge.
- However, applications for children without a birth certificate still require a {{Form B-6s 47E(d)}} Child born overseas without a birth certificate.
- Guide to lodging a travel document applications for children subject to a welfare or protection order is available on the passports website to assist child welfare agencies in navigating the process.

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### Related content

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### Policy

Child subject to a child welfare order - application of Special circumstance s 47E(d) (Chapter 13.23)

### Process

Child subject to welfare orders 001 - J cases s 47E(d) )

### Resources

Child welfare or Protective Agencies - A guide to lodging Child Passport applications - Annex 23 s 47E(d)

s 47E(d)

### Chapter 13.7.9.1 > s 47E(d) > Document exceptions - child subject to child welfare order

A child welfare agency (or their representative) lodging an application on behalf of a child may not have access to the child's original identity or citizenship documentation which is required for an Australian travel document (ATD) application.

- Generally, a child welfare agency needs cooperation from the child's family to access documentation (for example, evidence of citizenship) and often, given the circumstances, this cooperation may not be forthcoming.
- Child welfare agencies (or their agents) may provide *copies* of the following documentation where originals would normally be required:
  - child welfare orders
    - courts generally don't provide hard copies of child welfare orders to child welfare agencies; electronic copies sent to child welfare agencies may not be stamped, sealed or signed
  - documents evidencing the child's parents' (and if required, grandparents') Australian citizenship
  - documents evidencing a parent's death
    - such as a death certificate, cremation certificate, a coroner's report, full Australian birth certificate that records the death or a medical certificate detailing the cause of death (a medical certificate must be verified with the issuing person/authority).

#### **B19 Form - Aboriginal and Torres Strait Islander declaration lodged with a B10 Form - J-Case (Child Subject to Child Welfare Order)**

- Child welfare agencies may provide copies of documents evidencing the Australian citizenship of the child's parents (and grandparents if applicable) if they can't get the originals.

A court order indicating a child is Indigenous or a First Nations Australian doesn't remove the need for proof of citizenship.

- Most state and territory Registries of Births, Deaths and Marriages (RBDMs) have procedures in place which allow a child welfare agency to access a child's parent's birth certificate. If the welfare agency is unable to get evidence of the child's citizenship, they may provide a completed B19 form.
- The B19 form **must not** be completed by a person with parental responsibility. This includes the person allocated parental responsibility via court order, as well as their delegate.
- Further information is available in the Guide: Children subject to a court order issued under state or territory child protection law.

**Note:** PCOs must treat these cases with sensitivity.

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Related content

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s 47E(d)

**Policy**

Aboriginal and/or Torres Strait Islander customer s 47E(d)

**Resource**

Guide: Children subject to a court order issued under state or territory child protection law -

s 47E(d)

B19 form - Aboriginal or Torres Strait Islander declaration s 47E(d)

s 47E(d)

## Chapter 13.22 > <sup>s 47E(d)</sup> Child outside Australia needs a travel document to travel or legally reside overseas

The Minister for Foreign Affairs or their delegate may issue an Australian travel document (ATD) to a child without full consent or an Australian court order permitting issue where the child is outside Australia and there is a need for the child to travel internationally or hold a valid ATD to continue to legally reside overseas (paragraph 10(3)(i) of the Australian Passports Determination 2015). The Specialised Case Management Section (SCM) manages these cases.



## Chapter 13.16.1 > s 47E(d) Medically incapable of providing consent - parental responsibility

- A person who is medically incapable of providing consent to the issue of an {{Australian Travel Document s 47E(d)}} ({{ATDs 47E(d)}} to a child is still considered to be a person with {{Parental Responsibility s 47E(d)}} for the child, unless their {{Parental Responsibility s 47E(d)}} has been extinguished by an order under the Family Law Act 1975 or the Family Court Act (WA).
- All persons with {{Parental Responsibility s 47E(d)}} are assumed to have full medical competency until proven otherwise. The burden of proof lays with the {{Lodging person s 47E(d)}} asserting the medical incapacity of another person with parental responsibility.

### Medically incapable of providing written consent

- Where a person is not medically capable of providing consent in writing, but is capable of providing consent in some form, the Australian Passport Office (APO) must not unjustly ignore the person's parental responsibility.
- It may be appropriate to seek or accept verbal consent in some cases.
- This is consistent with Australia's obligations under the UN Convention on the Rights of Persons with Disabilities and Australian anti-discrimination laws.

## Chapter 13.9.9 > s 47E(d) > Guardianship, custody or parental responsibility under another Australian law

Guardianship is the right and responsibility to make decisions about the long-term welfare of the child. Custody is the right to the daily care and control of a child.

- Persons in addition to the child's parents may be attributed {{parental responsibility s 47E(d)}} for a child under a law of the Commonwealth, a State or a Territory ({{paragraph 11(5)(b) s 47E(d)}} of the {{Australian Passports Act 2005 s 47E(d)}} (the Passports Act)).
- The Minister or Chief Executive of a child welfare agency may be granted parental responsibility under state child welfare legislation when a child is taken into protective care.
- The Minister for Immigration (or their delegate) is deemed the legal guardian of Unaccompanied Humanitarian {{Minors s 47E(d)}} (UHMs) that arrive in Australia unaccompanied on a refugee or humanitarian {{visa s 47E(d)}} (Immigration (Guardianship of Children) Act 1946).
- The person/s named on the child's birth certificate (the child's parents) also continue to have parental responsibility for the child, unless an order under the Family Law Act 1975 or the Family Court Act 1997 (WA) removes their parental responsibility.
  - Only an order made under the Family Law Act 1975 or the Family Court Act 1997 (WA) can extinguish a parent's parental responsibility for the purposes of {{subsection 11(5) s 47E(d)}} of {{the Passports Act s 47E(d)}}.

## Chapter 13.9.10 > s 47E(d) > Child subject to child welfare order - parental responsibility

Persons in addition to the child's parents may be attributed parental responsibility for a child under a law of the Commonwealth, a State or a Territory ({{paragraph 11(5)(b)s 47E(d)}} of the Australian Passports Act 2005 (the Passports Act)).

- Child welfare orders may grant {{parental responsibility}s 47E(d)} (however described – common terms include care, {{custody}s 47E(d)}, guardianship, care and protection) to:
  - the Minister, Chief Executive, Director-General or Secretary of a child welfare agency
  - another individual (other than a parent of the child)
  - one parent of the child only.
- Where the Minister, Chief Executive, Director-General or Secretary of a child welfare agency is granted parental responsibility for a child under a child welfare order, the consent of that person (or their delegate) is required to issue an {{Australian Travel Document}s 47E(d)} (ATD) to the child.
- Where a child welfare agency or another individual granted parental responsibility in the child welfare order lodges the application, they should seek the consent of the child's parents *where appropriate*.
- If the consent of the parent/s is not obtained, the child welfare agency or the individual with parental responsibility should outline why on {{Form B-10}s 47E(d)} Child subject to an order made under state or territory child welfare law.

### Applications lodged with full consent

- Where an application is lodged with the consent of the child's parents, in addition to the person/s named in the child welfare order, an {{ATD}s 47E(d)} may be issued under {{paragraph 11(1)(a)s 47E(d)}} of {{the Passports Act}s 47E(d)} (full consent).

### Applications lodged without full consent

- Where an application is lodged without the consent of all the persons with parental responsibility under {{subsection 11(5)s 47E(d)} of {{the Passports Act}s 47E(d)}}, the application can be considered under {{special circumstances}s 47E(d)} ({{paragraph 10(3)(j)s 47E(d)} of {{the Passports Determination}s 47E(d)}}).

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### Related content

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s 47E(d)

### Policy

Lodging with full consent (Chapter 13.10)

Child subject to a child welfare order - application of Special circumstance **s 47E(d)** (Chapter 13.23)

**s 47E(d)**





### Chapter 13.9.10.1 > s 47E(d) > Application lodged by child welfare agency - consent requirements

An application lodged by a child welfare agency must include a Form B-10 - Child subject to an order made under state or territory child welfare law B-10.

#### Consent of the child welfare agency

- The Minister, Chief Executive, Director-General or Secretary of the relevant child welfare agency named in the child welfare order (or their delegate) must provide their consent on the Form B-10.
  - The “person” named in a child welfare order may be the person in the “position” named (for example, the Minister, Chief Executive, Director-General or Secretary) at the time the application is made or their delegate.
  - It is the responsibility of child welfare agency delegates to ensure they have the appropriate delegation before providing consent on behalf of the person named in the child welfare order.
  - Guide to lodging a travel document applications for children subject to a welfare or protection order provides instructions on how to complete the Form B-10.
- Ordinarily, Non-Government Organisations (NGOs) managing care plans for the child would not be delegated to exercise {{Parental Responsibility s 47E(d)}} on behalf of the child welfare agency. Evidence of any delegation claimed by an NGO must be confirmed with the responsible child welfare agency before it is accepted.
- Evidence of the child being transferred from a child welfare agency in one State or Territory to another must be supported by an order of a State or Territory court, made under a child welfare law, granting {{Parental Responsibility s 47E(d)}} or guardianship of the child to a child welfare agency (and/or person) in the relevant State or Territory.

#### Consent of the child’s parents

Where a child’s parents are not named as having parental responsibility for the child under a child welfare order, there is no requirement to pursue their consent.

- If the consent of the child’s parent/s is not, or cannot be, obtained by the child welfare agency:
  - the child welfare agency should outline why on the {{Form B-10 s 47E(d)}}
  - the application will be considered under {{Special circumstance s 47E(d)}}s ({{paragraph 10(3)(j) s 47E(d)}} of {{the Passports Determination s 47E(d)}}).
- There is no requirement for the {{Passport Case Officer s 47E(d)}} s 47E(d) to pursue the consent of other persons with {{Parental Responsibility s 47E(d)}} (including the child’s parents), unless the child welfare order specifically lists them as a person with parental responsibility.

- The order transferring {{Parental Responsibility s 47E(d)}} under child welfare legislation satisfies {{paragraph 10(3)(j)s 47E(d)}} of {{the Passports Determination s 47E(d)}}.
- Consistent with the provisions relating to {{Parenting order s 47E(d)}}s under the Family Law Act 1975, the consent of persons awarded only components of {{Parental Responsibility s 47E(d)}} (for example, culture and heritage, religion and education) is not required.

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#### Related content

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Child subject to a child welfare order - application of Special circumstance s 47E(d) (Chapter 13.23)

#### Resources

Child welfare or Protective Agencies - A guide to lodging Child Passport applications - Annex 23 s 47E(d)

Guide to lodging a travel document applications for children subject to a welfare or protection order – Annex 23 s 47E(d)

s 47E(d)

Chapter 13.9.10.2 > **s 47E(d)** > Application lodged by the child's parent - consent requirements

The consent of the persons named in the child welfare order is required.

- Where an application is lodged by another person with {{Parental Responsibility **s 47E(d)** }} for the child (for example, a parent not named in the child welfare order), the Australian Passport Office (APO) will seek the consent of the persons named in the order.
- This includes the child welfare agency when allocated any form of parental responsibility, however described (other common terms include care, {{Custody **s 47E(d)** }}, guardianship, care and protection).

#### Exception: Family Reunification Orders (Victoria)

- An exception may arise through Family Reunification Orders in Victoria. The Children Youth and Families Act 2005 (Vic) provides a legal basis for removing the {{Parental Responsibility **s 47E(d)** }} of the Secretary for a child on the basis of a direction of the Department of Health and Human Services.
- In such cases, this will be annotated on the court order and the {{Lodging person **s 47E(d)** }} must present the documentation evidencing this direction. This documentation must be verified with the Victorian Department of Health and Human Services.

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#### Related content

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**s 47E(d)**

#### Policy

Child subject to a child welfare order - application of Special circumstance **s 47E(d)** (Chapter 13.23)

**s 47E(d)**



## Chapter 13.2.4 > [s 47E\(d\)](#) > Complex child application - definition

Specialised Case Management (SCM) child applications are applications without full consent and without an Australian court order that permits the child to have an Australian travel document (ATD), travel internationally or to live or spend time with a person outside Australia.

- A request for consideration under special circumstances will be indicated by one of the following B forms lodged with the application:
  - B8 One parent only on child's birth certificate (B8) form
  - B9 Child without full parental consent or Australian court order permitting issue of a travel document (B9) form
  - B10 Child subject to an order made under state or territory child welfare law (B10) form.
- All the following applications are also considered complex, even where full consent or an Australian court order is provided. Applications for or involving:
  - children in out-of-home care (subject to a child welfare order)
  - children born through surrogacy
  - first time applications for children born overseas and adopted
  - unaccompanied humanitarian minors (UHMs)
  - international child abductions and recovery
  - allegations or suspicions of forced marriage.
- These applications must be managed according to the relevant procedure and in consultation with the Specialised Case Management section (SCM) as instructed by that procedure.
- Priority (2-day processing) and Fast Track (5-day processing) are not offered or accepted in these cases because of their complex nature.
- Child passport applications considered under special circumstances generally take six to eight weeks to process. **Standard turnaround times do not apply.**
- Cases will be handled as quickly as possible, particularly in compelling or compassionate circumstances.

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### Related content

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[s 47E\(d\)](#)

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B forms - child [s 47E\(d\)](#) (Chapter 13.7)

Priority (2-day processing) and Fast Track (5-day processing) - child applications [s 47E\(d\)](#) (Chapter 13.4)



Born overseas and adopted - Priority (2-day processing) and Fast Track (5-day processing)

s 47E(d) (Chapter 13.4)

Compassionate circumstances - definition s 47E(d) (Chapter 29.3)

Compelling circumstances - definition s 47E(d) (Chapter 29.3)

## Process

SCM triage 007 s 47E(d)

SCM general processing 010 s 47E(d)

Processing of child application with a Form B8 008 s 47E(d)

PC5 eligibility guidelines

Overseas adoption - child applicant 018 s 47E(d)

Surrogacy in country of birth 009 s 47E(d)

Surrogacy - first time applicant outside country of birth or born in Australia s 47E(d)

Surrogacy subsequent 011 s 47E(d)

Management of HBJC applications 019 s 47E(d)

Hague Convention country court order 002 s 47E(d)

Medically incapable of providing consent 003 s 47E(d)

Child subject to welfare orders 001 - J cases s 47E(d)

Non-consenting person missing or presumed dead s 47E(d)

Management of Specialised Case Management applications s 47E(d) 017 s 47E(d)

Child abduction - responding to allegations from customers 013 (s 47E(d)

Child abduction - managing applications involving child abduction recovery s 47E(d) 014  
s 47E(d)

s 47E(d)

## Chapter 13.7.6.1 &gt; s 47E(d) Court proceedings pending - child application

- The Minister or their delegate cannot consider an application under the {{special circumstances s 47E(d)}} set out in {{section 10 s 47E(d)}} of the {{Australian Passports Determination 2015 s 47E(d)}} (the Passports Determination) where proceedings before an Australian court may affect any of the following {{subsection 10(2) s 47E(d)}} of {{the Passports Determination s 47E(d)}}:
  - the child's right to have an {{Australian Travel Document s 47E(d)}}
  - the child's right to travel internationally
  - the persons with {{parental responsibility s 47E(d)}} for the child.
- While court action is pending, an EL1 or above Complex Child Application ({{CCAs s 47E(d)}}) delegate may only consider the exceptions set out in {{paragraphs 11(2)(b) to (d) s 47E(d)}} of the {{Australian Passports Act 2005 s 47E(d)}} (the Passports Act).
- The delegate may decide that none of these exceptions are met, or that it is not appropriate to exercise their discretion because the matter is better dealt with by the court.
- Should a person wish to lodge an application for a child under special circumstances while court action is pending, they should be advised to wait for the outcome of the court proceedings and/or seek the court's direction before lodging an application.
- If an application is accepted at lodgement and the {{lodging person s 47E(d)}} has disclosed on the Form B-7: No further court orders that there are court proceedings pending, the application may be held for 28 days to allow the court to make a determination.
- If an extension of this timeframe is sought, only a further 28 days will be allowed. If the matter is still not finalised after this period, the application will go to the delegate for decision and may be refused.
- If the delegate decides to refuse to issue an Australian Travel Document to the child, because none of the available exceptions are met or the delegate decides the matter is better dealt with by the court, the {{application fee s 47E(d)}} will not {{refunded s 47E(d)}}.

## Chapter 13.12.1.2 > s 47E(d) > Court proceedings pending - child subject to child welfare orders

- The delegate cannot consider an application under the {{special circumstance s 47E(d)}} specific to child welfare orders where there are proceedings before a court that could affect {{parental responsibility s 47E(d)}} for the child or the rights of the child to travel internationally or to have an {{Australian Travel Document s 47E(d)}} (ATD) {{{subsection 10(2) s 47E(d)}} of the {{Australian Passports Determination 2015 s 47E(d)}} (the Passports Determination).
- While court action is pending, an appropriate delegate may only consider the circumstances set out in {{paragraphs 11(2)(b) to (d) s 47E(d)}} of the {{Australian Passports Act 2005 s 47E(d)}} (the Passports Act). The delegate may still decide that none of these special circumstances are met or it is inappropriate to exercise their discretion, because the matter is better dealt with by the court.
- Where an application is lodged by a child welfare agency and there are proceedings pending, including proceedings to renew the child welfare order for the child, any of the following options are available to the {{lodging person s 47E(d)}}:
  - provide the consent of all persons with parental responsibility under the Passports Act (including the child's parent/s)
  - wait for the outcome of the court proceedings (or if an application has already been lodged, request that the application be held for 28 days and seek the court's direction on passport issue)
  - request that the application be considered under the exceptions set out in {{paragraphs 11(2)(b) to (d) s 47E(d)}} of {{the Passports Act s 47E(d)}} only, noting that if an ATD is refused, the {{application fee s 47E(d)}} will not be {{refunded s 47E(d)}}.

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### Related content

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s 47E(d)

### Process

Child subject to welfare orders 001 - J cases s 47E(d)

s 47E(d)

## Chapter 13.12.2 > **s 47E(d)** > Role of the case officer - complex child application

- Before a decision is made or an application is referred to a higher-level delegate for decision, Passport Case Officers (PCOs), including in the Specialised Case Management Section (SCM), must:
  - ensure all necessary forms are completed by the lodging person and all required questions on those forms are answered
  - ensure any statements made by the lodging person are supported by documentary evidence in the form of a statement on a relevant B form or file note of a conversation, or other documentary evidence (for example court orders or supporting letters and statements from other parties)
  - verify supporting evidence as necessary
  - complete all necessary checks on the child and the non-consenting person with parental responsibility
  - where deemed necessary and appropriate, contact the non-consenting person with parental responsibility to seek their consent
  - complete the appropriate sections of the relevant Form B-12 Complex Case Application Delegate Decision, recording the results of all checks undertaken
  - if the PCO holds the appropriate delegation for a special circumstance that has been met, make the decision to issue
  - if no special circumstance for which the PCO holds a delegation has been met or if it may be appropriate to refuse the application, refer the application and the Form B-12 to an appropriate delegate for decision.
- If during the course of these checks, all persons with parental responsibility consent to the issue of an Australian travel document (ATD) to the child, the PCO may also approve issue of the ATD under paragraph 11(1)(a) of the Passports Act (the Form B-12 is not required in this case).

**s 47E(d)**



s 47E(d)

## Related content

s 47E(d)

## Policy

Delegations and decisions - complex child applications (Chapter 13.13)

## Process

SCM general processing 010 s 47E(d)

Child subject to welfare orders 001 - J cases s 47E(d)

Hague Convention country court order 002 s 47E(d)

Medically incapable of providing consent 003 s 47E(d)

Non-consenting person missing or presumed dead 004 s 47E(d)

## Resources

Form B-12 - Record of APS5 Complex Child Application Delegate Decision B-12 APS5 s 47E(d)

Form B-12 - Record of APS6 & above Complex Child Application Delegate Decision s 47E(d)

Specialised Child Applications – Referral guide s 47E(d)

s 47E(d)

## Chapter 16.2.1.2 &gt; s 47E(d) &gt; Incomplete applications - identified at assessment

A lodgement officer should only accept an application and take payment of the fee when they are satisfied the application has been completed correctly and all required documents are provided.

- At the assess stage, the passport case officer (PCO) should check that all required documentation has been provided. If they identify missing documentation, they may be able to check the customer's APO record (previous applications) for the missing documentation.
  - if the document is already on the customer's APO record, the PCO **may** be able to process the application using this information.
- If there are no documents on the customer's record, or they're applying for the first time, the PCO must contact the customer and request the missing information or documentation.
  - This may include original or supporting documents, supplementary B forms, or new photos that meet the photo guidelines.
  - PCO's can contact customers by phone, followed up by an email or mail. PCO's must use approved templates in Compass when contacting a customer in writing.

