

**AUSTRALIA'S APPROACH TO INTERNATIONAL CHILD ABDUCTION:
Practical Experiences & Lessons Learnt**

by Andrew Davies¹

Introduction

In an era of ever increasing globalisation and ease of movement, the benefits of international co-operation in matters concerning children have never been more important. The multi-cultural nature of today's relationships has meant an increase in child abduction cases and the need to enforce 'custody'² orders outside of the country in which these orders are made.

The Hague Convention on the Civil Aspects of International Child Abduction, which took effect in 1983 and to date has 81 signatories (Appendix A), seeks to address this issue in a proactive way. The treaty requires Courts in the receiving country to send children back to their countries of "habitual residence" where all custody issues are then litigated subject to limited exceptions.

This paper seeks to outline Australia's approach to child abduction and share some of the practical experiences and lessons learnt by the legal profession³.

Hague Convention on Civil Aspects of International Child Abduction

The Hague Convention on the Civil Aspects of International Child Abduction entered into force in Australia through domestic law on 1 January 1987.

Outline of the Hague Convention

The objects of the Hague Convention are set out in Article 1 as follows:

1. to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and
2. to ensure rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

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² The term custody has been used as it still has application in the international context however the term has been replaced in Australia with the word "residence".

³ Discussions with Jane Selwood, Acting Director, Central Authority, Attorney General's Department, Canberra, Ilse Petersen from WA State Solicitor's Office, Lee Mather from Legal Aid WA and Senior Lawyers in Perth.

The Convention's main purpose is to return the child to the country of habitual residence so that Courts in that jurisdiction may determine issues relating to the best interests of the child.⁴

It is up to each Contracting States how they wish to implement the Convention into local law.⁵

Hague Convention in Australia

The Hague Convention came into force in Australia on 1 January 1987 with the passing of the *Family Law (Child Abduction Convention) Regulations* 1986 (Cth) ("the Australian Regulations").

Consistent with the provisions of the Hague Convention, the Australian Regulations provide for the prompt return of a child who has been wrongly removed to, or retained in, Australia from another convention country, or who has been wrongly removed to, or retained in, another convention country from Australia.

Administration of the Hague Convention

Article 6 of the Hague Convention requires Contracting States to establish a Central Authority to discharge the duties that are imposed under the Convention.

Article 7 of the Hague Convention requires the Central Authority to take appropriate measures including but not limited to:

1. discover the whereabouts of a child who has been wrongfully removed or retained;
2. secure the voluntary return of the child or bring about an amicable resolution of the issues;
3. provide information of a general character as to the law of their State in connection with an application under the Convention;
4. initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the Child; and

⁴ Article 1 'Convention of 25 October 1980 on the Civil Aspects of International Child Abduction', *Hague Convention on Private International Law*, http://www.hcch.net/index_en.php?act=conventions.pdf&cid=24

⁵ Kay J, 'The Hague Convention - order or chaos?' (2005) 19, *Australian Journal of Family Law* 245

5. where the circumstances so require, to provide or facilitate the provision of legal advice, including participation of legal counsel and advisers.

A Central Authority has been established in Australia and is run under the umbrella of the Commonwealth Attorney General's department. Each State and Territory also has its own Central Authority. In Western Australia, the Central Authority is the Commissioner of Police. Other States have appointed their own Child Protection Agency as their State Central Authority.

The Commonwealth Central Authority website⁶ provides an overview of the approach taken by Central Authorities in processing applications for the return of children.

A Summary of the procedures are:

Child abducted from Australia to a convention country

1. the left behind parent makes an application to the Central Authority for the return of the child;
2. the application is sent to the Commonwealth Attorney-General's Department in Canberra;
3. the application is transmitted to the relevant Central Authority in the Convention country where the child is understood to be (and translated if necessary);
4. whilst the procedures in the Convention countries do vary (and some of those variations are explained below) the matter is generally brought to a Court for the appropriate Orders directing the return of the children;
5. if an overseas lawyer is required, a party may apply for Australian Government assistance (means tested); and
6. in most cases the left behind parent does not need to travel to the Convention country and the child is often accompanied on return by the 'abducting parent'⁷

⁶http://www.ag.gov.au/www/agd/agd.nsf/Page/Internationalchildabduction_CommonwealthandStateCentralAuthorities (4 May 2009)

⁷ ibid 6

Child abducted to Australia from another convention country

7. the left behind parent makes an application to the Central Authority in the country from which the child was abducted;
8. the application is transmitted to the Central Authority in Australia;
9. if the application is accepted, the Central Authority in Australia will make an application to the Family Court for an order that the child be returned to the convention country; and
10. there is no cost to the left behind parent for making the application except that in some circumstances the left behind parent may have to pay the airfare for the return of the child.

Australia is different to many convention countries in that the applicant is usually the Central Authority on behalf of the left behind parent (although the left behind parent may make the application and bear the costs).

Costs

Article 26 expressly states the each Central Authority shall bear its own costs in applying the Hague Convention and not impose any charges on individuals in relation to applications under the Hague Convention. It then goes on to say that a Contracting State can make a reservation under Article 42 to declare that it is not bound to assume any costs resulting from the participation of legal counsel or advisers or from Court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.

As a matter of practice, 44 of the 81 Contracting States have made a reservation under Article 26: see Appendix A. Australia has not made a reservation under Article 26 of the Convention.

In Australia, the Central Authority conducts nearly all proceedings seeking the return of a child from Australia to a convention country, and so all costs are borne by the Central

Authority.⁸ In addition, Australia also offers government assistance (means tested) to parents whose children have been removed from Australia.⁹

Hague Convention and Australian Domestic Law

The Hague Convention is not, by itself, part of Australian domestic law.¹⁰ However, the Convention is set out in Schedule 1 of the Australian Regulations and to this extent it is part of domestic law.¹¹

The Convention cannot override the terms of the Regulations, however it can be used to interpret the Regulations. The Hague Convention has been interpreted broadly without attributing to its terms any specialist meaning that it may have under domestic law.¹²

Application of the law in Australia

The general principle in Australia is that the Courts must return a child to the country in which they were habitually resident at the time of the wrongful removal.

It is because the Child Abduction Convention is to be interpreted broadly that the important expression “rights of custody” in Article 5(a), is not limited to rights of custody as understood under Australian domestic law.¹³ It is also for this reason that the expression “habitually resident” in Article 3(a), has not been given the limited interpretation it might otherwise have under Australian domestic law.

In February 2009 the High Court of Australia in *LK v Director- General, Department of Community Services*¹⁴, found the appellant's children did not have 'habitual residence' in Israel for the purpose of the Hague Convention. The Court held that the use of 'habitual residence' under the Convention was in preference to 'domicile' because questions of intention are important and may well be decisive.

The High Court had regard to the fact that, at the time the mother and children left Israel, it was both parents' shared intention that the mother and the children would live

⁸http://www.ag.gov.au/www/agd/agd.nsf/Page/Internationalchildabduction_YourchildhasbeenabductedFR_OManothercountryoverseasTOAustralia#3 (4 May 2009) nb: if an applicant chooses to instruct a private solicitor to prepare the application, these costs will not be reimbursed.

⁹ *ibid*

¹⁰ *McCall and McCall; State Central Authority (Applicant); Attorney-General (Cth) (Intervener)* (1995) FLC 92-551.

¹¹ *De L v Director-General, NSW Department of Community Services* (1996) FLC 92-706.

¹² see *Re B (a Minor)* [1994] 2 Fam LR (Eng) 249 at p 257.

¹³ see: *DP v Cental Authority; JLM v NSW Department of Community Services* [2001] HCA 39 at paragraph 26-27.

¹⁴ [2009] HCA 9

in Melbourne, Australia and the father in Israel unless he decided he wanted to reconcile with the mother in Melbourne. The mother had, before and after her return to Melbourne, taken various steps to set up a home in Melbourne (which gave effect to the parents' shared intention). The Court held that as at July 2006 the children did not habitually reside in Israel and dismissed the Director-General's application for orders that the children be returned to Israel. It was also very critical of the delay by the Family Court in its dealing with the case and reinforced the need to deal with such matters promptly.

Return Applications

Applying for orders

Where a child has been removed to, or retained in, Australia, the request for assistance from a parent located in another Convention country is known as an incoming application. On receipt of an incoming application the Central Authority, determines whether there is a prima facie case to initiate proceedings in the Family Court.

Where a child has been removed to or retained in a Convention country other than Australia, a requesting parent, through the Central Authority, may decide to make an outgoing application to the Central Authority of that country for assistance.