A decision **cannot** be made if the application is incomplete.

- The customer will be given 28 calendar days to respond or longer if an extension is agreed between the customer and the PCO.
  - for requests by email, the 28 days starts from the date the email is sent.
  - for requests by mail, 7 days should be added for delivery.
- If the customer doesn't respond or resolve the outstanding requirements within the 28 days or agreed timeframe, the application may be deemed incomplete.
  - PCO's can withdraw the application from the system and submit a fee refund request. Fees that can be refunded include the:
    - application fee
    - Priority (2-day processing) fee (PPF) (if paid)
    - Fast Track (5-day processing) fee (FTF) (if paid)
    - overseas surcharge (if paid).
- An application may be deemed incomplete even where the delegate is satisfied of a customer's identity or citizenship. If the customer fails to provide the required information in the approved form as stated in sections 7(3)(a) and 9(3)(a) of the *Australian Passports Act 2005*, the APO can finalise the application as incomplete.
- An incomplete application isn't eligible for review as no decision has been made on the customer's application for a passport.
- Once withdrawn, should the customer still wish to be issued a travel document, they will need to submit a new application with all the required documentation and pay the appropriate

fee(s).

s 47E(d)

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#### Related content

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s 47E(d)

#### Policy

Application for Australian Passport (Chapter 3)

Using Australian Passport Office records (Chapter 5.4)

Refunds under the Public Governance, Performance and Accountability Act (Chapter 28.5)  
Complex child applications – case management (Chapter 13.12)

#### Process

SCM general processing 010 - s 47E(d)

Child subject to welfare orders 001 - J cases - s 47E(d)

Hague Convention country court order 002 - s 47E(d)

Medically incapable of providing consent 003 - s 47E(d)

Non-consenting person missing or presumed dead 004 - s 47E(d)

Customer contact SOP - s 47E(d)

Withdrawing an application SOP – s 47E(d)

s 47E(d)





## Chapter 13.12.4 > s 47E(d) > Contacting the non-consenting person - complex child application

It is standard procedure to contact a non-consenting person to seek their consent and/or test the statements and/or confirm the information provided in the application. However, if it is **inappropriate** to do so (for example, the lodging person has claimed family violence or child abuse) or **unnecessary** (for example, a Hague court order is presented with the application that permits issue), the non-consenting person is not to be contacted.

- Where deemed necessary and appropriate, attempting to contact the {{Non-consenting person s 47E(d)}} to test the statements and confirm the information provided in the application ensures that the Australian Passport Office (APO) safeguards the rights of all persons with {{Parental Responsibility s 47E(d)}} for a child and applies procedural fairness.
  - It is particularly important for the delegate to confirm any claims by the {{Lodging person s 47E(d)}} that there has been no contact between the child and the {{Non-consenting person s 47E(d)}} for a substantial period (to meet the {{Special circumstance s 47E(d)}} under {{paragraph 10(3)(d) s 47E(d)}} of the {{Australian Passports Determination 2015 s 47E(d)}} ({{the Passports Determination s 47E(d)}}).
  - In limited circumstances, where it is not necessary or appropriate to contact the {{Non-consenting person s 47E(d)}}, this {{Special circumstance s 47E(d)}} may be met untested, but other evidence may be required.
- Contacting (or attempting to contact) the {{Non-consenting person s 47E(d)}} also either:
  - provides an opportunity for the {{Non-consenting person s 47E(d)}} to consent to the issue of an {{Australian Travel Document s 47E(d)}} ({{ATD s 47E(d)}}) to the child (in this case the application may be approved with full consent under {{paragraph 11(1)(a) s 47E(d)}} of the {{Australian Passports Act 2005 s 47E(d)}})
  - if the {{Non-consenting person s 47E(d)}} does not respond, allows the delegate to consider the {{Special circumstance s 47E(d)}} under {{paragraph 10(3)(a) s 47E(d)}} of {{the Passports Determination s 47E(d)}} (the Minister or delegate has not been able to contact the {{Non-consenting person s 47E(d)}} for a reasonable period).
- If the {{Non-consenting person s 47E(d)}} refuses to provide consent, their refusal will be considered as part of the delegate's decision, but if a {{Special circumstance s 47E(d)}} has been met, the delegate may still decide to issue an {{ATD s 47E(d)}} to the child.

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### Related content

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s 47E(d)

## Policy

Lodging with full consent (Chapter 13.10)

Unable to contact the Non-consenting person for a reasonable period (Chapter 13.14)

No contact between the Non-consenting person and child for a substantial period (Chapter 13.17)

Inappropriate or unnecessary to contact the Non-consenting person s 47E(d) (Chapter 13.12)

## Process

CCA General Processing SOP s 47E(d)

Child subject to child welfare orders - J cases - SOP s 47E(d)

Hague Convention country court order SOP s 47E(d)

Medically incapable of providing consent SOP s 47E(d)

Non-consenting person missing or presumed dead SOP s 47E(d)

s 47E(d)





Chapter 13.12.4.1 > **s 47E(d)** > Objection to contacting the non-consenting person

Only an EL1 or above Specialised Case Management (SCM) delegate in SCM can overrule an objection to contact and only if the objection is not based on family violence.

- If the lodging person objects to the Australian Passport Office (APO) contacting the non-consenting person, they must state their objection, including the reasons for their objection, on one of the following:
  - Form B8 One parent only on child's birth certificate
  - Form B-9 - Child without full parental consent or Australian court order permitting issue of a travel document
  - Form B-11 - General Declaration.
- Where the lodging person has objected to contact with the non-consenting person, the Passport Case Officer (PCO) must seek the advice of a EL1 or above SCM delegate in the Specialised Case Management Section before contacting the non-consenting person.
  - Only a EL1 or above SCM delegate can overrule an objection to contact and only if the objection is not based on family violence.
  - If the objection is not based on family violence, generally the non-consenting person will be contacted, unless the contact is deemed inappropriate or unnecessary by the delegate.
  - If the lodging person's objection is based on family violence, the non-consenting person **must not** be contacted under any circumstance.

Where family violence is alleged in the application and the lodging person objects to the Australian Passport Office (APO) contacting the non-consenting person, the non-consenting person **must not** to be contacted under any circumstance.

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#### Related content

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**s 47E(d)**

#### Policy

Contacting the non-consenting person - family violence **s 47E(d)** (Chapter 13.12)

Inappropriate or unnecessary to contact the non-consenting person **s 47E(d)** (Chapter 13.12)

#### Resources

Request for SCM advice (special and exceptional circumstances) (email template) **s 47E(d)**

**s 47E(d)**

## Chapter 13.12.4.3 &gt; s 47E(d) &gt; Non-consenting person contact - family violence

The Australian state, territory and federal governments have committed to the National Plan to End Violence against Women and Children 2022-2032. The department's overarching policy in relation to family violence is to not put any victim of family violence at risk of further harm.

**No objection to contact**

- Where a lodging person alleges family violence when applying for an Australian travel document (ATD) under special circumstances and doesn't object to the Australian Passport Office (APO) contacting the non-consenting person, the department will usually attempt to contact that person.
- In all instances, when contacting a non-consenting person about a child's application, APO will:
  - protect the personal information of the lodging person and the child as required by the Privacy Act 1988.
  - only provide the child's full name and date of birth to the non-consenting person to identify the child.

Contacting the non-consenting person, where appropriate, provides procedural fairness to all persons with parental responsibility.

- APO will ask the non-consenting person if they consent to an ATD being issued to the child. If consent is provided, an ATD will be issued under the non-discretionary reasons in the Australian Passports Act 2005 (the Passports Act).
- If the non-consenting person **does not** consent, APO will request further information with a view to testing claims made in the application.
- A delegate may decide, based on the evidence provided with the application, that it's unnecessary or inappropriate to contact a non-consenting person, even if the lodging person doesn't object to contact.

**Objection to contact**

- Where a lodging person alleges family violence by the non-consenting person and objects to APO contacting that person, APO **must not** contact that person under any circumstance. The only exception to this is where family violence has occurred after lodgement and APO has already contacted the non-lodging person (NLP) during the application process, and the lodging person subsequently objects to contact.
  - A complex child application delegate can't overrule an objection to contact on family violence grounds.
  - This applies regardless of whether claims of family violence are supported by evidence.
  - The lodging person is best placed to assess the risk to their or their child's personal safety if APO attempts to contact the non-consenting person.



- APO must not put any person at risk of physical, psychological, emotional or other harm.
- While APO will not contact a non-consenting person where an objection is raised on family violence grounds, this may mean an ATD can't be issued to the child.
  - A delegate will consider all information provided with an application before deciding whether to exercise their discretion to issue an ATD under special circumstances at section 10(3) of the Australian Passports Determination 2015 and discretionary provisions at section 11(2) of the Passports Act. This includes:
    - the objectives of child passport provisions in Australian passport legislation, which include protecting the child from international child abduction and protecting the rights of all persons with parental responsibility
    - the relationship and contact between the non-consenting person and the child, if any
    - whether the lodging person has presented documents that support a claim that a special circumstance exists
    - whether it is appropriate for a delegate to exercise their discretion to issue an ATD without meeting the requirements of section 11(1) of the Passports Act, on the basis of statements that cannot be tested and may not be supported by documentation.
  - A delegate may find that a special circumstance is enlivened, but that the matter is best dealt with by a court.

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#### Related content

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[s 47E\(d\)](#)

#### Policy

Family violence order issued against the non-consenting person - application of special circumstance

[s 47E\(d\)](#) (Chapter 13.18)

Inappropriate or unnecessary to contact the non-consenting person [s 47E\(d\)](#) (Chapter 13.12)

Family violence overseas (Chapter 13.20)

Privacy and disclosures (Chapter 24)

[s 47E\(d\)](#)

#### Chapter 13.12.4.4 > s 47E(d) > Inappropriate or unnecessary to contact the non-consenting person

##### Family violence

Where the lodging person has objected to contact with the non-consenting person on family violence grounds, the non-consenting person **must not** be contacted under any circumstance.

- The only exception to this is where family violence has occurred after lodgement and APO has already contacted the non-lodging person (NLP) during the application process, and the lodging person subsequently objects to contact.
- Where family violence is *alleged* in the application and the lodging person permits contact (doesn't object), the delegate may still decide contact is inappropriate or unnecessary.
- This *may* include where:
  - there is other evidence to support the non-consenting person has had no contact with the child for a substantial period (for example, the lodging person and the child may have moved to escape a family violence situation)
  - a current Family Violence Order states that the non-consenting person must not contact the child under any circumstance (even if the order permits contact if initiated by the lodging person only).

##### Child born overseas through surrogacy

- For first-time applications where a surrogate child is still in the country of birth, consent must be confirmed with the surrogate mother.
- For subsequent applications or where the child has already been removed from the country of birth, it isn't necessary to pursue the consent of the surrogate.

##### Child welfare cases

- For a child subject to an Australian child welfare order, consent is only required from the persons granted parental responsibility in the order. It isn't necessary to pursue the consent of other persons that haven't been granted parental responsibility, guardianship or custody in the order.

##### International child abductions

- Where a child has allegedly been abducted to another country by one parent, seeking consent from the other parent may not be appropriate or necessary, depending on the following circumstances:
  - If the lodging person is the parent who has abducted the child, a delegate must use all available methods to contact the non-consenting person (except where the lodging person objects due to family violence).

- If the parent left-behind lodges the application, it may not be appropriate to contact the non-consenting person as it may cause the child to be relocated elsewhere (for example from a Hague Convention country to a non-Hague Convention country where there are no protocols for the return of children wrongfully removed across international borders).

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## Related content

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s 47E(d)

## Policy

Non-consenting person contact - family violence s 47E(d) (Chapter 13.12)

Child born overseas through surrogacy - parental responsibility s 47E(d) (Chapter 13.9)

Child subject to child welfare order - parental responsibility s 47E(d) (Chapter 13.9)

## Process

SCM General Processing SOP s 47E(d)

Child abduction - managing applications involving child abduction recovery (SCM only) s 47E(d)

Surrogacy subsequent SOP s 47E(d)

Surrogacy first time outside country of birth or born in Australia SOP s 47E(d)

s 47E(d)

#### Chapter 13.12.4.6 > s 47E(d) > Contact guidance for locating and contacting the NLP

- When lodging an application without the consent of all persons with {{parental responsibility s 47E(d) }}, the {{lodging person s 47E(d) }} (LP) must complete the relevant B form, providing both:
  - the most recent contact details they have for the {{non-consenting person s 47E(d) }}
  - information about contact between the child and the non-consenting person. This includes the last date the child and non-consenting person had contact.
- The Australian Passport Office (APO) will usually attempt to contact the {{non-consenting person s 47E(d) }} to:
  - ask whether they consent to the issue of an {{ATDs s 47E(d) }}
  - confirm the period of no contact with the child.
- When assessing whether an {{ATDs s 47E(d) }} may be issued under special circumstances, the Complex Child Application (CCA) delegate will consider recency of contact between the child and the {{non-consenting person s 47E(d) }}

#### Risk factors

- Risk assessment in the complex child application space attempts to address all the following risks:
  - restricting the rights of persons with {{parental responsibility s 47E(d) }}
  - fraud, including false or misleading statements
  - child abduction or trafficking
  - forced marriage
  - (exposure to) family violence.
- **High risk complex child applications** include:
  - the child's first application for an {{Australian Travel Document s 47E(d) }} ({{ATDs s 47E(d) }})
  - applications with pending court action, in which the outcome may affect one or all of the following:
    - parental responsibility
    - the child's right to hold an Australian travel document
    - the child's right to travel internationally.
  - child alerts raised in {{PICs s 47E(d) }}, including alerts raised by any of the following:
    - a person with parental responsibility.



- the APO.
- a competent authority (such as the family court)
- recent contact between the child and the {{non-consenting person}s 47E(d) }
- applications with allegations of child abduction where the person who lodges is the parent alleged to have abducted the child
- If assessing sibling applications with the same {{non-consenting person}s 47E(d) }, apply the highest risk level across the family group.

#### Contacting the non-consenting person

- The APO prefers contact via telephone or email. You should try contact by post where there are no other options, or the application is high risk.
- When you're attempting contact with the {{non-consenting person}s 47E(d) }, you must consider the currency and reliability of the data.
- You **must not** make contact through social media.
- You must give a {{non-consenting person}s 47E(d) } reasonable time to respond to written requests for consent.
  - In most cases this will be 10 business days, as defined in the *Australian Passports Determination 2015* Explanatory Statement.
  - In urgent circumstances, an EL1 or above CCA Delegate may shorten the reasonable period.

#### Do not attempt to contact if:

- the LP has claimed family violence and objects to the APO contacting the {{non-consenting person}s 47E(d) }.
  - A CCA delegate cannot overturn objections to contacting a {{non-consenting person}s 47E(d) } where the lodging parent has claimed family violence.
- if there are allegations of child abduction and the left-behind parent lodges the application.
- a child welfare agency (or their agent) is lodging an application with a child welfare order that transfers parental responsibility.
- a Hague Convention country court order permits the issue of a passport, and there are no alerts on the child's {{PICs 47E(d) }} record.
- a CCA delegate has previously verified that the {{non-consenting person}s 47E(d) } is missing and/or presumed dead.
- a CCA Delegate has previously verified that the {{non-consenting person}s 47E(d) } is permanently incapacitated and medically incapable of providing any form of consent.
- it is the first application for a surrogacy outside country of birth or a subsequent surrogacy application.

- all of the following apply, the applicant:
  - is 16 and above
  - has held a previous Australian Travel Document
  - has had no recent contact with the non-consenting person (over 2 years).

#### In all cases use most recent information to attempt contact

- PCOs should use the most recent contact details to contact the {{non-consenting person}s 47E(d) }.
- The PCO should get this information from:
  - the child's current application, including details provided on B form/s and other supporting documents
  - the {{non-consenting person}s 47E(d) } most recent Australian travel document application (if applicable) (PENQ)
  - the child's most recent passport application prior to the current application
  - the Commonwealth electoral role enquiry (EENQ)
  - the White Pages.

#### High risk applications: Use all avenues available to attempt contact

- PCOs should use all possible methods to obtain contact details to contact the {{non-consenting person}s 47E(d) }.
- The PCO should attempt to obtain contact details from the following:
  - the child's current application, including details provided on B form/s and other supporting documents
  - the child's most recent previous passport application (if applicable)
  - the {{non-consenting person}s 47E(d) } most recent Australian travel document application (if applicable) (PENQ), including use of emergency contact details where appropriate
  - the Commonwealth electoral roll enquiry (EENQ)
  - the White Pages
  - the Passenger Card Information System (PCIS), where a Movement Record (MR) check identifies travel by the non-consenting person;
  - a request to the Department of Human Services (DHS) to check their records for contact details. You should only pursue this option if all other options bring no results. A CCA delegate in the Complex Case Management Section must assess the application and approve a DHS check.

#### Related content

s 47E(d)

#### Policy

Child Alert - relates to the issue of an Australian Travel Document only (not travel) s 47E(d)  
(Chapter 13.34)

Child born overseas through surrogacy - Parental Responsibility s 47E(d) (Chapter 13.9)

Child subject to child welfare order - Parental Responsibility s 47E(d) (Chapter 13.9)

Contact between the child and the Non-consenting person - definition s 47E(d) (Chapter 13.17)

#### Process

CCA General Processing SOP (s 47E(d) )

s 47E(d)





Chapter 13.10.8.2 > **s 47E(d)** > Confirming consent of a person currently in prison  
- child application.

- Passport case officers (PCOs) can conduct a verbal consent check with a person with parental responsibility who is in prison. The application **doesn't** need to be referred to Specialised Case Management (SCM).
  - For more information, refer to resources - Prisoner Location Information Guide.
- Some prisons or correctional facilities may request employee information for verification purposes (such as a copy of the PCOs photo ID or security pass). Some prisons will not allow contact with the person in the prison or correctional facility without it.
  - PCOs **should not** provide this information. APO enforces the de-identification policy to protect the identities of our staff.
- The Prisoner Location Information Guide outlines how to make contact with a person in prison or correctional facility. If contact still can't be made successfully, the PCO can confirm consent with the witness instead.
  - If a new written consent is required for the person in prison or correctional facility, consent should be witnessed by a prison official.

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#### Related content

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**s 47E(d)**

#### Policy

**s 47E(d)** - Full consent to the issue of an Australian travel document

**s 47E(d)** - Parental responsibility - definition

**s 47E(d)** - Australian Passport Office de-identification policy - details

#### Resources

**s 47E(d)** – Script – Consent check – Non-lodging person

**s 47E(d)** – Consent check and parental responsibility guide

**s 47E(d)** – Prisoner Location Information Guide

**s 47E(d)** – Prisoner Location request template

**s 47E(d)**



#### Chapter 13.12.4.8 > s 47E(d) > Timeframe for a response from the non-consenting person

- A minimum of 10 {{Business day}s 47E(d)} s from the date of correspondence must be allowed for a {{Non-consenting person}s 47E(d)} to respond.
- Discretion should be used to factor for known delays (for example known disruptions to postal deliveries or delays in receiving mail due to the location of the recipient).

#### Shortened timeframe for a response from the non-consenting person

- Only an EL1 or above Complex Child Application ({{CCAs 47E(d)}} delegate may shorten the minimum (10 {{Business day}s 47E(d)}) timeframe, if necessary and appropriate.
- In urgent circumstances, an EL1 or above {{CCAs 47E(d)}} delegate may shorten what is considered to be a reasonable period for response to 5 {{Business day}s 47E(d)}s, where correspondence has been sent by email to an email address that has been confirmed by the {{Non-consenting person}s 47E(d)}.

#### Extension to timeframe at the request of the non-consenting person

- If the {{Non-consenting person}s 47E(d)} seeks an extension for their response, a reasonable agreed deadline should be reached taking into account all circumstances of the case (5 {{Business day}s 47E(d)}s without {{CCAs 47E(d)}} delegate approval and up to 10 {{Business day}s 47E(d)}s with {{CCAs 47E(d)}} delegate approval is considered appropriate).
- Where an extension is granted to the {{Non-consenting person}s 47E(d)} to respond, the {{Lodging person}s 47E(d)} may be advised that an extension has been granted to the {{Non-consenting person}s 47E(d)}, but they cannot be advised of the reason the {{Non-consenting person}s 47E(d)} sought the extension.

## Chapter 13.12.4.9 > s 47E(d) > Verbal response from non-consenting person - complex child application

### Verbal consent to issue

- If verbal consent is obtained from the {{Non-consenting person s 47E(d)}}, the verbal consent will be acted on and an {{Australian Travel Document s 47E(d)}} ({{ATD s 47E(d)}}) will be issued. The {{Non-consenting person s 47E(d)}} should be made aware:
  - their consent will be recorded in a file note
  - an Australian Travel Document will be issued based on their verbal consent.

### Verbal refusal of consent

- If a {{Non-consenting person s 47E(d)}} verbally refuses to consent to the issue of an {{ATD s 47E(d)}} to the child, they will be asked to verbally outline their reasons for not consenting. This information must be accurately file noted. It will help the Complex Child Application ({{CCA s 47E(d)}}) delegate in reaching a decision.
- Where the {{Non-consenting person s 47E(d)}} is unsure whether they will consent or refuse to consent, this should be file noted. The {{Non-consenting person s 47E(d)}} should be asked to advise whether or not they consent within 48 hours (or 2 business days). This advice can be:
  - in writing, such as an email or B11 form
  - verbally via a return call to the case officer.
- If no response is received this will be treated as no consent provided.
- Where appropriate and a {{Special circumstance s 47E(d)}} has been met, the delegate may still decide to issue an {{ATD s 47E(d)}} to the child without full consent. This is regardless of verbal refusal of consent by the {{Non-consenting person s 47E(d)}}.

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### Related content

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s 47E(d)

### Process

CCA General Processing SOP s 47E(d)

s 47E(d)

Chapter 13.12.4.9 > s 47E(d) > Verbal response from non-consenting person - complex child application

#### Verbal consent to issue

- If verbal consent is obtained from the {{Non-consenting person s 47E(d) }}, the verbal consent will be acted on and an {{Australian Travel Documents s 47E(d) }} ({{ATDs s 47E(d) }}) will be issued. Letter 22c will be sent to the non-lodging person confirming the issue of a passport based on the verbal consent given.

#### Verbal refusal of consent

- If a {{Non-consenting person s 47E(d) }} verbally refuses to consent to the issue of an {{ATDs s 47E(d) }} to the child, they will be asked to provide a written response that outlines their reasons for not consenting. This information will assist the Complex Child Application ({{CCAs s 47E(d) }}) delegate in reaching a decision.
- Where the {{Non-consenting person s 47E(d) }} does not confirm their refusal (and reasons for the refusal) in writing, the file note recorded at the time of their verbal refusal will be relied on by the delegate in making a decision.
- Where appropriate and a {{Special circumstance s 47E(d) }} has been met, the delegate may still decide to issue an {{ATDs s 47E(d) }} to the child without full consent, regardless of a verbal or written refusal of consent by the {{Non-consenting person s 47E(d) }}.

#### Related content

s 47E(d)

#### Process

CCA General Processing SOP s 47E(d) )

s 47E(d)



## Chapter 13.12.5 > [s 47E\(d\)](#) > Referral to delegate for decision - complex child application

- Once the Passport Case Officer (PCO), including in the Specialised Case Management Section (SCM), has checked all documentation and undertaken all necessary checks, they must complete the appropriate sections of the relevant Form B-12 Complex Case Application Delegate Decision.
- The Form B-12 must record the results of all checks undertaken and a concise overview of the case in the case summary section. Case officers must ensure that the Form B-12 includes all information relevant to the delegate's consideration of the application.
- The case officer may then refer the case to the appropriate SCM delegate for decision.
- In addition to the Form B-12, all documentation submitted with the application must be provided to the delegate, including the:
  - application form
  - all B forms completed by the lodging person
  - any existing court orders relevant to parental responsibility for the child or the issue of an Australian travel document (ATD) to the child
  - all other documentation and evidence provided by the lodging person
  - any documentation or evidence provided by the non-consenting person
  - all file notes and records of conversation.
- If necessary to inform the delegate's decision, the delegate may request additional information or documentation from the case officer.

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### Related content

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[s 47E\(d\)](#)

### Policy

Delegations and decisions - complex child applications (Chapter 13.13)

### Resource

Form B-12 - Record of APS5 Complex Child Application Delegate Decision [s 47E\(d\)](#)

Form B-12 - Record of APS6 & above Complex Child Application Delegate Decision [s 47E\(d\)](#)

Specialised Child Applications – Referral guide [s 47E\(d\)](#)

[s 47E\(d\)](#)



## Chapter 13.13.1 ><sup>s 47E(d)</sup> > Delegation levels - complex child applications

There are three levels of delegation awarded to Australian Passport Office (APO) delegates in the Specialised Case Management section (SCM). The delegations are outlined in the Minister's Authorisations and Delegations instrument. All SCM delegates must be trained and accredited as delegates before they can exercise their delegation.

### EL1 and above delegates: full delegation

- The Minister for Foreign Affairs has delegated their full delegation in relation to child applications to Executive Level 1 (EL1) and above delegates in APO, including contractors at the equivalent level.
- In practice, only EL1s and above in SCM exercise these delegations.
- EL1s or above are delegated to issue an Australian travel document (ATD) to a child under all of the exceptions and special circumstances set out under section 11(2) of the Australian Passports Act 2005 (the Passports Act) and section 10(3) of the Australian Passports Determination 2015 (the Determination).
- In practice, the following decisions are restricted to EL1 or above SCM delegates only:
  - refuse to issue under special circumstances (as only these delegates can consider all the exceptions and special circumstances in the Passports Act and the Determination)
  - refuse to exercise their discretion to issue because the matter should be dealt with by a court.

Declarations under section 11(3) of the Passports Act are only made in complex cases where the Family Court has jurisdiction and where a decision by an administrative decision-maker is not appropriate.

### APS5 and APS6 delegates: limited delegations

- APS5 and APS6 delegates are delegated to issue an ATD to a child under certain special circumstances set out under section 10(3) of the Passports Determination only.
- These delegates are subject to certain policy restrictions, which limit their exercise of these powers in practice.
- APS6 delegates and below are **not permitted** to do any of the following:
  - consider applications involving allegations of child abduction from any party
  - consider applications involving allegations of family violence

### APS4 delegates: limited delegations

- APS4 delegates are also only delegated to issue an ATD to a child under certain special circumstances set out under section 10(3) of the Passports Determination.
- APS4 delegates are **not permitted** to consider any of the following:
  - applications involving allegations of child abduction from any party
  - applications involving allegations of family violence
  - applications where the non-consenting person has not been able to be contacted for a reasonable period
  - applications where there has been no contact between the child and non-consenting person for a substantial period before the application was made, and
  - applications where the non-consenting person is not an Australian citizen; and is separated from a person who has parental responsibility and who has consented to the child having an ATD.

#### Delegation to refuse

- APS6 and below delegates are also **not permitted** to do any of the following:
  - decide to refuse to issue under special circumstances (as they are unable to consider all the exceptions and special circumstances in the Passports Act and the Determination)
  - decide to refuse to exercise their discretion to issue because the matter should be dealt with by a court.
- All applications involving potential refusal to issue after they have been considered under special circumstances must be referred to an EL1 or above delegate in SCM for decision.
- Cases that are more complex than usual for other reasons should also be escalated to an EL1 or above SCM delegate for advice or decision.

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#### Related content

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[s 47E\(d\)](#)

#### Legislation

Minister's Delegations and Authorisations instrument - signed version (searchable) [s 47E\(d\)](#)

#### Policy

Delegations and authorisations (Chapter 26)

Specialised Case Management - Delegations [s 47E\(d\)](#)

#### Resources

Request for SCM advice (email template)

[s 47E\(d\)](#)

## Chapter 26.4.2 > s 47E(d) > Specialised Case Management - delegations

Specialised Case Management (SCM) delegates are considered officers under the Australian Passports Act 2005 (the Passports Act) and delegated to perform certain functions under the Passports Act and the Australian Passports Determination 2015 (the Passports Determination).

- SCM officers have the same delegations and can perform the same functions as Passport Case Officers. They also hold the *additional* delegations outlined below.

### APS 6 SCM delegations

- SCM APS 6 officers (or equivalent) may perform the following *additional* functions:

#### Concurrent passport under exceptional circumstances

- approve the issue of a concurrent Australian travel document (ATD) to an adult or a child due to exceptional circumstances (under section 15(c) of the Passports Determination).

#### Allegations of family violence, where requirements of s10(3)(f) or s10(3)(g) are not met

- The following policy restrictions previously applied to APS6 delegates **have been removed**:
  - the inability to consider any special circumstance where family violence has been alleged:
    - where a family violence order has not been issued or
    - if the child is overseas, evidence of family violence has not been provided.

APS6 SCM delegates should consult with Executive Level 1 (EL1) SCM delegates where the application's circumstances require further scrutiny.

### EL1 SCM delegations

- Executive Level 1 (EL1) SCM officers (or equivalent) may perform the following *additional* functions:
  - issue an ATD to a child without full parental consent or a court order, in all special circumstances under section 11 of the Passports Act and section 10 of the Passports Determination, including cases:
    - involving family violence in Australia and overseas (**sections 10(3)(f) and (g)** of the Passports Determination)
    - where the child is outside Australia and needs a travel document to travel internationally or reside legally overseas (**section 10(3)(i)** of the Passports Determination)
    - where the child's welfare would be adversely affected if the child were not able to travel internationally (**section 11(2)(b)** of the Passports Act)

- where the child needs to travel internationally due to a family crisis (**section 11(2)(c)** of the Passports Act)
- where the child departed Australia less than twelve (12) months ago and the ATD is needed to enable return to Australia (**section 11(2)(d)** of the Passports Act)
- refuse to issue an ATD to a child without full parental consent or a court order, after considering all the special circumstances (**section 11(2)** of the Passports Act)
- make a declaration that they are refusing to exercise their discretion to issue an ATD to a child, despite the existence of a special circumstance, because the matter should be dealt with by a court (**section 11(3)** of the Passports Act).

### EL2 SCM delegations

- The Director of SCM performs the same functions delegated to Executive Level 2 (EL2) officers. See **s 47E(d)** - EL2 Directors and Regional Directors - Delegations.

Particularly complex cases should be escalated to the Director of the Specialised Case Management section (SCM) for consultation before a final decision is made.

- In practice, the Director of SCM will perform functions that mainly relate to law enforcement matters including Competent Authority requests.

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### Related content

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**s 47E(d)**

### Legislation

Minister's Delegations and Authorisations instrument - signed version (searchable)

### Policy

Delegations matrix **s 47E(d)**

Table of delegation restrictions - complex child applications **s 47E(d)**

**s 47E(d)**



Chapter 13.13.1.4 > **s 47E(d)** > Table of delegation restrictions - complex child applications

Section 11(2)(a) of the Australian Passports Act 2005 (the Act) and section 10(3) of the Australian Passports Determination 2015 (the Determination) outline the special circumstances in which a delegate may consider an application for an Australian travel document (ATD) for a child.

- The following table is a reference guide that lists the delegation levels for APO staff under the Authorisations and Delegations Instrument 2024:

Legislative Reference	Special circumstance	EL1 Delegate	APS6 Delegate	APS5 Delegate
s10(3)(a) of the Determination	The Minister has not been able to contact the non-consenting person for a reasonable period.	Y	Y	<b>SCM trained only - permitted to consider</b>
s10(3)(b) of the Determination	The non-consenting parent is either or both: (i) missing or (ii) presumed dead.	Y	Y	Not permitted to consider where family violence is alleged and the non-consenting person has been located
s10(3)(c) of the Determination	The non-consenting person is medically incapable of providing consent.	Y	Y	Not permitted to consider where family violence is alleged and the non-consenting person is not incapacitated
s10(3)(d) of the Determination	There has been no contact between the child and the non-consenting person for a substantial period of time before the application is made.	Y	Y	<b>SCM trained only - permitted to consider</b>
s10(3)(e) of the Determination	The non-consenting person is not an Australian citizen; and is separated from a	Y	Y	<b>SCM trained only - permitted to consider</b>

	person who has parental responsibility and has consented to the child having an ATD; and has not had any contact with the child since the child arrived in Australia.			
s10(3)(f) of the Determination	A family violence order has been issued against the non-consenting person.	Y	<b>Not permitted to consider</b>	<b>Not permitted to consider</b>
s10(3)(g) of the Determination	If the child is outside Australia – there is evidence of family violence.	Y	<b>Not permitted to consider</b>	<b>Not permitted to consider</b>
s10(3)(h) of the Determination	An order of a court in a convention country (within the meaning of the Family Law (Child Abduction Convention) Regulations 1986) permits any of the following: (i) the issue of an ATD to the child; (ii) the child to travel internationally; (iii) contact between the child and another person outside the country where the order was made.	Y	Y	Not permitted to consider applications involving allegations of child abduction from any party or alleged family violence where an alert has been raised by the non-consenting person
s10(3)(i) of the Determination	If the child is outside Australia – the Minister considers that there is a need for the child to travel internationally or the child requires an ATD to continue to legally reside overseas.	Y	<b>Not permitted to consider</b>	<b>Not permitted to consider</b>
s10(3)(j) of the Determination	An order of a State or Territory court, made under a child welfare law, grants parental responsibility or	Y	Y	Not permitted to consider where allegations of family violence



	guardianship of the child to: (i) a parent of the child other than the non-consenting person; or (ii) a person other than a parent of the child.			have been made against a person named to have parental responsibility in the order
<b>Section 11(2)(b) of the Act</b>				
s11(2)(b) of the Passports Act	The Minister is satisfied that the child's welfare (physical or psychological) would be adversely affected if the child were not able to travel internationally.	Y	<b>Not permitted to consider</b>	<b>Not permitted to consider</b>
<b>Section 11(2)(c) of the Act</b>				
s11(2)(c) of the Passports Act	The Minister is satisfied that: (i) the child urgently needs to travel internationally because of a family crisis; and (ii) if there is a person who has parental responsibility for the child and who has not consented to the child having an ATD – it is not possible to contact that person within a reasonable period.	Y	<b>Not permitted to consider</b>	<b>Not permitted to consider</b>
<b>Section 11(2)(d) of the Act</b>				
s11(2)(d) of the Passports Act	In the case of a child who is outside Australia – the child departed Australia less than 12 months before the application for the ATD was made and the Minister considers that an ATD should be issued to enable	Y	<b>Not permitted to consider</b>	<b>Not permitted to consider</b>

	the child's return to Australia.			
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## Chapter 26.2.5 > <sup>s 47E(d)</sup> > Delegate responsibilities - exercising a delegation

Delegates must perform their functions under the Australian Passports Act 2005 (the Passports Act) and the Australian Passports Determination 2015 in line with the relevant legislation, policy and procedures.

Delegates must make sure they:

- have the **authority** to make a decision
  - A decision made without a delegated power can't be legally enforced.
- comply with any **conditions** on that authority, including any directions by the Minister
  - Conditions may be imposed by the legislation or the delegation instrument.
- comply with the provisions of passports legislation, the Public Service Act 1999 and the Australian Public Service (APS) Code of Conduct (this applies to both APS staff and contractors)
  - If a delegate disregards the relevant legislation when making a decision, the decision isn't legal and can't be enforced.
  - A delegate who knowingly disregards the legislation or abuses their power may be penalised under sections 38-40 of the Passports Act
  - breaches of the APS Code of Conduct can also result in penalties under the Public Service Act, including: termination of employment, reduction in classification, re-assignment of duties, reduction in salary, a fine or a reprimand.
- follow the relevant policies and procedures
  - Policy shouldn't be applied inflexibly and each case should be considered on its merits.
  - If a delegate deviates from policy or procedures, they must record the reason and include any approvals from the Policy and Legislation section. Failure to do so may result in the delegate being counselled, even if their decision was made legally and is therefore enforceable.
- base their decisions on fact, documented evidence and defensible reasons
- act reasonably and in good faith
- apply **administrative law principles** such as procedural fairness
  - For example, a person must be given an opportunity to comment and provide further information before a decision that could adversely affect them is made.
  - A delegate's decision may be reviewable under the Administrative Decisions (Judicial Review) Act 1977 if administrative law principles are not applied.
- accurately record all of the following:
  - their decision

- the legislative power under which the decision was made
- the delegation under which the power was exercised
- their main findings of fact
- the evidence on which those findings were based.

## Chapter 13.13.3 > <sup>s 47E(d)</sup> > Decisions available to the delegate - complex child application

A Specialised Case Management (SCM) delegate must decide whether they are satisfied one or more special circumstances exist and, secondly, whether it's appropriate to exercise discretion to issue under the special circumstance(s).

For an easy reference guide, see the SCM decision flow chart.

The SCM delegate decision is only one component of entitlement. A passport case officer (PCO) must ensure all identity, citizenship and entitlement requirements are met prior to approving issue of an Australian travel document (ATD).

### Special circumstances do not exist

- **EL1 and above SCM delegates only:** If the delegate isn't satisfied special circumstances under section 11(2) of the Australian Passports Act 2005 (the Passports Act) and section 10(3) of the Australian Passports Determination 2015 (the Determination) exist, the application must be **refused** under section 11(1) of the Passports Act.
- In these cases, because the delegate has found that special circumstances do not exist, they don't need to refuse to exercise discretion under section 11(3) of the Passports Act.

### Special circumstances exist

- The delegate should declare they are satisfied special circumstances exist, either in the Passports Act or the Determination, and identify which of these have been met. The delegate may then do one of the following:
  - approve the issue of an ATD within the limitations of their delegation and any policy restrictions
  - **EL1 and above SCM delegates only:** decide not to exercise discretion and instead declare that the matter is better dealt with by a court under section 11(3) of the Passports Act
  - **Director SCM decision only:** in some cases, a delegate may decide not to exercise discretion to issue an ATD, but also not make a declaration under section 11(3) that the matter is better dealt with by a court.
    - Ordinarily, where a special circumstance exists and the matter is not complex, (therefore referral to a court is not indicated) an ATD will be issued.
    - A delegate must clearly outline what circumstances were considered when finding special circumstances are met, but deciding not to issue an ATD and not declare the matter is better dealt with by a court.
    - Before proceeding with this decision, the delegate should consult the Passport Policy and Legislation section (PLG) for review if the decision goes outside current policy and legislative requirements.

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## Related content

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s 47E(d)



## Resources

SCM decision flow chart s 47E(d)

SCM general processing SOP s 47E(d)

Form B12 Record of APS 5 SCM application decision s 47E(d)

Form B12 Record of APS 6 and above SCM application decision s 47E(d)

s 47E(d)





Chapter 13.13.3.1 > **s 47E(d)** > Decisions available where more than one non-consenting person - complex child application

- Where there is more than one non-consenting person, the delegate must consider the relevant special circumstances for **each** non-consenting person.
- Only one decision can be made – the application may either be approved or refused.
- If there are reasons to refuse to issue an Australian travel document in relation to one non-consenting person, it is open to the delegate to refuse the application.
  - This applies even if special circumstances are met in relation to the other non-consenting person/s.

The following table provides additional guidance:

Circumstance	Decision
<p><b>Where any of the following apply:</b></p> <ul style="list-style-type: none"> <li>- a Hague order permits issue - section 10(3)(h) of the Passports Determination 2015</li> <li>- the child requires a document to travel internationally or to reside legally - section 10(3)(i) of the Passports Determination</li> <li>- the child is the subject of a child welfare order - section 10(3)(j) of the Passports Determination</li> <li>- the child's welfare would be adversely affected if they could not travel - section 11(2)(b) of the Passports Act 2005</li> <li>- the child departed Australia less than 12 months ago and requires a document to return - section 11(2)(d) of the Passports Act.</li> </ul>	<p>It is open to the delegate to do either of the following:</p> <ul style="list-style-type: none"> <li>- approve the application in line with the relevant circumstance and delegation</li> </ul> <p>or</p> <ul style="list-style-type: none"> <li>- refuse to exercise the discretion to issue as the matter is better dealt with by a court (EL1 and above delegates only).</li> </ul> <p>Refer to section 11(3) of the Passports Act.</p>
<p><b>Where a special circumstance has been <u>met</u> for all non-consenting persons</b></p> <p>Applies where:</p> <ul style="list-style-type: none"> <li>- the non-consenting person can't be contacted</li> <li>- there has been no contact for a substantial period</li> <li>- they are medically incapable or missing/presumed dead</li> <li>- there is family violence or</li> <li>- there is a family crisis and contact is not</li> </ul>	<p>It is open to the delegate to do either of the following:</p> <ul style="list-style-type: none"> <li>- approve the application in line with the relevant circumstance and delegation</li> </ul> <p>or</p> <ul style="list-style-type: none"> <li>- refuse to exercise the discretion to issue as the matter is better dealt with by a court (EL1 and above delegates only).</li> </ul> <p>Refer to section 11(3) of the Passports Act.</p>

possible within a reasonable period. (section 10(3)(a)-(g) of the Passports Determination and section 11(2)(c) of the Passports Act).	
<p><b>Where a special circumstance has <u>not</u> been met for all non-consenting persons</b></p> <p>Applies where a special circumstance is met for one non-consenting person but no special circumstances apply to the other non-consenting person/s.</p>	<p>It is open to the delegate to refuse the application as no special circumstances apply (EL1 and above delegates only). Refer to section 11(2) of the Passports Act.</p>
<p><b>Where a special circumstance is met for both non-consenting persons but it is only appropriate to approve the application for one non-consenting person</b></p> <p>Applies where one decision is to issue and one decision is to refuse to exercise the discretion to issue (PICS code R3).</p>	<p>It is open to the delegate to refuse to exercise the discretion to issue as the matter is better dealt with by a court (EL1 and above delegates only). Refer to section 11(3) of the Passports Act.</p>
<p><b>Where it is <u>not</u> appropriate to issue under a special circumstance for one non-consenting person and no special circumstances are met for the other non-consenting person</b></p> <p>Applies where one decision is to refuse (PICS code R2) and one decision is to refuse to exercise the discretion to issue (PICS code R3).</p>	<p>It is open to the delegate to refuse the application as no special circumstances apply (EL1 and above delegates only). Refer to section 11(2) of the Passports Act.</p>

## Chapter 13.13.4 > <sup>s 47E(d)</sup> > Child travel document - held by another person with parental responsibility

Any person with parental responsibility who consented to the issue of the child's Australian travel document (ATD) is entitled to hold it. A dispute between persons with parental responsibility over who holds a child's ATD must be settled privately. Parties may wish to seek legal advice.