The purpose of a return application is not to determine substantive rights of custody: the Convention requires that these matters be determined in the appropriate forum, that is, the child's place of habitual residence.

Application Process

The Regulations set out the process for applying in Australia for the return of a child removed to, or retained in another Convention country.

A person may apply to the Central Authority under regulation 11(1) or 11(3) for assistance in securing the return of the child. On receiving the application the Central Authority will take any action required by it under the Convention including transmitting the application to the Central Authority of the country to which the child has been removed or retained.¹⁵ When the Central Authority of the country to which the child has been taken receives the return application, it is obliged under Article 7 of the Convention to:

¹⁵ *Family Law Regulations (Child Abduction Convention)*1986 (Cth) Regulation 11.4

- take action to discover the whereabouts of the child,
- prevent harm to the child, and
- secure the voluntary return of the child, or otherwise bring about an amicable solution.

Unlike the considerations and factors relating to children set out in Pt VII of the Family Law Act (Cth),¹⁶ the best interest of the child are not the paramount consideration and the discretion of the Family Court to refuse to order the return of a child to his or her home country is limited.

In *De L v Director General, NSW Department of Community Services & Anor*,¹⁷ the High Court of Australia stated:

The underlying premise is that, once the forum is located in this way, each Contracting State has faith in the domestic law of the other Contracting States to deal in a proper fashion with matters relating to the custody of children under the age of 16...it follows that they are not subject to the paramountcy principle.

In Australia the Court cannot make an order, except an interim order, providing for the custody of the child until a Hague Convention application is determined.¹⁸ The “best interests of the child” principle in the Family Law Act has a limited role to play in Hague Convention applications; it is seen to be best served by addressing questions of custody in the country of the child’s habitual residence.

A Successful Application

For an application of return to be successful in a Convention country, the applicant must establish that the removal of the child to or retaining of the child in a Convention country is “wrongful”, and:

- the child was under 16 : Article 4;
- the child was habitually resident in the Convention country immediately before their removal or retention: Article 3;

¹⁶ see section 60CA : “In deciding whether to make a particular parenting order in relation to a child, a Court must regard the best interests of the child as the paramount consideration.”

¹⁷ (1996) FLC 92,706 at 83,454-83,455

¹⁸ *ibid* 15: Regulation 19

- the applicant has “rights of custody” in relation to the child under the laws of the Convention country: Article 3 and 5;
- the child’s removal or retention is in breach of those rights: Article 3(a): and
- at the time of the child’s removal or retention, the applicant was actually exercising those rights or would have been but for the removal or retention: Article 3(b).

Exceptions to the mandatory return of the child

The Australian Regulations compel the Family Court to order the return of a child to his or her home country unless certain specific circumstances exist,¹⁹ and a discretion not to enforce the Convention if:

Article 12

The application is made more than one year after the removal and the child is now settled in its new environment: Regulation 16(2).

Article 13

- (a) At the time of removal or retention custody rights were not being exercised or, alternatively, the removal or retention was by consent: Regulation 16(3)(a).
- (b) The return of the child would expose him or her to a great risk of physical or psychological harm or otherwise place the child in an intolerable situation: Regulation 16(3)(b).
- (c) The child objects to the return and is mature enough, in the view of the Court, to make that decision: Regulation 16(3)(c).

Article 20

To return a child would conflict with the fundamental principles of the requested State relating to the protection of human rights and freedoms.

Although the High Court in *LK v Director-General, Department of Community Services*²⁰ recognised that an underlying assumption of the Hague Convention and the Australian

¹⁹ *ibid* 15: Regulation 16

Regulations is that it is generally better for a child to be returned promptly to familiar surroundings rather than suffer the disruption of an international move, the Court has also noted that assumption will not be right in every case.²¹

Notwithstanding the establishment of one or more of these defences, the Australian Courts retain an overriding discretion to make a return order. Consequently, lawyers who represent abducting parents in incoming, as opposed to outgoing, applications play a much greater role in the proceedings.

Courts in Hague Convention countries have interpreted exceptions to mandatory return in different ways and are reviewed in detail by the Honourable Joseph Kay in his paper referred above in '*Outline of the Hague Convention*'.²² This paper simply seeks to provide a very brief overview.

Article 12 - Applications made after one year

Two different approaches have been adopted in relation to the question of whether the child is settled.²³

In Australia we have adopted a liberal view of what it means to be settled in a country and there does not need to be both a physical and mental element to being settled.²⁴ A child will be found to be settled if he or she has simply adjusted simply to their new household.

In contrast, English Courts have adopted a more restrictive approach and children must be physically and emotionally settled.²⁵

Article 13 (b) – Risk of harm

Most Convention countries have generally construed the exception very narrowly as to do otherwise would be to undermine the purpose of the Hague Convention.²⁶ So, for example, in the case of *Murray and Director General of Family Services*,²⁷ the Court ordered a child to be returned to New Zealand despite the risk of domestic violence.

²⁰ [2009] HCA 9

²¹ Ibid 15: Regulation 29(3)

²² Ibid 5

²³ Ibid 5

²⁴ *Townsend v Director General Department of Families, Youth and Community Care* (1999) FLC 92-842 at 85,853

²⁵ *Re M (Abduction: Acquiescence)* [1996] 1 FLR 315

²⁶ Ibid 5

²⁷ (1993) FLC 92-416

The Court held that it would be presumptuous in the extreme to assume that the New Zealand Courts could not offer adequate protection to the child in question.

The Full Court in *Director-General Department of Families, Youth and Community Care v Bennett*²⁸ held that clear and compelling evidence is required before a Court can find that there is a grave risk that a child would be exposed to harm if it were to be returned to its home country, and that such a finding is likely to be made only in exceptional circumstances.

Article 13 (c) - Wishes of the child

There has been considerable judicial debate and interpretation as to what is meant by the word “objects” in Article 13(c). The objection must be to the return to the habitual place of residence. Also, does the term “objects” mean more than just a mere preference to remain with the abducting parent?

Australian Courts have adopted a narrow approach to the issue of objection by a child. The child must now be returned unless his or her objection imports strength of feeling beyond the mere expression of a preference or ordinary wishes.²⁹

Success of the convention

The success of the Hague Convention is obviously dependent on the active participation and co-operation of each member State. There have been regular reviews of the Hague Convention and its operation by Special Commissions and it has published a voluntary Best Practice Guide.³⁰

Australia deals with over 200 applications under the Convention each year (Appendix B). In the 20 years since the convention came into force in Australia, the Central Authority has dealt with 2,938 applications.³¹ Apart from the fact that the number of applications rises most years, and there has been a relatively large increase in

²⁸ (2000) FLC 93

²⁹ Ibid 15: Regulation 16(3)(c)(ii)

³⁰ The Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Part I, Central Authority Practice, HCCH, 2003; and Transfrontier Contact Concerning Children- General Principles and Guide to Good Practice, HCCH, 2008 http://hcch.e-vision.nl/upload/guidecontact_e.pdf (4 May 2009).

³¹ as at 30 April 2009.

applications over the last 4 years, the statistical information referred to in the following 3 paragraphs remain approximately the same.³²

The Attorney General's department suggests that in Australia, the majority of abduction and access applications occur between Australia and New Zealand followed by the UK and USA. Generally, 75% of children were removed by mothers, 20% by fathers and 5% by others (such as grandparents). Ms Isle Peterson from the State Solicitors Office, Western Australia indicated the WA statistics were similar and noted an emerging trend of more abducting parents acting in person and placing considerable pressure on community legal resources.

From 1 January to 30 April 2009, the Central Authority has received 44 applications for the return of children under the Convention (17 incoming - 27 outgoing), and 8 applications for access or contact (3 incoming - 5 outgoing). Out of the 58 children (21 incoming - 37 outgoing) who are the subject of Hague child abduction convention applications to/from Australia so far in 2009 (one application may relate to more than one child), 48 children have been returned, 16 children returned abroad (12 Court ordered - 4 voluntarily) and 32 returned to Australia (18 Court ordered - 14 voluntarily).

Of the children not returned, a small percentage remain missing. In most cases, the matter is still before the Courts or a Court has ordered that the child should not be returned (e.g because one of the defences has been made out, or because the Court found that the left behind parent did not have rights of custody, or the child was not habitually resident in that other country and therefore not wrongfully removed or retained).³³

Procedural Issues experienced in Australia

It is important that applications are dealt with quickly and efficiently in order to achieve the main objectives of the Hague Convention.