- If a person with parental responsibility lodges a new application because the child's current ATD is in the possession of another person with parental responsibility, the lodging person must be advised that the delegate will consider the fact the child already has a valid ATD.
  - Except in specified circumstances, under section 17 of the Australian Passports Act 2015, the delegate **must not issue** an ATD to a person if they already have been issued with an ATD and that document is still valid.
  - If the delegate decides not to issue a new or concurrent ATD to the child, the application fee will generally not be refunded.
- A complete application must not be refused at lodgement and the lodgement officer should advise the lodging person that acceptance of the application **does not** guarantee issue of a new ATD for the child.
- In these circumstances, applications must be referred to the Specialised Case Management section (SMS) for consideration.

The existing ATD **must not** be cancelled in the passport system without approval from a SMS delegate.

<sup>s 47E(d)</sup>

s 47E(d)



### Policy

Cancellation of a child travel document at lodgement s 47E(d) (Chapter 13.32)

Child already holds a valid Australian travel document - issue in exceptional circumstances

s 47E(d) (Chapter 13.13)

Child already holds a valid travel document - refusal to issue s 47E(d) (Chapter 13.13)

### Resources

Request for SCM advice (email template)

s 47E(d)





#### Chapter 13.13.4.1 > s 47E(d) > Child already holds a valid Australian travel document - issue in exceptional circumstances

Under section 17 of the Australian Passports Act 2005 (the Passports Act), the delegate **must not** issue an Australian travel document (ATD) to a person if they have already been issued with an ATD and that document is still valid (except in specified circumstances only).

##### Concurrent ATD in exceptional circumstances

- An Executive Level 1 (EL1) delegate or above may consider whether exceptional circumstances exist to permit the issue of a concurrent ATD under section 15(c) of the Australian Passports Determination 2015 (the Determination).
- If a person with parental responsibility lodges a new application because their child's current ATD is in the possession of another person with parental responsibility, the delegate would ordinarily refuse to issue under section 17(1) of the Passports Act.
- Exceptional circumstances for this purpose may include but are not limited to:
  - where a child is resident overseas and requires a document to return to Australia in line with an Australian or Hague court order, but also needs the current document to remain valid so they can continue living legally in the country of residence until they are returned.
- In these cases, the delegate may wish to issue a new document for 'return to Australia only' and cancel the existing document (and possibly the new document as well, depending on the terms of the order) upon the child's return to Australia.

Under section 48(a)(ii) of the Passports Act, a decision to issue an ATD to a child, including a concurrent ATD, is not a reviewable decision.

##### New ATD in exceptional circumstances

- Section 22(2)(a) of the Passports Act provides that the Minister (or delegate) may cancel a child's ATD at the time when the child applies for, or is issued with, another ATD.
- However, if the current ATD isn't presented for cancellation at lodgement because it's in the possession of another person (not lost or stolen), this provision **can only be used** where one or more of the following apply:
  - the current ATD has 6 months validity or less
  - the new application is lodged with full consent
  - an EL1 or above delegate considers that exceptional circumstances exist to warrant cancelling the current ATD and issuing a new one.
- Cases where this may be appropriate include, but aren't limited to, where the delegate is satisfied that the current ATD is unavailable to the lodging person and one of the following applies:

- an Australian or Hague court has ordered the issue of a travel document after the existing ATD was issued (decision under section 11(1)(b) of the Passports Act or Specialised Case Management (SCM) decision)
  - an Australian or Hague court order permits the issue of a travel document or international travel and the current ATD has 12 months validity or less (to allow sufficient validity for travel and sufficient time to apply for the document and any visas for travel) (decision under section 11(1)(b) of the Passports Act or SCM decision)
  - a child has been abandoned overseas and requires a document to return to Australia (SCM decision)
  - the document is being held by someone not entitled to be in possession of the child's ATD (decision under section 11(1) of the Passports Act or SCM decision)
  - there is evidence of family violence perpetrated by the person holding the document and it is unreasonable to expect the lodging person to pursue the document (SCM decision).
- Before a new ATD is issued, the child's existing ATD must be cancelled in the passport system under section 22(2)(a) of the Passports Act.
    - This must be done **before** the new ATD is changed to normal status.
    - Section 17 of the Passports Act doesn't apply in this scenario because there will be no valid document at the time of issue.
    - Any decision to issue a new ATD must be made on the basis that the existing document will be cancelled prior to issue – this instruction must be documented clearly in a file note in APO records.

A decision to issue an ATD to a child isn't a reviewable decision. However, the decision to cancel an existing document is reviewable under section 48(c) of the Passports Act.

s 47E(d)

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#### Related content

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s 47E(d)

#### Policy

Review of decisions (Chapter 25)

Concurrent passports - children **s 47E(d)** (Chapter 13.3)

Cancelled Australian travel documents (Chapter 20)

#### Resources

s22(2)(a) Child cancellation - notification to person in possession of cancelled document Letter 49

**s 47E(d)**

**s 47E(d)**

Chapter 13.13.4.2 > **s 47E(d)** > Child already holds a valid travel document - refusal to issue

Section 17 of the Passports Act 2005 (the Passports Act) states that except in specified circumstances the delegate **must not** issue an Australian travel document (ATD) to a person if the person has already been issued with an ATD and that document is still valid.

- Where a person with parental responsibility lodges a new application because their child's current ATD is in the possession of another person with parental responsibility, and no exceptional circumstances exist, the delegate may refuse the application under section 17(1) of the Passports Act.
  - This includes where the application has been lodged with an Australian court order that would otherwise permit issue.
    - Note: refusal in these circumstances must be under section 17(1) of the Passports Act and a refusal letter is to be sent to the lodging person.
- Where the application has been lodged for consideration under special circumstances, the delegate may also decide to do either of the following:
  - refuse the application because no special circumstances are met under section 11(2) of the Passports Act
  - refuse to exercise their discretion because the matter should be dealt with by a court under section 11(3) of the Passports Act.

Only decisions to refuse an application under sections 11(2) of the Passports Act and 17(1) of the Passports Act are reviewable. A delegate's decision to refuse to exercise their discretion because the matter should be dealt with by a court (section 11(3) of the Passports Act) isn't reviewable.

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#### Related content

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**s 47E(d)**

#### Policy

Review of decisions (Chapter 25)

#### Resources

Section 17 child refusal - child already holds a passport Letter 33d **s 47E(d)** )

**s 47E(d)**



## Chapter 13.13.5 > [s 47E\(d\)](#) > Recording delegate decision - complex child applications

- Once a delegate has considered all information provided for a child's application for an Australian travel document, they must record their decision on the relevant B12 Complex Child Application Delegate Decision (B12) form.
- The delegate must:
  - record their assessment of each of the special circumstances in the Australian Passports Act 2005 and/or the Australian Passports Determination 2015, indicating which apply
  - record a statement of what relevant information was considered in the decision made by the delegate
  - if the delegate deems it necessary to deviate from policy or procedures, they must document the reason for this and include any appropriate approvals from the Policy and Legislation and/or Specialised Case Management sections
  - record the circumstances in which the application has been approved or refused
  - make sure they sign (physically or electronically) and date the decision.
- The delegate should not declare their decision was directed by another individual or area as an appropriately authorised delegate cannot be legally directed to make a particular decision.
  - Any advice received can only inform the delegate's decision.
  - The delegate is still accountable for the final decision.

The decision date, decision reason codes (listed in the B12 form) and the details of the delegate **must** be entered into the passport system as a formal record of the decision.

[s 47E\(d\)](#)

### Related content

[s 47E\(d\)](#)

### Resources

Record of APS5 Complex Child Application Delegate Decision B12 APS5 ([s 47E\(d\)](#))  
 Record of APS6 & above Complex Child Application Delegate Decision [s 47E\(d\)](#)

[s 47E\(d\)](#)

## Chapter 13.13.6 > **s 47E(d)** > Reviewable and non-reviewable decisions - child applications

Section 48 of the Australian Passports Act 2005 (the Passports Act) and section 30 of the Australian Passports Determination 2015 (the Passports Determination) set out the decisions relating to Australian travel documents (ATDs) that are reviewable.

- These decisions are reviewable under administrative law, either by the Department of Foreign Affairs and Trade or the Administrative Review Tribunal (ART). The department and ART can only review decisions that the law specifically states are reviewable.
- Review under administrative law is merits based, which means the decision can be overturned if the reviewer doesn't think the original decision resulted in the best outcome, even if the decision was legally made. This is different to judicial review where a court only looks at the lawfulness of a decision.
- Several decisions are specifically not reviewable. Where the legislation specifies that decisions are not reviewable, it's usually because they are procedural in nature and not discretionary.
  - For example, the Minister's decision to issue a travel-related document to remove, deport or extradite a person from Australia (section 9 (1A)(b) of the Passports Act).
- Certain decisions relating to children are also not reviewable. These are matters better dealt with by the Family Court than the administrative reviews regime.

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### Related content

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**s 47E(d)**

### Legislation

Australian Passports Act 2005 (Section 43)

Australian Passports Determination 2015 (Section 30)

### Policy

Review of Decisions (Chapter 25)

**s 47E(d)**

## Chapter 13.13.6.1 &gt; s 47E(d) &gt; Decision to refuse to issue to a child - reviewable

Section 48(b) of the Australian Passports Act 2005 (the Passports Act) provides that the decision to refuse to issue an Australian travel document (ATD) to a child under subsection 11(2) of the Passports Act is subject to review, usually because special circumstances do not exist.

- Review under administrative law is merits based, which means that the decision can be overturned if the reviewer doesn't think the original decision resulted in the best outcome for the customer, even if the decision was legally made.
- The reviewer must take all the information that was available to the original decision-maker into account, as well as any new information available at the time of the review.
- This means that additional information may be provided at the review stage to establish that a special circumstance does in fact exist, or the reviewer may take a different view to the decision-maker and the original decision may be overturned.
- The reviewer will also attempt to contact the non-consenting person as part of the review where it's deemed necessary and appropriate. This provides another opportunity for the non-consenting person to consent to the issue of an ATD to the child.
- If the non-consenting person provides their consent at the review stage (including verbal consent), an ATD may be issued under section 11(1)(a) of the Passports Act.
- Customers can contact the Child Passport Reviews team in the Passport Reviews section (PPR) directly by email to [cpreviews@dfat.gov.au](mailto:cpreviews@dfat.gov.au) with enquiries as instructed on the decision letter.

s 47E(d)

s 47E(d)

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#### Related content

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s 47E(d)

#### Policy

Verbal response from non-consenting person - complex child application s 47E(d) (Chapter 13.12)

#### Process

SCM general processing SOP s 47E(d)

s 47E(d)



Chapter 25.2.2.1 > **s 47E(d)** > Decision to issue to a child - not reviewable

- Under section 48(a)(ii) of the Australian Passports Act 2005 (the Passports Act), a decision to issue an Australian travel document (ATD) to a child is **not reviewable**.
- Where a person with parental responsibility objects to the issue of a passport to a child, but the child is still entitled to a passport under a provision of the Passports Act, the matter is more appropriately dealt with by a court.

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Related content

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**s 47E(d)**

**Policy**

Reviewable and non-reviewable decisions - child applications **s 47E(d)** (Chapter 13.13)

Decision to refuse to issue to a child - reviewable **s 47E(d)** (Chapter 13.13)

Decision to refuse to exercise the discretion to issue to a child - not reviewable **s 47E(d)** (Chapter 25.2)

**s 47E(d)**

## Chapter 25.2.2.2 > **s 47E(d)** > Decision to refuse to exercise discretion to issue to a child - not reviewable

- Under section 11(3) of the Australian Passports Act 2005 (the Passports Act), if the Minister or delegate decides to refuse to issue an Australian travel document (ATD) to a child, then the Minister may declare they are refusing to exercise the discretion to issue an ATD to the child under the reasons outlined in section 11(2) of the Passports Act.
  - These are cases where a special circumstance exists, but the delegate makes a declaration that the matter should be dealt with by a court.
- Declarations under section 11(3) of the Passports Act are only made in complex cases where the matter should be heard by a Family Court and that a decision made by an administrative decision-maker is not appropriate.

### Background for 2005 legislative amendment

#### Disputes between parents to be dealt with by a court

Data collected prior to 2004 found that in approximately 25 cases annually, passport applicants used the administrative review process to resolve a dispute with the child's other parent about whether their child should travel internationally, rather than through the courts.

In these cases, APO officials were required to make decisions outside the policy and legislative framework established under the family law system.

It also meant that if the matter went to the Administrative Review Tribunal (ART), the department, as the decision-maker, was the respondent (the party being tried and represented) whereas the parent who had refused consent was not represented. The new provision (section 11(3) of the Passports Act) remedied this anomaly.

The 2005 legislative amendment also provides that the decision to refuse to issue an ATD where a declaration under section 11(3) of the Passports Act has been made is **not reviewable** under the Passport Act's administrative review regime.

### Related content

#### **s 47E(d)**

#### Policy

Reviewable and non-reviewable decisions - child applications **s 47E(d)** (Chapter 13.13)

Decision to issue to a child - not reviewable **s 47E(d)** (Chapter 25.2)

Decision to refuse to issue to a child - reviewable **s 47E(d)** (Chapter 13.13)

#### Resources

Explanatory Memorandum to the Australian Passports Bill 2004

s 47E(d)



## Chapter 13.14.1 > s 47E(d) > Unable to contact the non-consenting person for a reasonable period - application of special circumstance

- The {{special circumstance s 47E(d)}} under {{paragraph 10(3)(a) s 47E(d)}} of the {{Australian Passports Determination 2015 s 47E(d)}} (the Determination) may be met where:
  - the {{Passport Case Officer s 47E(d)}} (PCO) is unable to locate or get contact details for the {{non-consenting person s 47E(d)}}. The delegate must make all required attempts to locate and contact the non-consenting person. These are specified in the contact guidance for locating and contacting the non-lodging parent s 47E(d).
  - the non-consenting person does not respond to attempts to contact them within a reasonable period (usually 10 {{business days s 47E(d)}})
  - on attempting to contact the non-consenting person, the PCO is unable to positively identify the person. For example, they refuse to provide their name or speak to the PCO.
- The special circumstance under {{paragraph 10(3)(a) s 47E(d)}} of {{the Passports Determination s 47E(d)}} 2015 cannot be satisfied if:
  - the non-consenting person responds to attempts to contact them
  - the non-consenting person has otherwise contacted the Australian Passport Office (APO) during the processing of the application
  - the APO does not attempt to contact the non-consenting person because they consider it inappropriate or unnecessary to contact them.

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Procedural notes

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s 47E(d)



s 47E(d)

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#### Related content

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s 47E(d)

#### Policy

Contacting the non-consenting person - complex child application s 47E(d) (Chapter 13.12)

Inappropriate or unnecessary to contact the non-consenting person s 47E(d) (Chapter 13.12)

Contact guidance for locating and contacting the non-consenting person - s 47E(d) (Chapter 13.12.4.5)

s 47E(d)

## Chapter 13.15.1 > <sup>s 47E(d)</sup> > Missing and/or presumed dead - application of special circumstance

- The special circumstance under section 10(3)(b) of the Australian Passports Determination 2015 (the Determination) allows for applications to be considered where acceptable evidence to establish the death of a person with parental responsibility **cannot** be presented.
- Acceptable evidence of death includes an **original** of any of the following:
  - Australian or foreign death certificate
  - Australian or foreign coroner's report
  - Australian or foreign cremation certificate or burial permit
  - any full Australian birth certificate that records the death
  - Australian or foreign medical certificate showing the person is deceased.
    - All medical certificates must be verified with the issuer (with the issuing hospital or medical clinic, for example).
- Specialised Case Management (SCM) delegates can also request and use the following documents as acceptable evidence of death:
  - confirmation from Consular Operations (CONOPS)
  - Fact of Death (FOD) file checks conducted in the Passport Issuance Control System (PICS)
  - visa evidence which shows the lodging person as widowed on their Document for travel to Australia (DFTTA)
  - confirmation in writing from the overseas post
  - Centrelink notification that records the death (Child Support Case has ended due to death).
- If evidence of death was provided with the child's previous application, the passport case officer (PCO) can access and use this information during processing.
  - Refer to policy 'Using Australian Passport Office records'.

There is no statutory timeframe that must end before a person may be presumed dead under this special circumstance (unlike in the legal definition of missing and presumed dead).

- The criteria in the special circumstance under section 10(3)(b) may be met in circumstances where:
  - the deceased person isn't listed on the child's birth certificate, or the surviving parent isn't entitled to access acceptable evidence of death
  - the person is recently deceased and acceptable evidence of death has not yet been issued

- the non-consenting person was located close to a crisis when they went missing
- the person died overseas and a death certificate was not issued or cannot be obtained
- the person is presumed to have died during war or civil unrest and the child came to Australia as a refugee.

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#### Related content

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s 47E(d)

#### Policy

One or both parents deceased - parental responsibility s 47E(d) (Chapter 13.9)

Using Australian Passport Office records (Chapter 5.4)

#### Process

Non-consenting person missing or presumed dead 004 s 47E(d)

s 47E(d)

## Chapter 13.15.2 > s 47E(d) > Acceptable evidence for special circumstance - missing and/or presumed dead

The lodging person must provide as much evidence as possible to support their claim that the non-consenting person is missing and/or presumed dead.

Acceptable evidence may include the documents outlined below:

### Coroner's Court

- a letter from the Coroner advising inquiries are underway
- documents pertaining to inquiries into a missing {{non-consenting person}s 47E(d) presumed to be dead

### Court or Administrative Tribunal

- a court order giving a person control over the estate of a missing person yet to be declared legally dead

### Australian Federal Police

- a letter from the National Missing Persons Coordination Centre stating the non-consenting person is listed as missing and the period for which the person has been missing
- where the investigation is being handled by the AFP, a letter from the investigating officer stating they have formed a belief the non-consenting person may be deceased

### Local Police Force

- a letter from the investigating officer stating the belief that the non-consenting person may be deceased

### Foreign Governments

- {{Foreign passport}s 47E(d) stating the parent is widowed
- correspondence with a foreign embassy/consulate with regards to the death where a foreign death certificate cannot be obtained

### Letters of support

- a letter from a funeral director that conducted a funeral for the non-consenting person
- a letter from a social worker that works with the family (for example, a counsellor or a resettlement coordinator for immigrant/refugee families)
- a letter from an agency that helps with missing persons cases: Salvation Army Family Tracing Service, Australian Red Cross Tracing Unit, International Social Services, Friends and Family of Missing Persons Unit



### Other evidence

- proof of a crisis (for example, a plane crash or natural disaster) and the non-consenting person's proximity to the crisis (for example, a copy of the plane ticket) and the non-consenting person has not been heard of since
- obituary or notice of the funeral in a newspaper
- a newspaper article reporting the person missing

### Department of Foreign Affairs and Trade

- correspondence on settling of affairs and/or arrangements for remains where the non-consenting person was Australian and died overseas

### Department of Home Affairs

- prior to 2012, {{Document for Travel to Australia<sup>s 47E(d)</sup> }} that lists the child under the {{lodging parent<sup>s 47E(d)</sup> }} and the parent's marital status is listed as 'widowed'
- from 2012 -2016, the lodging person's Document for Travel to Australia listing marital status as widowed (from 2012 Documents for Travel to Australia were issued to individuals and not family groups).

### Chapter 13.15.3 > <sup>s 47E(d)</sup> > Delegate considerations for special circumstance - non-consenting person is missing and/or presumed dead

- Where possible, evidence provided to support that the non-consenting person is missing and/or presumed dead should be verified with the issuing authority.
- If the evidence is verified, or the standard checks do not locate the missing person, the application may be approved.
- If there is any doubt about the evidence provided, the Passport Case Officer (PCO) must escalate the application to the Specialised Case Management Section (SCM) for guidance or decision.
- If the non-consenting person is located, the PCO must refer the application to the Passport Fraud and Compliance Section (PFS).

#### Evidence not available or cannot be verified

- Where evidence is not available or cannot be verified, including circumstantial evidence (for example, an obituary/notice of funeral, newspaper article or hearsay letters of support), standard checks to locate the non-consenting person or to verify the lodging person's claims should also be undertaken, including:
  - National Missing Persons Register
  - PICS (Person Enquiry, Fact of Death check and any child alert)
  - Movement Records/Passenger Card Image System
  - Electoral Roll
  - Visa Enquiry for the lodging person if they travelled to Australia as a refugee from 2016 (where applicable). In 2016 Documents for Travel to Australia were replaced by Immicards. The Specialised Case Management section (SCM) can conduct enquiries to confirm if the lodging person's marital status is listed as widow by Home Affairs.
  - Consular Information System records check if the non-consenting person is Australian and died overseas (where applicable). The SCM can conduct this check.
- When a non-consenting person has died in a foreign country, records may be very difficult to obtain due to poor record keeping, obstacles to receiving documents, the loss of records or no death certificate being issued (especially for refugees fleeing conflict zones).

#### Both parents missing and/or presumed dead

- Where both parents are missing and/or presumed dead, it is important any court orders with regard to the care of the child are obtained to ensure all persons with parental responsibility for the child are identified.

- It is also important to check for any child alerts notifying the department of pending legal proceedings in relation to the child. If proceedings are pending, this special circumstance cannot be considered and the application will need to be escalated to an EL1 or above delegate in the Specialised Case Management Section (SCM) for a decision.

#### Subsequent applications

- If the claims have already been verified or the standard checks have been conducted with no result for the child's previous application, although evidence must still be presented, no further testing is required and the application may be approved.

#### Related content

s 47E(d)

#### Process

Non-consenting person missing or presumed dead 004 s 47E(d)

#### Resources

Referral for SCM advice (email template)

Referral to PFS

s 47E(d)

Chapter 13.15.3.1 >**s 47E(d)** > Missing non-consenting person is the subject of an ongoing police investigation - special circumstances 10(3)(b)

- Where the person missing is the subject of an ongoing police investigation because the person went missing under suspicious circumstances (usually detected through the supporting letter from police or because the case is in media reporting), the application must be referred to the Specialised Case Management Section (SCM) to manage.

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#### Related content

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**s 47E(d)**

#### Resources

Request for SCM advice (email template)

**s 47E(d)**



## Chapter 13.16.2 > s 47E(d) > Acceptable evidence for special circumstance - medically incapable of providing consent

The lodging person must provide evidence to support the medical incapacity of another person with parental responsibility. If a non-consenting person wishes to present evidence of their own medical incapacity, this must also be accepted.

Acceptable evidence may include the documents outlined below:

### Medical Professional

- a letter from a doctor treating the {{Non-consenting person s 47E(d)}} stating they are medically incapable of providing consent
- a letter from a manager/panel/board of institution where the {{Non-consenting person s 47E(d)}} is a resident (i.e. hospital, nursing home, psychiatric unit) that supports that the {{Non-consenting person s 47E(d)}} is medically incapable of providing their consent.

### Legal Rulings

- a finding by a court or tribunal that the non-{{Lodging person s 47E(d)}} is medically incapable of making decisions of this nature
- evidence that a third person has been granted substitute decision-making power, under a federal, state or territory law, for the non-{{Lodging person s 47E(d)}} to make decisions concerning the child (by order of a court, tribunal, panel, board or under statute).

## Chapter 24.5.3 > <sup>s 47E(d)</sup> > Power of Attorney or Adult Guardianship Order

- A Power of Attorney (Enduring Power of Attorney, Medical Power of Attorney or Enduring Guardianship) is a legal document appointing a person to manage another person's affairs on their behalf, usually in relation to commercial, property or medical matters.
- Adult Guardianship Orders are determined by a court or tribunal. This form of guardianship only applies to adults (over 18 years of age) and differs from child guardianship.
- A Power of Attorney or Adult Guardianship Order does not automatically provide authorisation for a person (or persons) to act on behalf of the subject for the purposes of applying for an Australian travel document (ATD) or other travel document matters.

### Privacy and disclosures

- Where a Power of Attorney or Adult Guardianship Order is confirmed to provide legal authority for a person (or persons) to act on behalf of a customer in relation to travel document matters:
  - the APO may request or disclose information from or to the authorised person for the purposes of assessing an application for an ATD for the customer
  - the authorised person may enquire about an application or any ATD issued to the customer on the customer's behalf.

### Entitlement to an Australian travel document

An adult with impaired decision-making capacity, for example due to a mental illness or disability, is entitled to be issued an ATD if they meet all requirements, unless an order of an Australian court or tribunal affects that entitlement.

- A legal authority to act on behalf of an adult customer may not affect the customer's entitlement to be issued an ATD, but the authorised person may have the authority to manage any ATD on the customer's behalf. In these cases, any ATD issued should be sent to or collected by the authorised person.
- A legal authority to act on behalf of an adult customer, including to manage any ATD issued to the customer, does not remove the requirement for the customer to lodge their application for the ATD in person. They may lodge with the assistance of an authorised person or a carer, but they must attend lodgement unless an exception applies.
- If an Adult Guardianship Order specifies that an ATD must be cancelled or refused, the Australian court or tribunal is considered a competent authority in this regard and the travel document must be cancelled or refused.

### Parental responsibility: child application

A Power of Attorney or Adult Guardianship Order does not remove a person's parental responsibility for the purpose of providing consent to the issue of an ATD to a child.

- In cases where a person with parental responsibility is medically incapable of providing their consent, consideration of an application under special circumstances (paragraph 10(3)(c) of the Australian Passports Determination 2015) may be appropriate.
- A Power of Attorney or Adult Guardianship Order may be presented as evidence that a person with parental responsibility is medically incapable of providing consent.
- Where a Power of Attorney or Adult Guardianship Order gives the authorised person the authority to make arrangements for the subject's children or to give consent to the issue of an ATD to a child, the document or order should be referred to the Specialised Case Management Section (SCM).

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#### Procedural notes

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s 47E(d)

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#### Related content

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s 47E(d)

#### Policy

Lodgement assistance - Australian passport s 47E(d) (Chapter 3.6)

Unable to lodge in person (exceptional circumstances) s 47E(d) (Chapter 1.3)

Delegate considerations for Special circumstance - Non-consenting person is medically incapable of providing consent s 47E(d) (Chapter 13.16)

Adult Guardianship (GU) alert s 47E(d) (Chapter 24.5)

s 47E(d)

**Chapter 13.16.3 > s 47E(d) > Delegate considerations for special circumstance - non-consenting person is medically incapable of providing consent**

The considerations for the delegate are different depending on if it is a first time applicant or a previous passport holder.



Chapter 13.16.3.1 > **s 47E(d)** > First time application - non-consenting person is medically incapable of providing consent

- Where possible, the supporting evidence should be verified with the author or issuing authority. In verifying the evidence, it is important to clarify that the non-consenting person has no capacity to provide their consent in any way. This is particularly important where the issue of providing consent has not been specifically addressed in the letter.
- If the non-consenting person has capacity to make decisions but is unable to provide written consent, consent must be obtained through an alternative method. It is imperative that a file note records the way in which the person's identity has been confirmed and that the person is giving unconditional consent to the issue of an Australian travel document (ATD) to the child.
- If the verified evidence supports that the non-consenting person has a condition that deems them medically incapable of providing consent, the application may be approved under paragraph 10(3)(c) of the Australian Passports Determination 2015.
- If there is any doubt about the evidence, the application must be escalated to an EL1 or above SCM delegate in the Specialised Case Management Section for guidance or a decision.
- If the non-consenting person is only temporarily medically incapable of providing consent, their best interests should be taken into account pending recovery. In this instance, the application must be escalated to an EL1 or above SCM delegate in the Specialised Case Management Section for a decision.

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Related content

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**s 47E(d)**

Policy

Temporary incapacity - non-consenting person is medically incapable of providing consent

**s 47E(d)** (Chapter 13.16)

Process

Medically incapable of providing consent SOPs **s 47E(d)**

Resources

Request for SCM advice (email template)

**s 47E(d)**

Chapter 13.16.3.2 > **s 47E(d)** > Subsequent applications - non-consenting person is medically incapable of providing consent

- Every time a claim of medical incapacitation is made, it must be supported with evidence.
- If the Australian Passport Office (APO) has verified for a previous application that the {{Non-consenting person**s 47E(d)** }} is permanently incapacitated and cannot provide consent, no further testing is required. The application may be approved under {{paragraph 10(3)(c)**s 47E(d)** }} of the {{Australian Passports Determination 2015**s 47E(d)** }}.
- If the APO has verified for a previous application the {{Non-consenting person**s 47E(d)** }} has capacity to make decisions and is able to provide consent through an alternative method (but not in writing), consent is to be obtained through an alternative method for all applications lodged.
- If the {{Non-consenting person**s 47E(d)** }} was only temporarily incapacitated for the previous application, any evidence of incapacity must be verified.

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#### Related content

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**s 47E(d)**

#### Policy

Temporary incapacity - Non-consenting person is medically incapable of providing consent

**s 47E(d)** (Chapter 13.16)

#### Process

Medically incapable of providing consent SOP **s 47E(d)**

**s 47E(d)**

Chapter 13.16.3.3 > s 47E(d) > Temporary incapacity - non-consenting person is medically incapable of providing consent

- If the non-consenting person is only temporarily medically incapable of providing consent, their best interests should be taken into account pending recovery. In this instance, the application must be escalated to an EL1 or above SCM delegate in the Specialised Case Management Section for a decision.
- Where medical evidence suggests imminent recovery is likely, the EL1 or above SCM delegate may decide to withhold their decision until the non-consenting person's wishes are known. It is important that consideration is given to preventing any attempt by the lodging person to remove or relocate the child while the non-consenting person is temporarily incapable of providing consent.
- Alternatively, if there is a compassionate reason to issue, for example the travel is to see the non-consenting person because death is imminent, it may be appropriate to approve issue under paragraph 10(3)(c) of the Australian Passports Determination 2015. This decision must be taken by an EL1 or above SCM delegate.



## Chapter 13.17.1 > s 47E(d) > No contact between the child and non-consenting person for a substantial period - application of special circumstance

- The {{Australian Passports Act 2005s 47E(d)}} and the {{Australian Passports Determination 2015s 47E(d)}} ({{the Passports Determinator s 47E(d)}}) do not define 'substantial period' of no contact between the child and the {{Non-consenting person s 47E(d)}} for {{paragraph 10(3)(d) s 47E(d)}} of {{the Passports Determinator s 47E(d)}}.
- Guidance is provided by the Explanatory Statement to {{the Passports Determinator s 47E(d)}} which provides that "in most cases, a substantial period during which there has been no contact is considered to be up to two years, but may be less depending on the age of the child and the circumstances of the application."
- If the child is under 2, then a 'substantial period' of no contact is since birth.

### Related content

s 47E(d)

### Legislation

Explanatory Statement to the Australian Passports Determination 2015

s 47E(d)



## Chapter 13.17.2 > s 47E(d) > Contact between the child and the non-consenting person - definition

- Contact includes all forms of contact. For example, in person, telecommunications, social media and any other avenue of communication.
- Incidental contact is defined as unintended contact, such as a chance meeting in the street or meeting at a family funeral.
- Unreciprocated contact by the {{non-lodging person s 47E(d)}} to the child is still contact.
- The APO instructs the {{lodging person s 47E(d)}}, **not the child** to pursue the consent of all persons with parental responsibility.
  - The lodging person may encourage the child to contact the non-lodging person to seek their consent.
  - The child may also independently contact the non-lodging person to seek their consent.
- A delegate will assess all contact, including unreciprocated contact, when assessing whether there has been a 'substantial period' of no contact.
- The delegate may exclude one off or limited contact by the child for the sole purpose of seeking consent to a passport application.

Chapter 13.8.1.4 > **s 47E(d)** > Child 16 or 17 - living independently

- A child 16 or 17 years of age may lodge an application on their own behalf if they can provide evidence that they are financially self-supporting and living independently of all persons with parental responsibility.
- They must use the child application form (unless they are legally married) and provide a Form B-9 Child without full consent or an Australian court order permitting issue for each person with {{Parental Responsibility **s 47E(d)** who has not consented to the application.

**Consideration of application under special circumstances**

- Evidence that the child is self-supporting and living independently is required for the delegate to consider a period of less than the usual two years as a reasonable “substantial” period if a delegate is considering the application under {{paragraph 10(3)(c**s 47E(d)** of the {{Australian Passports Determination 2015**s 47E(d)** } (no contact between the child and the non-consenting person for a substantial period before the application is made).
- A substantial period in these cases is considered to be at least one year before the application is made, however the {{CCAs**s 47E(d)** delegate has the discretion to consider a lesser period taking into account the circumstances of the application.

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Related content

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**s 47E(d)**

**Policy**

Delegate considerations for Special circumstance - no contact between the child and Non-consenting person for a substantial period **s 47E(d)** (Chapter 13.17)

Inappropriate or unnecessary to contact the Non-consenting person **s 47E(d)** (Chapter 13.12)

**s 47E(d)**

Chapter 13.8.1.5 > **s 47E(d)** > Child 16 or 17 - acceptable evidence of living independently

**Acceptable evidence that a child is self-supporting**

- Acceptable evidence that a child is self-supporting includes, but is not limited to, any of the following:
  - Youth Allowance at independent rate statement (or relevant equivalent)
  - Contract of employment/payslips/group certificate
  - Tax return
  - Medicare card/Health Care card
  - Bank statement
  - Utilities bills (for example, phone, gas, electricity, water)

**Acceptable evidence that a child is living independent of all persons with parental responsibility**

- Acceptable evidence that a child is living independent of all persons with {{Parental Responsibility **s 47E(d)** }} includes, but is not limited to, any of the following:
  - Proof of rent/ board agreement
  - Accommodation from state or territory Department of Housing
  - On-campus accommodation (from school or TAFE)
  - Drivers Licence with current address
  - Letter in support from child's social worker, principal, landlord, employer, lawyer, doctor or dentist

## Chapter 13.17.4 > s 47E(d) > Delegate considerations for special circumstance - no contact between the child and non-consenting person for a substantial period

- The delegate must be satisfied that there has been no contact for a substantial period.
- An APS6 {{CCAs s 47E(d) delegate is restricted to the standard definition of a 'substantial period' of no contact being two years or, for a child under 2, since birth.
- An EL1 or above CCA delegate has the discretion to accept a period of less than 2 years as a 'substantial period', taking into account the circumstances of the application.
- For example, a shorter period of no contact may be considered where a child is 16 or above and living independently of all persons with {{parental responsibility s 47E(d) }} (usually one year) or where there is a substantiated history of family violence or child abuse.

### Claim of family violence

- Consistent with the policy of putting no victim at risk of further harm, where there is substantiated evidence of family violence or child abuse (but not an Australian family violence order), a delegate can rely on supporting evidence of no contact untested or accept the claim of no contact untested.
- There needs to be sufficient evidence of family violence by the {{non-consenting person s 47E(d) }}, either from Australia or overseas, according to the definition of family violence under section 4AB of the Family Law Act 1975.
- Where it is inappropriate to contact the non-consenting person and the evidence cannot be tested, the delegate must consider all available evidence. In particular, the delegate must ensure that any information provided to the department by the courts or the non-consenting person (through a court order or {{child alert s 47E(d) }} is considered.
- A delegate cannot override a {{lodging person's s 47E(d) }} objections to contacting the {{non-lodging person s 47E(d) }} on family violence grounds even if there is no supporting evidence of the claim. However, if there is no evidence to support the claim, it is open to the delegate to determine they are not satisfied that the {{special circumstance s 47E(d) }} exists or that they are refusing to exercise their discretion because the matter is better dealt with by a court.

### Claim that contact has been obstructed

- Where the non-consenting person confirms the date of last contact claimed but states that their attempts to contact the child have been obstructed, it would be open to the delegate to make a declaration that the matter is better dealt with by a court.

### Period of no contact contested

- Where the non-consenting person contests the date of last contact, it would be open to the delegate to refuse the application as the special circumstance has not been met.



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## Procedural notes

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s 47E(d)

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## Related content

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s 47E(d)

## Policy

Family violence order issued against the Non-consenting person - application of Special circumstance

s 47E(d) (Chapter 13.19)

s 47E(d)

## Chapter 13.18.1 > s 47E(d) > Non-citizen parent, separated from lodging parent and no contact with child since child's arrival in Australia - application of special circumstance

- This {{Special circumstance s 47E(d)}} ordinarily applies to children who have immigrated to Australia or travelled to Australia as a refugee.
- As stipulated in the Australian Passports Determination 2015 (the Determination), the {{Non-consenting person s 47E(d)}} must be a foreign national and their relationship with the {{Lodging person s 47E(d)}} must have ended.
- The {{Non-consenting person s 47E(d)}} must have had no contact of any form with the child since the child arrived in Australia.
- If the delegate is satisfied that this {{Special circumstances s 47E(d)}} exists then it is likely one of the other circumstances will also exist (for example, {{paragraph 10(3)(d) s 47E(d)}} of the {{Australian Passports Determination 2015 s 47E(d)}}, no contact between the child and the non-consenting person for a substantial period).

### Chapter 13.18.3 > s 47E(d) > Acceptable evidence to support special circumstance - non-citizen parent, separated from lodging parent and no contact with child since child's arrival in Australia

- The {{Lodging person s 47E(d)}} will need to provide evidence that their relationship with the {{Non-consenting person s 47E(d)}} has ended and the date of the child's arrival in Australia.
- Where documentary evidence is not available, this information must be provided in a declaration on any B form supporting the application.

#### Acceptable evidence of a relationship ending

- Acceptable evidence of a relationship ending includes, but is not limited to, one of the following:
  - {{Divorce Order s 47E(d)}}
  - revocation/termination of {{Registered relationship certificate s 47E(d)}}
  - letter in support from a lawyer, counsellor, social worker, refuge or other crisis services or support groups.

#### Acceptable evidence of the child's arrival in Australia

- Acceptable evidence of the child's arrival in Australia includes, but is not limited to, any of the following:
  - border entry stamp into Australia on {{Child's travel document s 47E(d)}}
  - airline tickets
  - flight itinerary.

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#### Procedural notes

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s 47E(d)

## Chapter 13.18.4 > s 47E(d) > Delegate considerations for special circumstance - non-citizen parent, separated from lodging parent and no contact with child since child's arrival in Australia

- For this {{Special circumstance s 47E(d)}} to be met, the delegate must be satisfied that the {{Non-consenting person s 47E(d)}} is not an Australian citizen. Conducting a citizenship enquiry in {{PICs s 47E(d)}} will assist to rule this out.
- The delegate must also be satisfied that the parents' relationship has ended. In the absence of any other documentation to support this claim, the {{Lodging person s 47E(d)}}'s statement on the relevant B form may be accepted.
- Additionally, the delegate must be satisfied that there has been no contact between the child and the {{Non-consenting person s 47E(d)}} since the child arrived in Australia (confirmed through a movement records check) and any attempted contact by the {{Non-consenting person s 47E(d)}} has not been obstructed.
- Unless it is inappropriate to do so, the claim of no contact must be tested.

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### Procedural notes

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s 47E(d)

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### Related content

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s 47E(d)

### Policy

Inappropriate or unnecessary to contact the Non-consenting person s 47E(d) (Chapter 13.12)

s 47E(d)



## Chapter 13.19.1 > <sup>s 47E(d)</sup> > Family violence orders and the application of special circumstance

A *family violence order* is defined as ‘an order (including an interim order) made under a prescribed law of a state or territory to protect a person from family violence’. Refer to section 10(4) of the Australian Passports Determination 2015 (the Passports Determination) and section 4(1) of the Family Law Act 1975 (Family Law Act).