In Australia, at the time the initiating application is filed with the Family Court by the State Central Authority, a date is fixed in about 7 days for an ex parte hearing seeking orders that, among other things, restrain the abducting parent from removing the child from the jurisdiction. The orders may also require the surrender of the child's passport

³² Comments by Jane Selwood from the Central Authority, Attorney General's Department, Canberra (6 May 2009)

³³ *ibid* 32

to the registry manager of the Court and place the child on the airport watch list so that any attempt to leave the country will signal an alert to the Australian Federal Police.

These orders are routinely obtained on an ex-parte basis in Australia because of concern that if the abducting parent knows of the application, he or she may attempt to leave the jurisdiction. For an example of the type of orders sought see Appendix C³⁴.

The expeditious hearing of Hague matters is a fundamental principle of the Convention, and Courts are expected to facilitate this. In Australia, where the Court has not determined a return application within 42 days from the date of the application being filed, the State Central Authority may request the Court or registrar to state in writing the reasons for the application not having been determined in that period.³⁵ Accordingly, timetables will usually only permit each party a matter of weeks to file a response and reply.

At the final hearing, it is unusual for any witnesses to be called to give viva voce evidence or be available for cross-examination. The cases generally are dealt with on the papers. Unlike most other proceedings, affidavits of overseas witnesses may be filed with the Court and admitted as evidence, even where that witness does not attend Court for cross-examination.³⁶

This provision recognises that most evidence in international child abduction cases is provided by family and friends located overseas and attempts to alleviate the burden of travel to another jurisdiction. However Lawyers acting for the abducting parent have experienced difficulty in directly challenging the evidence in an affidavit or a witness and efforts to have witnesses available electronically via video or telephone can result in long delays.

³⁴ Documents from Ilse Peterson

³⁵ Ibid 15: Regulation 15

³⁶ *DP v Commonwealth Central Authority* (2001) 206 CLR 401 at 37

Lesson's Learned & Best Practice

In order to ensure the main objectives of the Hague Convention are achieved, several elements have been suggested as essential:³⁷

1. Free legal representation for left behind parents.
2. Legal representation by experienced Hague lawyers.
3. A centralised Court system with a small number of judges specialised in hearing Hague cases.
4. Interpreters provided free if the left behind parent does not speak the language of the requested country and the left behind parent is required to travel to the requested country for the legal proceedings or to pick up the child.
5. Each country should provide a clear description of its procedures, both legal and administrative, as well as its legal aid arrangements and eligibility criteria.
6. Each country should, if necessary, pay the cost of repatriating its own children, once a return order has been made

The following observations have been made by lawyers involved in Hague applications in Australia:

Appropriate Legislation

The level of success of the Convention in a Contracting State is related to provisions of the implementing legislation. Appropriate legislation will ensure minimal delays and help achieve international recognition for the Contracting State.

It is also vital that there be a free exchange of information between Government departments such as the Police, Social Services and Immigration to enable speedy location of the abducted child.

Australia's Commonwealth and State Central Authorities are very successful in locating the abducting parent and child, due to the agreements for exchange of information between governmental departments such as the Police, Centrelink, and Immigration.

³⁷ *Identifying Best Practice in Hague Convention cases. November 2000*, Jennifer Degeling, formerly Australian Central Authority

These departments allow the Central Authorities to access movement records in and out of the country, licence registration details (and so accommodation/contact address) and any application for government benefits that would otherwise be subject to privacy restrictions.

Specialist Judges and Lawyers

Specialist Family Court judges hearing Hague Cases is considered highly desirable to prevent delay and ensure the main objectives of the Convention are met.

The Judge's familiarity with legislation, interpretation of the convention and procedure is a vital component. Australia has two representative liaison judges who are part of the International Network of Judges in the field of International Child Abduction. This forum acts as a channel of communication in international cases and promotes greater consistency in the interpretation and practice under the Convention.³⁸ These conferences are important events in emphasising mutual understanding, respect and trust between judges from different countries; factors which are essential to the effective operation of Convention.³⁹

Some of the difficulties experienced by the Courts relate to the delays associated with obtaining information from the overseas Central Authority, particularly where the Court may also experience difficulties understanding and interpreting overseas law. This is especially difficult when the translation of a document may alter its meaning. The use of the Hague Liaison Network has been very helpful in addressing this difficulty.⁴⁰