- *Family violence* is defined in section 4AB(1) of the Family Law Act.
- The prescribed laws, referred to in the definition of a *family violence order*, are set out in the Family Law Regulations 1984 (Schedule 8).
- Section 10(3)(f) of the Passports Determination provides grounds to issue an Australian travel document (ATD) to a child if a family violence order has been issued against the non-consenting person under Australian law.
- If a family violence order has been issued against the non-consenting person, the special circumstance under section 10(3)(f) of the Passports Determination is enlivened. A delegate then has a discretion, but is not required, to issue an ATD to a child.
- Whether it is appropriate for a delegate to exercise their discretion will depend on the information provided as part of the application. This may include information from the lodging person, the non-consenting person (if applicable), and the circumstances (including the terms and scope) of the family violence order.

### Family violence order status, interplay with other court orders, and permitted contact

- Family violence orders that are refused, revoked, withdrawn, rescinded, expired or significantly dated will not ordinarily support the exercise of discretion to issue an ATD.
- Section 10(3)(f) of the Passports Determination wouldn't ordinarily be used to issue an ATD if an Australian court order permits (including by not prohibiting) access or contact between a non-consenting person with parental responsibility and the child. This includes Australian family violence orders or Australian family law orders.
- Family violence orders that don't name the child as a protected person will not ordinarily support the exercise of discretion to issue an ATD.

### Family violence is claimed but a family violence order has not been issued

- The special circumstance under s10(3)(f) of the Passports Determination is only enlivened when an Australian family violence order has been issued. The delegate must be satisfied (on the basis of evidence) that an Australian family violence order has in fact been issued. Ordinarily, this will mean providing the delegate with a copy of the relevant order.
- Where the delegate isn't satisfied that a family violence order has been issued, other evidence of family violence (such as medical evidence, police reports or undertakings as part of court proceedings) may support claims against a different special circumstance.

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Related content

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s 47E(d)

Policy

Parental Responsibility and consent (Chapter 13.9)

s 47E(d)

## Chapter 13.19.2 > <sup>s 47E(d)</sup> > Acceptable evidence for special circumstance - family violence order has been issued against the non-consenting person

- To issue an Australian travel document (ATD) to a child without full consent under the special circumstance in section 10(3)(f) of the Australian Passports Determination 2015, a family violence order must have been issued against the non-consenting person under Australian law.
- The order can be:
  - for the protection of any member of the child's immediate family who currently lives with the child
  - current or expired
  - final or interim
  - registered in any Australian state or territory.

**Note:** the order is still valid even if it isn't registered in the state or territory where the person named in the order currently lives.

## Chapter 13.19.4 > <sup>s 47E(d)</sup> > Delegate considerations for special circumstance - family violence order has been issued against the non-consenting person

The special circumstance at section 10(3)(f) of the Australian Passports Determination 2015 (the Determination) is enlivened where a family violence order has been issued against the non-consenting person. A delegate has the discretion, but is not required, to issue an Australian travel document (ATD) to a child (without consent).

- When deciding whether to exercise discretion under section 10(3) of the Determination, the delegate should consider the objectives of passport legislation, including:
  - to protect a child from international child abduction. The issue of an ATD may facilitate international travel that may occur with or without consent of the child or persons with parental responsibility
  - to protect victims of family violence from the risk of further harm by removing the need to contact the non-consenting person where family violence has occurred. This may include contact by the lodging person and, in certain circumstances, by the Australian Passport Office (APO)
  - to protect the rights of all persons with parental responsibility.

A family violence order made against a person **does not** remove the person's parental responsibility under law.

- Where the lodging person does not object to contact, and contact is appropriate or necessary, APO should attempt to contact the non-consenting person about the passport application.

### **Contact with a non-consenting person:**

- provides procedural fairness to the non-consenting person which reflects the objective in passport legislation to protect the rights of all persons with parental responsibility
- notifies the non-consenting person that an application has been lodged and gives them the opportunity to provide their consent to the issue of an ATD
- allows a non-consenting person who objects to an ATD being issued the option to provide information for consideration by the delegate
- allows APO to test claims made as part of the application, including the date of last contact between the non-consenting person and the child, and the relationship between the child and non-consenting person
- allows APO to confirm details of court orders, including:
  - information about the family violence order, such as whether the order has been varied, withdrawn or cancelled and any conditions of the order including contact provisions



- whether there are other relevant orders, including those made before or after the family violence order, or pending court action. This may also include family law orders, orders related to custody or other family violence-related orders.
- In the case that attempts to locate or contact the non-consenting person fail, additional special circumstances under the Determination may be considered.
- There is no requirement to verify family violence orders with the issuing courts. Some courts are required by law or policy to notify all parties to an order of any enquiries about the orders. An enquiry to a court by APO may risk the safety of both the lodging person and child.
- Where an application includes multiple sources of evidence of family violence or child abuse, it may be inappropriate or unnecessary to contact the non-consenting person. This may apply even where the lodging person has not objected to contact.
  - Other evidence of family violence may include family violence undertakings, police reports, medical reports, incarceration for family violence offences and records from family violence support services.
  - While other evidence of family violence does not automatically enliven the special circumstance at section 10(3)(f) of the Determination, it will generally be relevant to a delegate's consideration of whether to exercise discretion. Where there is evidence of family violence but no family violence order, it may also be relevant to other special circumstances.
- Where it's inappropriate to contact the non-consenting person, untested claims may be accepted by a Specialised Case Management (SCM) EL1 or EL2 delegate.
- If a delegate proposes to issue an ATD to the child without contacting the non-consenting person, it will ordinarily be appropriate to ask the lodging person to complete a B7 Form – No further court orders to confirm there is no later court order or other matters affecting the family violence order.

### The Delegate's decision

- While the existence of a family violence order enlivens the special circumstance at section 10(3)(f) of the Determination, the delegate must decide whether it's appropriate to exercise discretion to issue an ATD.
- The delegate must consider all relevant information available, including information provided by the lodging person, the non-consenting person (if applicable) including via a child alert, and by the courts through a court order alert.
- Information that may assist a delegate to determine whether it's appropriate to exercise the discretion under section 10(3)(f) of the Determination includes:
  - circumstances of the family violence order, which may include:
    - **How long since the order was issued** and whether it has expired. It may not be appropriate for a delegate to exercise the discretion when an order is aged. The delegate should consider why the order has not been updated, was not renewed or a new order sought.

- **Whether the order is interim or final.** A recently issued interim order may be not have been finalised because the court hearing has not occurred. It may not be appropriate for a delegate to exercise their discretion where a court has not had the opportunity to assess merits of the case for a final order.
  - **The age of interim orders.** An aged interim order may not support exercise of the delegate's discretion depending on the reason a final order was not made. An aged interim order may not have progressed to a final order because it was dismissed by the court, in which case it may not be appropriate for the delegate to exercise their discretion under section 10(3)(f). The application for a final order may have been withdrawn by the applicant for a number of reasons such as the person has removed themselves to safety; the person and alleged perpetrator have entered into a family violence undertaking; the perpetrator is incarcerated; the person is concerned a court will not find ground to issue a final order. The reason the order was not made final should be considered by the delegate when considering whether to exercise discretion.
  - **Whether the family violence order names the child applicant.** This is common in cases where the order was issued when the lodging person was pregnant or before the child was born.
  - **Whether the family violence order permits (including by not prohibiting) access or contact** between the non-consenting person and the child. If contact is permitted, it may not be appropriate for the delegate to exercise their discretion to issue under section 10(3)(f) on its own.
- other Australian court orders
  - whether there is access or contact between the non-consenting person and the child. Factors that may be relevant to a delegate's decision include:
    - whether contact is permitted by a court order
    - the recency and frequency of contact, and whether contact is ongoing
    - who initiated contact, and whether it is reciprocated.
  - for subsequent applications, a delegate may review information submitted with prior applications. This may help to test claims made as part of an application and to review for consistency.

### Chapter 13.19.4.1 > s 47E(d) > Orders that permit contact between the non-consenting person and the child - family violence

When a family violence order has been issued against the non-consenting person, the special circumstance under section 10(3)(f) of the Australian Passports Determination 2015 (the Determination) is enlivened. A delegate must decide whether it is appropriate to exercise discretion to issue an Australian travel document (ATD).

- Ordinarily, if a court order permits access or contact between the non-consenting person and the child, it wouldn't be appropriate for the delegate to exercise the discretion under section 10(3)(f) of the Determination. This includes where:
  - a family violence order permits access or contact between the non-consenting person and the child
  - a family court order made under the Family Law Act 1975 or Family Court Act 1997 (WA), issued after the family violence order permits access or contact between the non-consenting person and the child
  - a family court order issued prior to the family violence order permits access or contact with the non-consenting person, but **only if** the family violence order also allows contact (including by referencing provisions in the family court order).

#### Child's contact with non-consenting person

- While a family violence order or other order may prohibit contact between the non-consenting person and the child, there may be cases where contact has occurred after the order was made.
- The delegate should consider the scope, type, frequency and context of contact when deciding whether to exercise the discretion to issue an ATD under section 10(3)(f) of the Determination.
- Factors, with respect of contact between the child and non-consenting person, that should be considered by the delegate when deciding whether to exercise discretion are outlined below:
  - *Whether contact occurred after the making of the family violence order.* Contact prior to issue of the family violence order wouldn't normally be relevant to the delegate's decision. When considering contact after issue of the family violence order, the delegate should also consider in what context the contact occurred.
  - *If there has been contact, who initiated the contact.* Contact initiated by the non-consenting person, especially if that contact is unreciprocated, may have less weight in a decision to issue under section 10(3)(f) of the Determination than contact initiated by the child. When considering who initiated the contact, the delegate should also consider whether contact was reciprocated and the purpose of the contact.
  - *Whether contact was mutually agreed upon by the child and non-consenting person.* If the child and non-consenting person are willingly engaging with each other, it may not be appropriate to issue under section 10(3)(f) of the Determination.

- *Whether contact was reciprocated.* Ordinarily unreciprocated contact is considered contact. However, in this context unreciprocated contact will not weigh heavily against a decision to issue under section 10(3)(f) of the Determination.
  - *Whether contact is ongoing.* Where there is ongoing or regular contact between the child and non-consenting person, it may not be appropriate to issue under section 10(3)(f) of the Determination.
  - *Whether one-off or limited contact was undertaken for the sole purpose of seeking consent to the issue of an ATD.* Contact for the sole purpose of seeking consent to the issue of an ATD would not usually prevent a delegate issuing under section 10(3)(f) of the Determination.
  - *Whether contact was in breach of a current family violence order.* Contact in breach of a family violence order by the non-consenting person, especially when unreciprocated, wouldn't usually prevent a delegate issuing under section 10(3)(f) of the Determination. However, the delegate can consider the nature and reason for contact and if it was initiated by the child, or that contact is mutually agreed upon and/or continuing, before deciding that it may not be appropriate to issue under section 10(3)(f) of the Determination.
  - *Whether contact occurred after the family violence order ceased to be in effect (expired, withdrawn or revoked).* This should be considered in the context of why the family violence order has not been renewed or a new order sought. If the risk of family violence is mitigated, and there is regular contact between the child and non-consenting person, it may not be appropriate to issue under section 10(3)(f) of the Determination.
- If contact is mutually agreed between the child and the non-consenting person, it would not ordinarily be appropriate for the delegate to exercise the discretion to issue an ATD under the special circumstance at section 10(3)(f) of the Determination.
  - While contact may be in breach of a family violence or other court order, breaches are a matter for the relevant authority. The delegate should consider all factors related to contact when deciding whether to exercise their discretion.

## Chapter 13.19.4.2 &gt; s 47E(d) &gt; Interim and final family violence orders

Interim family violence orders are temporary orders that last until a specified date. This is usually the date of the final hearing.

- Interim orders are only based on the evidence of the aggrieved party and are presented under oath to the court.
- Interim orders can be varied or withdrawn.
- An interim or final protection order must be served on the respondent within a specified period from the court and may lapse if it can't be served.
- Interim orders can be:
  - resolved by way of 'undertakings' by the person against whom the order was made. Undertakings are a formal, but not legally enforceable promise by the person not to commit further violence and signed in front of the registrar
  - finalised by agreement between the parties. This is usually through a series of conferences, such as mediations, which are held between the parties (separately) and a registrar prior to the final hearing
  - finalised by order of the court at the final hearing.
- If an interim order has only recently been issued, delegates should wait for a final order to be issued before approving the issue of an Australian travel document.
- There may be circumstances where an interim order is extended on several occasions. For example, in some jurisdictions the court can make an interim order that will be decided at the conclusion of related criminal proceedings. Criminal proceedings can take months, if not years, to be finalised.
- The delegate should consider the reasons for the final order not being made and the length of time the interim order has been in place.
- After taking into consideration all evidence provided, it is open to the delegate to approve an application based on any expired or extended interim orders, where appropriate.
- Final orders are issued by agreement or by the court based on the evidence from both parties (where both have appeared). Final family violence orders can last several years and can also be extended.



## Chapter 13.19.4.3 &gt; s 47E(d) &gt; Expired family violence orders

Family violence orders may have an expiry date or expire after a prescribed period of time. If the order has not been extended or renewed and the date or time has passed, it is expired.

Interim orders may not have an expiry date. If final orders are made the interim order will lapse. Interim orders may also be withdrawn or cancelled.

- An expired family violence order enlivens the special circumstance at section 10(3)(f) of the Australian Passports Determination 2015 (the Determination). When considering whether to exercise discretion to issue an Australian travel document (ATD), a delegate is to give consideration to:
  - how long ago the order expired
  - why the order was not renewed or a new order obtained.
- An Australian family violence order may be withdrawn or cancelled. A cancelled or withdrawn order will ordinarily enliven the special circumstance in section 10(3)(f) of the Determination. The delegate must consider the circumstances of the withdrawal or cancellation when deciding whether to exercise discretion.
- A person who has previously obtained a family violence order against another person may not seek a new order, extend an order, or may cancel or withdraw the order for various reasons, such as:
  - they have removed themselves to safety (for example, to a location unknown to the perpetrator) and are no longer at risk of harm
  - the person has removed themselves to safety, and they don't want to jeopardise their safety by pursuing a new order which may re-expose them to harm
  - the person still has concerns court proceedings may provoke further violence from the perpetrator
  - the person believes, or their experience has shown, that a family violence order will not protect them
  - a family violence order will jeopardise the non-consenting person's employment, impacting their source of income. This may affect the lodging person or their child
  - the perpetrator is incarcerated
  - the violence has ceased, and an order is no longer required.

**Court dismissals**

- In some cases, a family violence order may be dismissed by the court. Dismissal may occur when assessing an application for a family violence order, finalising an interim or temporary family violence order, or after an order has been made.
- Orders may be dismissed for a number of reasons, including:

- parties entering into an undertaking. An undertaking is a formal (but not legally enforceable) agreement not to commit violence. **An undertaking does not meet the definition of a family violence order**, even when made in a court.
  - the person applying withdraws their application for safety reasons
  - change of circumstances
  - the court determines the order is not or is no longer justified or necessary
  - lack of evidence
  - the person applying for the family violence order fails to attend the court hearing
  - the accused person successfully contests the application in court
  - fraud or deception in making the application.
- An order dismissed at the application stage, or dismissal when finalising an interim family violence order, may not enliven the special circumstance at section 10(3)(f) of the Determination. The delegate is open to consider other special circumstances in the Australian Passports Act 2005 and the Determination based on information included with the application.
  - If an existing order is later dismissed, it will enliven the special circumstance. A delegate must consider the reason the order was dismissed when deciding whether it is appropriate to exercise their discretion to issue an ATD.

## Chapter 13.20.2 > s 47E(d) > Child is outside Australia and there is evidence of family violence - application of special circumstance

- {{Paragraph 10(3)(g)s 47E(d)}} of the {{Australian Passports Determination 2015s 47E(d)}} {{the Passports Determination s 47E(d)}} permits the Minister to consider evidence of family violence if the child is overseas.
- This is necessary as family violence orders under {{paragraph 10(3)(f)s 47E(d)}} of {{the Passports Determination s 47E(d)}} 2015 are defined as those made under a State or Territory law in Australia.
- It may also be more difficult for a person overseas to obtain a family violence order, depending on the country of location, so other evidence may be accepted.
- The {{Special circumstance s 47E(d)}} under {{paragraph 10(3)(g)s 47E(d)}} of {{the Passports Determination s 47E(d)}} 2015 may only be considered for children located overseas.
- There needs to be sufficient evidence of family violence by the {{Non-consenting person s 47E(d)}}, either from Australia or overseas, according to the definition of family violence under section 4AB of the Family Law Act 1975.
- In some cases, although evidence of family violence is presented, the delegate may find the evidence insufficient to satisfy this {{Special circumstance s 47E(d)}}. Such evidence may instead support a claim under a different {{Special circumstance s 47E(d)}}.

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### Related content

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s 47E(d)

### Policy

Family violence s 47E(d) (Chapter 13.2)

s 47E(d)

### Chapter 13.20.3 > s 47E(d) > Acceptable evidence to support special circumstance - child is outside Australia and there is evidence of family violence

- The evidence that may be provided will depend on the country of location, the culture of the community and the {{Gender s 47E(d) }}/age of the victim.
- Independent sources should be provided where possible.

#### Acceptable evidence to support special circumstance {{paragraph 10(3)(g) s 47E(d) of the Passports Determination 2015: legal system

- A family violence order issued by a foreign or Australian court, whether interim or not, or expired or not
- Charges by a foreign or Australian court that constitute family violence
- Police incident reports
- Letters from protection agencies for women and children

#### Acceptable evidence to support special circumstance {{paragraph 10(3)(g) s 47E(d) of the Passports Determination 2015: medical

- Hospital records
- Medical reports
- Doctor's notes
- Clinical psychologist or psychiatrist reports

#### Acceptable evidence to support special circumstance {{paragraph 10(3)(g) s 47E(d) } of the Passports Determination 2015: Australian Government Agencies

- Letters from the Department of {{Home Affairs s 47E(d) }} confirming {{Permanent residency s 47E(d) }} status without the sponsorship of a violent {{Spouse s 47E(d) }}/de facto
- Letters from Registrar for Births Deaths and Marriages making family violence exceptions
- Letters from a Child Support Agency making an exemption on family violence grounds

#### Acceptable evidence to support special circumstance {{paragraph 10(3)(g) s 47E(d) of the Passports Determination 2015: community groups

- Letters from refuges and crisis centres
- Letters from counsellors
- Letters from family relationship centres
- Letters from support groups

- Letters from women's councils
- Letters from traditional elders
- Letters from neighbourhood associations
- Letters from representatives of local council bodies

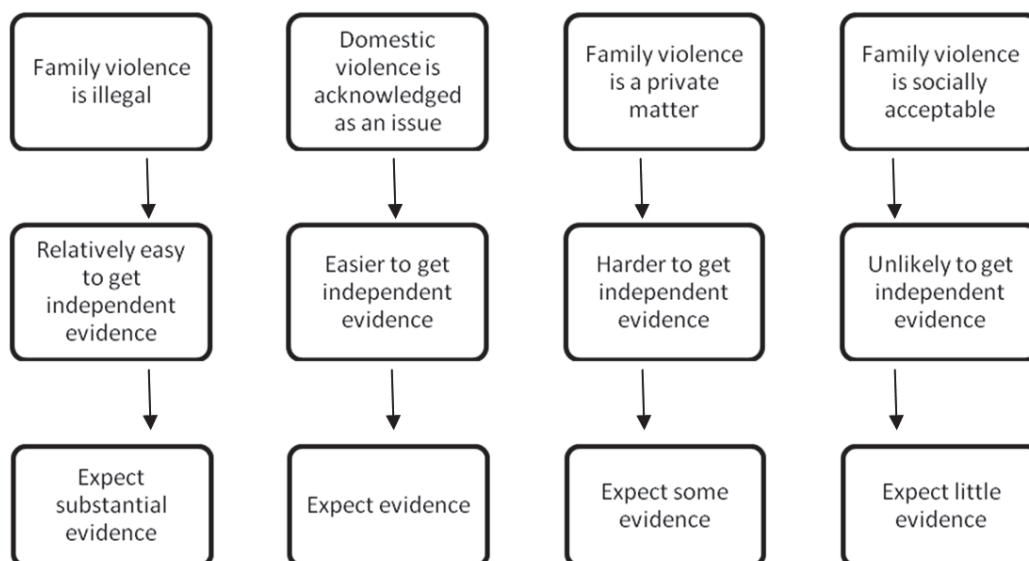
**Acceptable evidence to support special circumstance {{paragraph 10(3)(g)s 47E(d) }  
of the Passports Determination 2015: Statutory Declarations from Confidantes**

- Work colleagues
- Religious leaders
- Family
- Friends
- Social workers
- Community members
- Confidantes can also provide their statements using the {{Form B-11s 47E(d) }} General Declaration.