The Family Court in Perth has stated on many occasions that it is important to process applications quickly on behalf of left behind parents. Applications are generally listed for hearing within 7 days at which stage a raft of ex parte orders are made. Proceedings are then adjourned for about 4 weeks to enable the children to be located and the abducting parent served with Court orders and associated documents. If the application is opposed then the abducting parent is provided with a reasonably short adjournment and final orders are generally made within 3 months.⁴¹ In practice, and depending on the age of the children, applications made to Court close to the 12-month period

³⁸ *ibid* 32

³⁹ Common Law Judicial Conference on International Parental Child Abduction (17-21 September 2000)

⁴⁰ *ibid* 32

⁴¹ Comments by Ilse Petersen, State Solicitors Office (WA) (30 April 2009).

become quite difficult because of the wishes of children who may perceive themselves as settled in their new environment.

Central Authority

The State Central Authority is usually administered by each State's Child Protection Agency. However in Western Australia the State Central Authority is administered by the WA Police Commissioner.

The main advantages in having the Police Commissioner, as the Central Authority, is the broad powers the police have to apprehend and secure a child. In contrast the Child Protection Agency may have to seek an order to gain entry to premises or search other government databases to locate and secure the abducting parent and child.

The disadvantages are that police officers generally are not well-equipped to assist the abducting parent or the left behind parent in dealing with issues associated with the Court case, recommend support structure, access to resources and counselling. A left behind parent in Western Australia must rely on Community Legal Centres to help draft an application, and seek out other agencies to provide support.

Resources – Financial

An Application may create a financial burden on the parties, such as having to pay for legal fees, accommodation and travel expenses. In Australia there are a number of avenues available to support the financial needs of parties to an application.

In practice, most parties seek financial funding from their own sources, family or friends. However, if these funds are not available then a parent may seek assistance from Legal Aid or a Community Legal Centre.⁴²

Where a child is abducted from Australia, an application for financial assistance for the return of the child may be made under the Overseas Custody (Child Removal) Scheme. The scheme provides financial assistance to parents for expenses for legal representation overseas and for reasonable costs associated with securing the return of

⁴² Ibid 40

the child, for example travel and accommodation costs for the parent in Australia to travel overseas and accompany the child back to Australia. Applications under that Scheme can be made to the Financial Assistance Section, Legal Assistance Branch, Attorney-General's Department.⁴³

Persons from an overseas Convention country seeking the return of their child from Australia will not be required to bear any legal costs incurred by Central Authorities in Australia giving effect to Australia's Convention obligations. The Commonwealth will also meet the costs incurred by State Central Authorities giving effect to Australia's obligations under the Convention.⁴⁴

However the Commonwealth is not responsible under the Convention for any costs incurred by a left behind parent, for airfares for the return of the child from Australia to the country of habitual residence. An undertaking may be required from overseas parent to pay for the travel and related costs of returning the child. However, an applicant can request that the responsible Central Authority obtain a Court order directing that the abducting parent pay the necessary expenses incurred by or on behalf of the applicant, including travelling expenses and costs incurred to locate a child.⁴⁵

Support Structure

A well-funded support structure is essential in order to deal with cases quickly and efficiently. Accommodation services, access to legal aid and interpreter services are often required in Child Abduction matters.

Currently in Australia, there is no dedicated service within the community to address the needs of parents and children who are experiencing the immediate or long term affects of child abduction.

Interpreters

The need for an interpreter service is important to ensure effective communication between parties and Central Authorities. It has been suggested that this service should be provided free if an applicant does not speak the language of the requested country and the applicant is required to travel to the requested country for legal proceedings or

⁴³ ibid 8

⁴⁴ ibid

⁴⁵ Comments made by Lee Mather, Legal Aid WA

to pick up the child. When needed, a party may have access to the Commonwealth government interpreter service. However, since the majority of cases are between English speaking countries (NZ, US, UK) this service is rarely used.

Support Groups

The services offered by both the legal profession and the Attorney General's Department are, by nature, limited to advice on practical and legal steps to recover or return children. The International Social Service, Australian Branch (ISS) report stated that the Attorney General's Department were unable to offer much support and assistance beyond core legal work.