## Chapter 13.20.5 > s 47E(d) > Delegate considerations for special circumstance - child outside Australia and there is evidence of family violence

- Evidence is to be assessed on a case by case basis, in the context of the application as a whole. The evidence that can be provided will depend on the country of location, the culture of the community and the {{Gender}s 47E(d) }/age of the victim.
- Be guided by the responsible post as to what evidence the {{Lodging person}s 47E(d) } may be able to present given the attitude towards family violence in the country where the child is located.
- The less the risk of reporting family violence, the more robust and independent the evidence is to be expected. More weight can be given to a Form B-11 or {{Statutory declaration}s 47E(d) }s where the risk of reporting family violence is greater. Eyewitness statements will hold more weight over hearsay accounts where these are available.
- The diagram below indicates the difficulty in obtaining evidence to support claims of domestic violence in different places.



- Where the {{Lodging person}s 47E(d) } claims that the violence has been reported to an {{Overseas post}s 47E(d) }, a check of the {{Consular Information Systems}s 47E(d) } is to be undertaken to corroborate the claim and to check for any other evidence of the violence already presented to the department.
- The delegate should consider the age of the evidence and the circumstances around any contact subsequent to the violence. For example, when was the contact, how was the contact initiated and what was its purpose. Due to the community attitude, is the child still exposed to the potential for violence because the {{Lodging person}s 47E(d) } or child cannot leave the situation.

- The delegate can consider issuing a limited validity document with an {{Observation s 47E(d)}} for return travel to Australia only where:
  - little evidence can be presented or
  - the {{Non-consenting person s 47E(d)}} has refused consent and
  - the purpose of the travel document is to return to Australia.

#### Effect of foreign proceedings on the delegate's considerations

- Consideration also needs to be given to any declared foreign court orders and/or pending legal proceedings pending.
- Unlike Australian court orders or proceedings, foreign court orders or proceedings have no legal bearing on the delegate's ability to make a decision, but they can inform the delegate's decision.
- If the proceedings are in relation to a Hague return order, the delegate should defer their decision until the outcome is known, consistent with Australia's obligations as a signatory to the {{Hague Convention s 47E(d)}} *on the Civil Aspects of International Child Abduction*.

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#### Related content

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s 47E(d)

#### Policy

Court proceedings pending - return orders issued by a Hague country as a result of an application for the return of a child s 47E(d) (Chapter 13.20)

s 47E(d)

Chapter 13.21.3.2 > **s 47E(d)** > Lodgement where there is a return order issued by a Hague country as a result of an application for the return of a child

- An application lodged with a return order issued by a court in a Hague country must be supported by a Form B-7 - No further court orders and Form B-8 - One parent only on child's birth certificate or Form B-9 - Child without full parental consent or Australian court order permitting issue of a travel document.
- The application must be lodged at the overseas post in the country of the child's location. Exceptions to this requirement can only be made if all of the following are met:
  - lodgement in a different location has been pre-approved by a delegate in Australia
  - there is no Australian representation in the country of location
  - all legal proceedings have been finalised.
- The application may be for an emergency passport (EY). The overseas post may issue an EY if:
  - all necessary requirements are met
  - approval is granted by the relevant delegate in Canberra.
- Canberra will notify the responsible post when it becomes aware that a Hague proceeding overseas may result in an application being lodged at the overseas post.

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#### Related content

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**s 47E(d)**

#### Policy

Emergency passports - children **s 47E(d)** (Chapter 13.3)

Lodgement in a country where the child is not located - child applications **s 47E(d)** (Chapter 13.8)

Lodgement in Australia for a child overseas - child applications **s 47E(d)** (Chapter 13.8)

#### Process

Child Abduction - managing applications involving child abduction recovery (SCM only) **s 47E(d)**

**s 47E(d)**



Chapter 13.22.1.5 > **s 47E(d)** > Options for issue of an Australian travel document to enable a child to return to Australia

#### New document to return child to Australia

- Where the delegate has determined the child needs to return to Australia, it may be appropriate to only issue an {{Emergency Passport**s 47E(d)** }} or {{Limited Validity Passport**s 47E(d)** }} with the minimum validity required to return to Australia (including that necessary for any transit stops) and with an {{Observation**s 47E(d)** }} stating that the document is for 'return to Australia only'.

#### Concurrent document to return child to Australia

- Consistent with the policy of putting no victim at risk of further harm, where there is substantiated evidence of family violence or child abuse or forced marriage, the delegate may wish to consider the appropriateness of issuing a concurrent document to facilitate the child's travel. The child may also need the existing document to remain living legally in country until they can depart.
- If a {{Concurrent Travel Document**s 47E(d)** }} is issued, the child's concurrent document must be impounded on return to Australia for cancellation. It is important that the concurrent document is only an {{Emergency Passport**s 47E(d)** }} or {{Limited Validity Passport**s 47E(d)** }} with the minimum validity required to return to Australia (including that necessary for any transit stops) and with an {{Observation**s 47E(d)** }} stating that the document is for 'return to Australia only'.

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#### Related content

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**s 47E(d)**

#### Policy

Child already holds a valid Australian Travel Document - issue in exceptional circumstances

**s 47E(d)** (Chapter 13.13)

**s 47E(d)**

## Chapter 13.21.1 > **s 47E(d)** > Order of a Hague country permits the issue of a travel document - application of special circumstance

Paragraph 10(3)(h) of the Australian Passports Determination 2015 provides that a child passport may be issued when an order of a court in a Hague Convention country permits a child to be issued a passport or to travel internationally or to have contact with a person outside the country where the order was made.

- Hague Convention countries are listed in the Family Law (Child Abduction Convention) Regulations 1986 (Schedule 2) and on the Attorney-General's Department website.
- The objects set out under Article 1 of the Hague Convention are a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State and b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.
- Generally, there are two distinct types of applications that are considered under this special circumstance – those where a court in a Hague country has issued orders:
  - due to an application for the return of a child under the Hague Convention on the Civil Aspects of International Child Abduction (**return orders**) – in accordance with Article 1(a) of the Hague Convention
  - in standard family law proceedings (**parenting orders or equivalent**) – in accordance with Article 1(b) of the Hague Convention.
- Orders from Hague countries dealing with other matters, such as parental responsibility, that do not specifically permit the child to be issued a passport or to travel internationally or to have contact with a person outside the country where the order was made, can only be recognised under the Passports Act if they have been registered in Australia. Customers may wish to seek legal advice on this process.

All applications involving return orders are to be managed by the Specialised Case Management Section (SCM).

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### Related content

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**s 47E(d)**

### Legislation

Hague Convention on the Civil Aspects of International Child Abduction

### Policy

Delegate considerations for special circumstance - parenting order issued by a Hague country permitting the issue of a travel document **s 47E(d)** (Chapter 13.21)



Delegate considerations for special circumstance - return order issued by a Hague country as a result of an application for the return of a child **s 47E(d)** (Chapter 13.21)

#### Resources

Attorney-General's Department: Convention on the Civil Aspects of International Child Abduction

**s 47E(d)**



## Chapter 13.21.2 > s 47E(d) > Delegate considerations for special circumstance - parenting order issued by a Hague country permitting the issue of a travel document

- Unless the department is made aware of any legal proceedings pending (in Australia or a Hague country), this {{Special circumstance s 47E(d)}} will be satisfied where the equivalent of a {{Parenting order s 47E(d)}} is issued by a court in a country that is a signatory to the {{Hague Convention s 47E(d)}} that permits any of the following:
  - the issue of a travel document
  - the child to travel internationally  
(including orders that permit the child to be relocated to another country)
  - the child to have contact with someone outside the country of issue  
(including contact with the lodging or non-{{Lodging person s 47E(d)}}).
- It is important to recognise that a court with recognised authority has made a decision that permits the child to travel outside the jurisdiction and/or to relocate to another country. The court has implicitly considered the various risks as well as the rights of the parties (including the risk of abduction).

Chapter 13.21.2.1 > s 47E(d) > Example wording in Hague parenting orders permitting the issue of a travel document

Below are examples of some common orders that satisfy this {{Special circumstance s 47E(d) }} for both first time and subsequent passport applications.

Examples of common orders that satisfy {{paragraph 10(3) s 47E(d) }} of {{the Determination s 47E(d) }}
The child is to be issued with a travel document/passport (Australian or foreign)
The applicant is permitted to apply for and obtain a passport for the child
The child is permitted to relocate to [overseas country]
The applicant is permitted to remove the child from the jurisdiction of the court to reside with the applicant in [overseas country]
The person is permitted to relocate to [overseas country] with the child
The child is permitted to travel internationally
A person is permitted to travel [internationally/overseas] with the child
The child is permitted to travel to [overseas country]
The child is permitted to live with [person], [in overseas country]
The child is permitted to spend time with [person], and travel internationally for this purpose
The consent of {{{Non-consenting person s 47E(d) }}} for any passport and/or travel document is dispensed with

Chapter 13.21.2.2 > **s 47E(d)** > When to seek guidance from the Specialised Case Management Section on Hague parenting orders

If the order contains any of the following examples in the red box below, or a delegate is in any doubt about the intent of the order, seek advice from SCM.

**Seek guidance from SCM**

A time period for travel or spending time with another has passed

Contemplation of international travel without express permission e.g. "the mother will provide the non-consenting person with a copy of the itinerary if the child travels overseas"

The order does not say that the person they are permitted to live with is overseas, or that travel will be necessary for the child to live or spend time with that person

Unless there are other clauses within the order that may permit the issue of a travel document, it is unlikely an order with the wording above will satisfy paragraph 10(3)(h) of the Passports Determination.

Related content

**s 47E(d)**

Process

Hague Convention country court order SOP **s 47E(d)**

Resources

Request for SCM advice (email template)

**s 47E(d)**



Chapter 13.21.2.3 > **s 47E(d)** > Contacting the non-lodging person where a Hague parenting order permits issue

Applications, where a non-lodging person is to be contacted must be managed by the Specialised Case Management Section (SCM).

- The department will not contact other persons with parental responsibility where a Hague court order permits the issue of an Australian travel document (ATD) unless the non-consenting person has raised a Child Alert.
- The purpose of this contact is to determine whether there are other circumstances (such as, but not limited to, pending or subsequent legal proceedings) that need to be considered before making a decision.
- The refusal of consent from a person with parental responsibility does not automatically result in the refusal of the application. It is still open to the delegate to approve issue where the order stands and there is no evidence that there are legal proceedings pending.

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#### Related content

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**s 47E(d)**

#### Policy

Child Alerts (Chapter 13.34)

#### Resources

Request for SCM advice (email template)

**s 47E(d)**



## Chapter 13.21.3 > <sup>s 47E(d)</sup> > Delegate considerations for special circumstance - return order issued by a Hague country as a result of an application for the return of a child

All applications involving return orders are to be managed by the Specialised Case Management Section (SCM).

- If a person with parental responsibility believes that their child has been wrongfully removed from a Hague Convention country, or wrongfully retained in a Hague Convention country without their consent, they can make an application for the return of the child to their home country. This allows the issues of residence and contact to be resolved by the courts of the child's home country. Further information on this process can be found on Attorney-General's website.
- During the 2011-12 *Senate Inquiry into International Child Abduction* the department undertook to provide flexibility in managing passport applications for abducted children within the constraints of passport policies. Lodging persons (left behind parents) may not be able to satisfy the full requirements of a standard passport application (in particular, a current photo of the child, signature or a referee/guarantor. Existing records for the child can be used (including any images) to support an application where basic eligibility requirements cannot be met.
- Where a court in a Hague country issues a 'return order' directing the return of the child to Australia, the EL1 or above SCM delegate must consult with the Australian Central Authority (ACA) in the Attorney-General's Department (AGD) to:
  - verify the order and confirm there is no appeal period that could affect the validity of the order
  - organise any necessary translations (translations are the responsibility of AGD and not the lodging person)
- Only when AGD verify the order can the application be approved.
- Only an emergency passport or limited validity passport (validity is to be restricted to the minimum validity required to return to Australia), with an observation stating that the document is valid for 'one way travel to Australia only', will be issued. These conditions are set in accordance with the purpose of the order. However, local border authorities are responsible for enforcing the conditions, so it does not guarantee return.
- Where a child is the subject of Hague proceedings that do not involve the return of the child to Australia, it may be appropriate to seek the assistance of the ACA, or the relevant post, to contact the relevant Central Authority in the country of jurisdiction to determine the status of proceedings.

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Related Content

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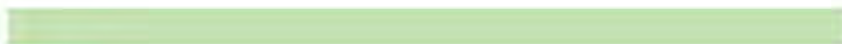
s 47E(d)



**Process**

Child abduction - managing applications involving child abduction recovery (SCM only) s 47E(d)

s 47E(d)



Chapter 13.21.3.1 > s 47E(d) > Court proceedings pending - return orders issued by a Hague country as a result of an application for the return of a child

All applications involving return orders are to be managed by the Specialised Case Management Section (SCM).

- Proceedings in courts outside of Australia do not prevent the delegate from exercising their discretionary powers to issue a document under subsection 10(3) of the Determination.
- However, as Australia is a signatory to the *Hague Convention on the Civil Aspects of International Child Abduction*, the delegate should defer their decision until the outcome is known.
- If there are exceptional circumstances that may warrant the issue of a travel document before the proceedings are finalised (for example, there is a significant risk to the safety or welfare of the child or lodging person), the Attorney-General's Department (AGD) must be consulted before issuing an Australian travel document (ATD).
- Any ATD issued should be restricted to 'one way travel to Australia only' and be issued with the minimum validity required to return to Australia. Returning the child to Australia ensures that any other person with parental responsibility has an opportunity to pursue Hague proceedings in Australia if they so wish.

## Chapter 13.22.1 > s 47E(d) > Child outside Australia needs a travel document to travel internationally - application of special circumstance

- This provision complements the provisions of the Department of Foreign Affairs's Consular Services Charter, which sets out the consular services that Australia may provide to Australians overseas.
- Examples of the types of cases that may require the consideration of this {{Special circumstance s 47E(d)}} include, but are not limited to, those set out below.

### Child abandonment

- When a child is removed from their usual country of residence, and is left or retained overseas, accompanied or not.

### Child abuse

- This {{Special circumstance s 47E(d)}} may be applied where there are claims of child abuse perpetrated overseas.
  - Although the behaviours are similar, domestic legislation does not include all forms of child abuse in its definition of family violence (to support the application of {{paragraph 10(3)(g) s 47E(d)}} of the {{Australian Passports Determination 2015 s 47E(d)}} {{the Determination s 47E(d)}}, the child is outside Australia and there is evidence of family violence).
  - Protections for children from abuse in Australia is legislated through State and Territory child welfare law. Child abuse in Australia is provided for under {{paragraph 10(3)( s 47E(d))}} of {{the Passports Determination s 47E(d)}} (child subject to a child welfare order transferring parental responsibility).
- The World Health Organization defines child abuse and neglect as 'all forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child's health, survival, development or dignity in the context of a relationship of responsibility, trust or power'.
- The Australian Institute of Family Studies in their 'What is child abuse and neglect? CFCA Resource Sheet' (September 2018) explains that 'different types of child abuse and neglect have different features. It is important to distinguish between what are commonly regarded as the five main subtypes of child abuse and neglect:
  - physical abuse
  - emotional abuse
  - neglect
  - sexual abuse
  - exposure to family violence'.

### Forced marriage

- This provision may also be applied in cases of forced marriage.

### Consular cases and overseas crisis

- During a crisis overseas (war, civil unrest, natural disaster or pandemic) the Australian Government may direct, through its travel advice on the Smartraveller website, Australian citizens and {{Permanent resident}s 47E(d)} s to leave a crisis affected area.
- Other cases considered under this {{Special circumstance}s 47E(d)} may include (but are not limited to) where the child's parent is a consular customer (for example, where the child's parent and sole carer is to be medically evacuated from a country or deported or where they have been incarcerated overseas).

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### Related content

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s 47E(d)

### Policy

Forced marriage (Chapter 13.31)

### Customer Advice

Department of Foreign Affairs's Consular Services Charter

Smartraveller website

s 47E(d)



## Chapter 13.31.1 > [s 47E\(d\)](#) > Forced marriage - definition

- The Department of Home Affairs describes forced marriage as ‘when a person gets married without freely and fully consenting, because they have been coerced, threatened or deceived, or because they are incapable of understanding the nature and effect of a marriage ceremony, for reasons including age or mental capacity’.
- Under sections 11 and 12 of the Marriage Act 1961, the age a person can consent to marry in Australia without the consent of a court is 18 years old. The legislation in other countries may differ.
- Forced marriage does not include:
  - ‘arranged marriages’ where both parties consent to the marriage
  - ‘sham marriages’ willingly entered into by both parties
  - ‘servile marriage’ where a person is sold or inherited, or where a {{Spouse[s 47E\(d\)](#) }} is treated like a possession, including through ongoing exploitation within the relationship. This is an exploitative practice also condemned by the Australian Government but is covered by separate {{Offences[s 47E\(d\)](#) }}.
- Australia is the signatory to a number of international laws designed to protect women and children from forced marriage. Australia's response to forced marriage forms part of the Australian Government's strategy to combat serious forms of exploitation, including human trafficking, slavery, and other slavery-like practices such as servitude and forced labour. The Commonwealth Criminal Code Act 1995 also contains {{Offences[s 47E\(d\)](#) }} in relation to forced marriage.
- The Australian ‘National Roundtable on Human Trafficking and Slavery Communication and Awareness Working Group’ has produced a very informative guide on forced marriage. It explains what forced marriage is and how organisations can assist someone at risk of forced marriage, including information on reporting a suspected forced marriage to the Australian Federal Police.

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### Related content

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[s 47E\(d\)](#)

### Legislation

Sections 11 and 12 of the Marriage Act 1961

### Resources

Information about forced marriage for agencies, community organisations and service providers

[s 47E\(d\)](#)

Chapter 13.22.1.2 > s 47E(d) > Acceptable evidence to support special circumstance - child outside Australia needs a travel document to travel internationally

The level of evidence that a lodging person may be able to provide will depend on the circumstances they are in, the country they are in, the culture they are from and their age and gender. Some examples of acceptable evidence include, but are not limited to, the below.

### Child Abandonment

- Flight itineraries or tickets that show it was intended for the child to return to the country of residence.
- Correspondence from the {{Non-consenting person s 47E(d) }} that confirms the child was purposely abandoned in country or that the child was meant to return to the country of residence.
- {{Statutory declaration s 47E(d) }}s or Form B-11 - General Declaration from other individuals or entities that independently confirm the claims of {{Lodging person s 47E(d) }}

### Child Abuse

- Police reports
- Medical reports that identify any injuries (physical or psychological) as consistent with child abuse
- {{Statutory declaration s 47E(d) }}s or Form B-11 - General Declaration from other individuals or entities that independently confirm the claims of the {{Lodging person s 47E(d) }}

### Crisis

- Australian Government Travel Advice

### Other cases

- Police reports
- Medical reports
- Statements from any organisations supporting the parent or child in country
- Statements from the {{Lodging person s 47E(d) }} about their circumstances
- Notices of deportation
- {{Statutory declaration s 47E(d) }}s or Form B-11 - General Declaration from other individuals or entities that independently confirm the claims of the {{Lodging person s 47E(d) }}

Chapter 13.7.10.1 > s 47E(d) > Evidence to support circumstances - forced marriage

The level of evidence that a lodging person may be able to provide will depend on the circumstances they are in, the country they are in, the culture they are from and their age and gender.

- Acceptable evidence may include (but is not limited to):
  - a {{foreign marriage certificate s 47E(d)}} naming the child
  - correspondence from the {{non-consenting person/s 47E(d)}} that confirms the claims of forced marriage
  - statements from organisations that are supporting the child to escape or leave the country
  - flight itineraries or tickets that show it was intended for the child to return to their country of residence
  - {{statutory declaration s 47E(d)}} or Form B-11 General Declaration from other individuals or entities that independently confirms the claims of the {{lodging person s 47E(d)}}
  - representations from forced marriage or slavery advocacy groups.

Chapter 13.22.1.4 > s 47E(d) > Delegate considerations for special circumstance - child outside Australia needs a travel document to travel

Each application will need to be assessed on its own merits and delegates will need to be guided by the responsible post as to what evidence the lodging person may be able to present. The delegate should also consider the age of the evidence and whether the circumstances are still current.