The Hug-ur-Kids is a Parental Child Abduction support group based in Western Australia, which commenced 8 years ago. However with ongoing expenses and lack of support, it now operates under the direction of HUKO International, and is now subject to a user pays system.⁴⁶

The ISS in its 2005 Report "Living in Limbo" stated that the absence of a comprehensive or dedicated Australian service means that the effects of child abduction on the individuals and families and the community is not acknowledged or addressed in any meaningful or effective way.⁴⁷ These issues frequently have a profound impact on not only the immediate family but also relatives. Funding to enable appropriate counselling and support services for the left behind parent and the abducted children especially is critical otherwise the impact of the abduction may have adverse consequences for many years.

United Nations Convention on the Rights of the Child

For countries that have not acceded to the Hague Convention there is the *United Nations Convention on the Rights of the Child* (UNCRC)⁴⁸. This convention is a widely accepted and ratified international treaty; with 193 countries parties to the convention as of December 2008.⁴⁹ (Appendix D)

⁴⁶ <http://www.hugurkids.com> (4 May 2009)

⁴⁷ International Social Service, *Living in Limbo: The Experience of International Parental Child Abduction*, Research Report, February 2005, Melbourne

⁴⁸ Entered into in Australia on 16 January 1991

⁴⁹ United Nations Treaty Collection. [Convention on the Rights of the Child](#) . Retrieved on 26 November 2008.

UNCRC expands on basic human rights afforded to all people by applying them specifically to children and their diverse needs.

The provision of UNCRC that is particularly relevant to child abduction is Article 11, which provides:

1. State Parties shall take measures to combat illicit transfer and non-return of children abroad.
2. To this end, State Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

To date Australia has a bilateral agreement with Egypt and has almost finalised an agreement with Lebanon.⁵⁰

Conclusion

The Hague convention has been successful in providing a uniformed approach to dealing with the difficult issue of swiftly returning abducted children to their place of habitual residence. The success of this convention can be easily seen when compared to the difficult, frequently cumbersome and nearly always expensive system of seeking return of children from non-Hague convention countries.

Proper implementation of legislation, co-operation between Government departments, a centralised authority system, a dedicated Court, specialist judges and lawyers and appropriately resourced support structures for the parents and children, allows for matters to be dealt with quickly. Hopefully this will reduce the impact of the actions of the abducting parent on the children and allow them to develop as normal and useful members of society.

Andrew Davies⁵¹

8 May 2009

⁵⁰ http://www.ag.gov.au/www/agd/agd.nsf/Page/Internationalchildabduction_YourchildhasbeenabductedFROManothercountryoverseasTOAustralia (4 May 2009); and <http://www.crin.org/resources/infodetail.asp?id=19888> (4 May 2009).

⁵¹ I acknowledge the generous assistance of Danielle Thompson, law graduate of University of Western Australia, Jane Selwood, Ilse Petersen and Lee Mather. Thank you.

APPENDIX A

CONVENTION OF 25 OCTOBER 1980 ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

STATUS TABLE

Members of the Organisation

Source: http://www.hcch.net/index_en.php?act=conventions.status&cid=24, (11 April 2009)

States	Signature	Ratification	
Albania		04.05.2007	(Res 26)
Argentina	28.01.1991	19.03.1991	
Australia	29.10.1986	29.10.1986	
Austria	12.06.1987	14.07.1988	
Belarus		12.01.1998	(Res 26)
Belgium	11.01.1982	09.02.1999	
Bosnia and Herzegovina	27.09.1991	27.09.1991	
Brazil		19.10.1999	
Bulgaria		20.05.2003	(Res 26)
Canada	25.10.1980	02.06.1983	(Res 26)
Chile		23.02.1994	
China, People's Republic of			(Res 26)
Croatia	27.09.1991	27.09.1991	
Cyprus		04.09.1994	
Czech Republic	28.12.1992	15.12.1997	(Res 26)
Denmark	17.04.1991	17.04.1991	(Res 26)
Ecuador		22.01.1992	
Estonia		18.04.2001	(Res 26)
Finland	25.05.1994	25.05.1994	(Res 26)
France	25.10.1980	16.09.1982	(Res 26)
Georgia		24.07.1997	
Germany	9.09.1987	27.09.1990	(Res 26)
Greece	25.10.1980	19.03.1993	(Res 26)
Hungary		7.04.1986	