- In addition to evidence provided, delegates should also consider:
  - statements made by the {{Non-consenting person s 47E(d)}} on the most recently issued travel document about the purpose of travel, movement records and outgoing passenger cards of the child and or parent/s that describe the nature of their travel to be for a holiday or a short stay only
  - consular records that confirm the statements made by the {{Lodging person s 47E(d)}}
  - consular records that confirm any forced marriage has been reported to the appropriate authorities (i.e. the Australian Federal Police)
  - whole-of-government crisis situation reports or talking points (crises only).
- The issue of an {{Australian Travel Document s 47E(d)}} {{ATDs s 47E(d)}} can be approved under {{paragraph 10(3)(i) s 47E(d)}} of {{the Passports Determination s 47E(d)}} 2015 where the delegate is satisfied that there is sufficient evidence to demonstrate that the {{Special circumstance s 47E(d)}} has been met.
- It is important to remember that an {{ATDs s 47E(d)}} is only one piece of the puzzle and usually the last. There may be other impediments in country to the child's travel (for example travel bans or the need for a paternal male relative to travel with them). It is important to consult with Consular Operations on all consular cases.

## Chapter 13.22.2 > <sup>s 47E(d)</sup> > Child outside Australia needs a travel document to legally reside overseas - application of special circumstance

In 2015, the Passports Determination was revised to include circumstances where a child is outside Australia and the Minister considers there is a need for the child to reside legally overseas.

- This provision is intended to protect children who have been residing lawfully overseas—sometimes for most, if not all, of their life—and where a passport is necessary to support the child’s continued lawful residence overseas.
- Possession of a valid passport is often a condition of a child’s {{Visa<sup>s 47E(d)</sup> }}. As such, a passport refusal has the potential to affect a child’s immigration status in that foreign country including their ability to attend school or seek medical assistance.



Chapter 13.22.2.1 > s 47E(d) > Acceptable evidence for special circumstance - child outside Australia needs a travel document to remain living legally in country

Some examples (but not limited to) of acceptable evidence are provided below.

- A current valid {{Visa s 47E(d)}} in the host country
- A current valid birth certificate or statement of citizenship or permanent residence status (that would by effect allow the child to legally reside in that country)
- Evidence from a legal authority in the host country that the person has lawful residence in that country.
- {{Visa s 47E(d)}} violation notifications
- Deportation notifications
- Statements from medical practitioners or education institutions in relation to accessibility to services
- Statements from any organisations supporting the parent or child in country
- Statements from the {{Non-consenting person s 47E(d)}} confirming they agree to the child living overseas
- {{Statutory declaration s 47E(d)}}s or **Form B-11 - General Declaration** from other individuals or entities that independently confirm the claims of the {{Lodging person s 47E(d)}}.

Chapter 13.22.2.2 > s 47E(d) > Delegate considerations for special circumstance - child outside Australia needs a travel document to remain living legally in country

- In addition to the evidence provided, delegates should also consider:
  - Advice from post on the local legal requirements
  - Movement records and/or outgoing passenger cards for the child or parent indicating that the child is residing overseas
  - Consular records that confirm the statements made by the {{Lodging person s 47E(d) }}
  - Consular advice around the laws regarding dual citizenship if the child is/or could be a dual citizen
- The issue of an {{ATD s 47E(d) }} can be approved under {{paragraph 10(3)(i) s 47E(d) }} of {{the Determination s 47E(d) }}, where **all of the following** conditions are met:
  - A {{Lodging person s 47E(d) }} can demonstrate that the child is ordinarily resident overseas and
  - The post has verified the child requires an {{Australian Travel Document s 47E(d) }} to remain legally in country and
  - There is no evidence the persons with {{Parental Responsibility s 47E(d) }} are disagreeing about the child remaining overseas (even if they are disputing the country of residence) and
  - The child does not hold a {{Foreign travel document s 47E(d) }} and
  - There is no allegation of child abduction.
- This {{Special circumstance s 47E(d) }} is not intended to be used in cases where a child is subject to an abduction allegation. The Attorney-General's Department has stated that the Australian Government position is that a court of law is best placed to preside over such a complex matter as abduction. That said, the allegation of abduction does not prevent the consideration of other {{Special circumstance s 47E(d) }}s where applicable and appropriate.

## Chapter 13.30.1 > s 47E(d) > Child abduction - definition

One of the primary objectives of the Australian Passports Act 2005 is to protect children from child abduction.

- Child abduction is defined as either of the following:
  - removing a child from their country of residence without the consent of all persons with {{parental responsibility s 47E(d) }}
  - retaining a child overseas without the consent of all persons with parental responsibility.

### Hague Convention and bilateral agreements

- Australia is a signatory to the {{Hague Convention s 47E(d) }} on the Civil Aspects of International Child Abduction (the Hague Convention).
  - The Hague Convention is a mechanism by which a person with parental responsibility can seek the return of their child abducted to another signatory country.
  - The Hague Convention does not apply to children who are 16 or 17 years of age.
- Australia also has similar bilateral agreements with Lebanon and Egypt.
- The Attorney-General's Department (AGD), as the Australian Central Authority, is responsible for managing applications for the return of a child under the Hague Convention and the bilateral agreements.
- Further details, including Hague Convention member countries, can be found on AGD's website.

### Information for parents

- In response to the Legal and Constitutional Affairs Senate Inquiry into International Parental Child Abduction to and from Australia (inquiry report tabled on 31 October 2011 and the Government's response tabled on 30 March 2012), the department undertook to provide information about child abduction in a range of publications.
- This included the Children and Parental Consent brochure produced by the Australian Passport Office (APO) and in the information pages of future editions of the Australian passport.

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### Related content

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s 47E(d)


### Process

Child Abduction - Responding to allegations from customers SOP s 47E(d)

Customer Advice

Children and Parental Consent

s 47E(d)





## Chapter 13.23.1 > s 47E(d) > Child subject to a child welfare order - application of special circumstance

- {{the Passports Act s 47E(d)}} does not recognise the removal of {{Parental Responsibility s 47E(d)}} unless it is through an order pursuant to the Family Law Act 1975 or the Family Court Act 1997 (WA). This {{Special circumstance s 47E(d)}} provides a mechanism for a delegate to recognise an order issued under child welfare law that affects parental responsibility.
- The protection of children from child abuse is governed by State and Territory legislation. Under the Care and Protection legislation of each jurisdiction (however described), a court can direct that a child be placed in the care or {{Custody s 47E(d)}} of the Minister or the Head of a Child Welfare or Protection Agency (child welfare agency) or be placed in a kinship care arrangement (where extended family or community members care for the child). Historically children in this arrangement were referred to as {{Wards of the state s 47E(d)}} but are now more commonly referred to as {{Foster child s 47E(d)}} or {{Children in out-of-home care s 47E(d)}}.
- This {{Special circumstance s 47E(d)}} can only be considered where there is a valid court order issued under Australian child welfare legislation. Applications for children who are under informal kinship care arrangements/agreements/plans cannot meet this {{Special circumstance s 47E(d)}}.
- Child welfare legislation includes (this is not an exhaustive list and may be subject to change):
  - Children and Young People Act 2008 (ACT)
  - Children and Young Persons (Care and Protection) Act 1998 (NSW)
  - Care and Protection of Children Act 2007 (NT)
  - Child Protection Act 1999 (QLD)
  - Children and Young People (Safety) Act 2017 (SA)
  - Children, Young Persons and Their Families Act 1997 Act (TAS)
  - Children, Youth, and Families Act 2005 (VIC)
  - Children and Community Services Act 2004 (WA).

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### Related content

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s 47E(d)

### Legislation

{{Paragraph 10(3)(j) s 47E(d)}} of the {{Australian Passports Determination 2015 s 47E(d)}}

s 47E(d)



## Chapter 13.5.3.2 &gt; s 47E(d) &gt; Referee (guarantor) requirements - children

In most cases, the referee must have known the child for at least 12 months.

#### Child under 12 months old

- For a child under 12 months old, the {{Referee s 47E(d)}} must have known the child since birth.

#### Child adopted or placed in care

- For a child who has been adopted or placed in care under a child welfare order, the referee must have known the child since the child was one the following:
  - adopted
  - arrived in Australia
  - placed into care.
- A person in a child welfare agency who has {{parental responsibility s 47E(d)}} for a child **cannot** be the {{Guarantor s 47E(d)}}/{{Referee s 47E(d)}} for that child. Another person from that agency/organisation who has known the child for the required time can be a Guarantor/Referee (including a person authorised to lodge the application).

#### Unaccompanied Humanitarian Minors

- For Unaccompanied Humanitarian {{Minor s 47E(d)}} (UHMs), the Referee must have known the child since they arrived in Australia.
- A representative from the Department of {{Home Affairs s 47E(d)}} or the relevant state or territory welfare agency may act as Guarantor/Referee as long as parental responsibility has not been delegated to them by the Minister. The representative must state their position and how long they have known the child on the {{PC s 47E(d)}} form.

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#### Related content

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s 47E(d)

#### Policy

Child subject to child welfare order - B-10 s 47E(d) (Chapter 13.7)

Child born overseas and adopted (Chapter 13.27)

Unaccompanied Humanitarian Minors (Chapter 13.29)

s 47E(d)

## Chapter 13.23.4 > <sup>s 47E(d)</sup> > Delegate considerations for special circumstance - child subject to a child welfare order

### APS5 J delegate

- APS5 J delegates can exercise their power to issue a travel document under this special circumstance where **all of the following** are met:
  - a court order made under child welfare legislation grants parental responsibility to a parent (to the exclusion of the other parent) or another person
  - there are no legal proceedings pending
  - all required consents have been provided.
- However, if an individual lodges, and a Form B-9 - Child without full parental consent or Australian court order permitting issue of a travel document is presented for a person with court awarded parental responsibility (that is, not all required consents have been provided), the APS5 J delegate must escalate the application to an APS5 SCM Delegate to manage.

### APS5 SCM delegate

- APS5 SCM delegates can exercise their power to issue a travel document under this special circumstance if the consent of all persons with court awarded parental responsibility has been provided with the application or is provided during consent checks.
- If not, they will prepare the application for consideration by a SCM EL1 delegate or above.

### SCM EL1 or above delegate

- The application must be referred to an EL1 or above CCA delegate in the Specialised Case Management section (SCM) for consideration where **any of the following** apply:
  - an individual lodges and the child welfare agency or a parent or other individual named to have parental responsibility in the child welfare order does not consent to issue
  - there are legal proceedings pending (and an urgent decision is required).
- The SCM EL1 or above delegate should carefully consider the merits of issuing a travel document where the consent of a person who has been granted parental responsibility under a child welfare order has not been obtained.
- It is still open to a delegate to issue a passport to the child even if consent has been refused. However, a travel document will not ordinarily be issued if a child welfare agency holding parental responsibility does not consent to issue.

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### Related content

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<sup>s 47E(d)</sup>

### Resources

Request for SCM advice (email template)

s 47E(d)



## Chapter 13.24.1 > <sup>s 47E(d)</sup> > Physical or psychological welfare would be adversely affected if not able to travel internationally - application of exception

For the purposes of defining whether the physical and/or psychological welfare of the child is at risk if the child is not able to travel internationally, the following definitions may be considered.

- Risk of physical or psychological harm to the child includes any detrimental effect of a significant nature on a child's physical, psychological or emotional well-being. Harm may be caused by physical or emotional abuse, neglect and/or sexual abuse or exploitation.
- Risk to the child's physical welfare includes cases where the child's medical needs are life threatening and cannot be met if the child is unable to travel internationally, as the child's current country of location does not provide (or the child cannot access) the needed medical care.

## Chapter 13.24.2 > <sup>s 47E(d)</sup> > Acceptable evidence for exception - physical or psychological welfare would be adversely affected if not able to travel internationally

- The application must be accompanied by a written statement from a registered healthcare provider to support the claim. The statement must be provided on the healthcare provider or institutions official letterhead, dated and signed accordingly.
- Where the healthcare provider is overseas, consideration will be given to an equivalent registration body overseas, if available. In such cases, a written statement must be provided on the letterhead clearly indicating the health professional's name, occupation, registration, date and contact details.
- The healthcare provider must state impartially whether the physical and/or psychological welfare of the child is at risk if the child is not able to travel internationally.

### Healthcare Provider Requirements in Australia

- The healthcare provider must be registered with a registration authority as a member of a particular health profession to ensure that only healthcare providers who are suitably trained and qualified to practice in a competent and ethical manner are recognised for the purposes of providing such a statement.
- A written statement will be accepted from any of the following healthcare providers only:
  - Medical practitioner
  - Counsellor
  - Psychologist
  - Psychiatrist
  - Social Worker



### Chapter 13.24.3 > <sup>s 47E(d)</sup> > Delegate considerations for exception - physical or psychological welfare would be adversely affected if not able to travel internationally

- The delegate must be satisfied that the child's welfare (physical or psychological) would be adversely affected if the child were not able to travel internationally.
- While it is expected that the adverse effects on the child will be more than the usual disappointment experienced, the delegate does not have the relevant expertise to dispute a statement provided by an acceptable healthcare provider if that statement specifically addresses the adverse effect on the child's welfare should the child not be able to travel internationally.
- The delegate must assess the full circumstances of the case (i.e. purpose of travel, whether the non-lodging person is refusing to consent, etc.) and, where this exception has been met, decide whether they wish to exercise their discretion in light of any other information available.
- For example, it may not be appropriate to exercise the delegate's discretion where the lodging person is wishing to permanently relocate the child against the wishes of another person with parental responsibility.
- Delegates must also ensure that the medical statement has been verbally confirmed with the author and, where the healthcare provider in Australia has failed to detail their professional registration number and national registration body on the statement, a verbal confirmation of their registration has also been sought.

## Chapter 13.25.1 > s 47E(d) > Child urgently needs to travel because of a family crisis - application of exception

- A family crisis is a situation where a child needs to travel internationally due to an urgent situation such as, but not limited to, the following circumstances:
  - a close family member dying from serious injury or illness (imminent death expected)
  - hospitalisation of close family member due to life threatening injury or illness
  - unexpected death of close family member
  - urgent medical evacuation of the child required to, or from, Australia
  - urgent medical evacuation of a parent/guardian of the child with no one able to take care of child.
- A family crisis situation may involve the child travelling to, or from, Australia. For example, a child residing in Australia may need to travel to another country due to a family crisis such as those listed above. Alternatively, a child may be residing overseas (Australian passport lost/stolen/damaged/expired) and urgently needs to be issued a passport to travel back to Australia, or somewhere else, in the case of a family crisis.
- A family crisis would normally involve close family members such as the child's parents, siblings or grandparents, but it could involve anyone considered to have {{Parental Responsibility s 47E(d) }}for the child, including guardians and step-parents.

## Chapter 13.25.2 > s 47E(d) > Acceptable evidence for exception - child urgently needs to travel because of a family crisis

- The {{Lodging person}s 47E(d)} should provide as much evidence as possible of the family crisis when lodging the application.

### Evidence could include, but is not limited to:

- An official letter from a medical expert/hospital/medical facility with the prognosis of the close family member, including whether condition is life threatening and/or death is imminent. The letter should be clearly dated and signed.
- An official police or hospital report confirming the unexpected death of a close family member. This report should be clearly dated and signed.
- Evidence of family member's close proximity to a natural disaster or emergency
- Proof of close relationship to the child if the crisis involves a family member that is not listed on the child's birth certificate such as:
  - certificate of adoption
  - {{marriage certificate}s 47E(d)} (in case of step-parent)
  - birth certificate of parents or siblings (to prove relationship to siblings, grandparents, extended family)
  - documentation related to surrogacy.

### Chapter 13.25.3 > s 47E(d) > Delegate considerations for exception - child urgently needs to travel because of a family crisis

- Issuing a {{child passport s 47E(d)}} on the basis of a family crisis is a high risk area due to the high pressure placed on case managers and delegates. At all times, delegates must make their decision based on the evidence presented, and balance considerations of urgency, risk and the level of scrutiny {{supporting documentation s 47E(d)}} is subject to.
- Attempts to locate the {{non-consenting parent s 47E(d)}} must be taken. However, the delegate has the discretion to determine what a reasonable period is and what the reasonable checks are based on the situation.
- Determining what a 'reasonable period of time' is will depend on the particular circumstances of the case and the nature of the crisis. {{Lodging persons s 47E(d)}} should be encouraged to provide as much supporting evidence as possible to assist delegates to make a timely decision.
- Delegates will be guided by the strength of the evidence and the specific context of each case. In cases of imminent death or life threatening illness or injury, the prognosis of the patient and supporting evidence will be particularly important to consider. Delegates may also consider the travel time involved when considering what constitutes a reasonable period of time to make contact.
- At a minimum, reasonable checks to locate the {{non-lodging person s 47E(d)}} should include checking {{PICSS s 47E(d)}}, movement records, citizenship database and the {{electoral roll s 47E(d)}}. If time allows, further attempts should be made in accordance with standard procedures.
- Where it is reasonable and appropriate to do so, the delegate must also ensure statements provided in support of the family crisis are tested. If the case is being handled as a consular case (either for the child or a relative who is an Australian citizen), records on the {{Consular Information System s 47E(d)}} must inform the delegate's decision.
- The delegate must take into account the following factors when considering the application and accompanying evidence:
  - weaker, circumstantial evidence (e.g. letters of support, obituary, media reporting) used without any official evidence (e.g. medical, police, coroner or government sources)
  - whether reasonable checks have been made to locate the {{non-consenting person s 47E(d)}} given the circumstances
  - any {{child alerts s 47E(d)}} in place with regards to the child
  - any previous applications that have been refused or withdrawn
  - high risk factors such as the age of the child and whether it is the child's first passport (children are most vulnerable to abduction between the ages of 0-7 years old)
  - strength of the evidence of the family member's relationship to the child.

- The delegate may consider the child's need to travel, particularly in light of Australian Government travel advice. For instance, if the death, illness or injury of a close family member is due to a serious natural disaster, civil disorder/conflict or major outbreak of contagious disease, the delegate may question the safety of the child travelling to the region.



## Chapter 13.26.1 > s 47E(d) > Child departed Australia less than 12 months ago and requires a passport to return to Australia - application of exception

This exception was designed to complement the requirements in the Hague Convention on the Civil Aspects of International Child Abduction that 'a child who has been wrongfully removed for a period of less than 12 months should be returned, forthwith'. **However, the Australian Government encourages all customers to follow local legal processes to seek the return of their child.**

### Hague proceedings pending

- An application cannot be considered under this exception where the child is the subject of an ongoing application under the *{{Hague Convention s 47E(d)}}* on the Civil Aspects of International Child Abduction.

### Other cases

- This exception is not limited to child abduction and *{{Custod s 47E(d)}}* dispute cases only.
- This exception can also be used to facilitate the child's return to Australia by authorising an *{{Emergency Passport s 47E(d)}}* where an *{{Australian Travel Documents s 47E(d)}}* (*{{ATDs s 47E(d)}}*) is lost, stolen or damaged and due to the surrounding circumstances, full consent cannot be obtained.
- It can also be used where the child has been abandoned in another country and does not have access to their *{{ATDs s 47E(d)}}*.

## Chapter 13.26.2 > s 47E(d) > Acceptable evidence for exception - child departed Australia less than 12 months ago and requires a passport to return to Australia

- The {{Lodging person s 47E(d)}} should provide as much evidence as possible.

### Evidence could include, but is not limited to:

- Flight itineraries or tickets that show it was intended for the child to return to Australia.
- Correspondence from the {{Non-consenting person s 47E(d)}} that confirms the child was to return to Australia.
- Police reports showing passport has been reported {{Lost or Stolen s 47E(d)}}.
- {{Statutory declaration s 47E(d)}}s or Form B-11 - General Declaration from other individuals or entities that independently confirm the claims of {{Lodging person s 47E(d)}}.

## Chapter 13.26.3 > <sup>s 47E(d)</sup> > Delegate considerations for exception - the child departed Australia less than 12 months ago and requires a passport to return to Australia

### Delegate considerations: alleged child abduction/custody disputes

- Where a lodging person alleges their child has been abducted from Australia or there is an ongoing custody dispute with regards to the child, it is open to a delegate issue an emergency passport (EY) for the child to return to Australia only, in order for the issue to be settled in the courts.
- Before doing so, the delegate must have regard to:
  - where the child is ordinarily resident (movement record checks) and the outgoing passenger card will provide information on intended travel
  - whether there is evidence that the parties agreed to relocate the child before departure
  - what other legal avenues are available to return the child (for example under the Hague Convention in convention countries or local legal processes). If an application has been made under the Hague Convention, the passport application should be placed on hold
  - the intent for the child to return to Australia (return tickets purchased)
  - the period of time the child has been outside Australia (movement records checks)
  - if it is appropriate to contact the non-lodging person.

### Delegate considerations: other circumstances

- It is open to a delegate issue an emergency passport (EY) for the child to return to Australia if there is evidence that the child was intended to return to Australia and they departed Australia less than 12 months ago (as evidenced through a movement records check).

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#### Related Content

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<sup>s 47E(d)</sup>

#### Process

Child abduction - managing applications involving child abduction recovery (SCM only) <sup>s 47E(d)</sup>

<sup>s 47E(d)</sup>