Iceland		14.07.1996	(Res 26)
Ireland	23.05.1990	16.07.1991	
Israel	4.09.1991	4.09.1991	(Res 26)
Italy	2.03.1987	22.02.1995	
Latvia		15.11.2001	
Lithuania		5.06.2002	(Res 26)
Luxembourg	18.12.1984	8.05.1986	(Res 26)
Malta		26.10.1999	
Mexico		20.06.1991	
Monaco		12.11.1992	(Res 26)
Montenegro	27.09.1991	27.09.1991	
Netherlands	11.09.1987	12.06.1990	(Res 26)
New Zealand		31.05.1991	(Res 26)
Norway	9.01.1989	9.01.1989	(Res 26)
Panama		2.02.1994	(Res 26)
Paraguay		13.05.1998	
Peru		28.05.2001	
Poland		10.08.1992	(Res 26)
Portugal	22.06.1982	29.09.1983	
Romania		20.11.1992	
Serbia	27.09.1991	27.09.1991	
Slovakia	28.12.1992	7.11.2000	(Res 26)
Slovenia		22.03.1994	
South Africa		8.07.1997	(Res 26)
Spain	7.02.1986	16.06.1987	
Sri Lanka		28.09.2001	(Res 26)
Sweden	22.03.1989	22.03.1989	(Res 26)
Switzerland	25.10.1980	11.10.1983	
The former Yugoslav Republic of Macedonia	27.09.1991	27.09.1991	
Turkey	21.01.1998	31.05.2000	(Res 26)
Ukraine		02.06.2006	
United Kingdom of Great Britain and Northern Ireland	19.11.1984	20.05.1986	(Res 26)

United States of America	23.12.1981	29.04.1988	(Res 26)
Uruguay		16.11.1999	
Venezuela	16.10.1996	16.10.1996	(Res 26)

Res = Reservations

Non-Member States of the Organisation

States	Ratification	
Armenia	1.03.2007	(Res 26)
Bahamas	1.10.1993	
Belize	22.06.1989	(Res 26)
Burkina Faso	25.05.1992	
Colombia	13.12.1995	
Costa Rica	9.11.1998	
Dominican Republic	11.08.2004	
El Salvador	5.02.2001	(Res 26)
Fiji	16.03.1999	
Guatemala	6.02.2002	(Res 26)
Honduras	20.12.1993	(Res 26)
Mauritius	23.03.1993	(Res 26)
Moldova, Republic of	10.04.1998	(Res 26)
Nicaragua	14.12.2000	
Saint Kitts and Nevis	31.05.1994	(Res 26)
San Marino	14.12.2006	
Seychelles	27.05.2008	
Thailand	14.08.2002	
Trinidad and Tobago	7.06.2000	
Turkmenistan	29.12.1997	
Uzbekistan	31.05.1999	(Res 26)
Zimbabwe	4.04.1995	(Res 26)

Res = Reservations

APPENDIX B

Hague Convention on the Civil Aspects of International Child Abduction Statistics

NUMBER OF ABDUCTION AND ACCESS APPLICATIONS RECEIVED as at 31 March 2009

STATE/ TERRITORY	ABDUCT IN 07/08	ABDUCT OUT 07/08	ACCESS IN 07/08	ACCESS OUT 07/08	ABDUCT IN 08/09	ABDUCT OUT 08/09	ACCESS IN 08/09	ACCESS OUT 08/09
New South Wales	19	35	3	7	17	18	4	4
Queensland	28	20	5	4	15	15	3	4c
Victoria	11	18	7	2	7	13	3	3
Western Australia	10	12	3	2	7	12	1	1
South Australia	3	5		1	4	4	2	
Tasmania	1	1				1	1	1
Northern Territory	3			1				
ACT	2	1	1		1			
TOTAL	77	92	19	17	51	63	14	13

ABDUCTION APPLICATIONS: CURRENT STATUS OF CASES as at 31 March 2008

	IN 07/08	OUT 07/08	IN 08/09	OUT 08/09
RETURNED	40	50	14	23
REJECTED	17	9	8	1
WITHDRAWN	14	16	10	9
PENDING	6	17	19	30
TOTAL	77	92	51	63

Notes:

Figures refer to the number of applications received, not the number of children involved

'IN' refers to applications for the return of children removed to Australia

'OUT' refers to applications for the return of children removed from Australia

ACCESS APPLICATIONS: CURRENT STATUS OF CASES as at 31 March 2008

	IN 07/08	OUT 07/08	IN 08/09	OUT 08/09
ACCESS ARRANGED	7	2	2	0

REJECTED	4	1	0	0
WITHDRAWN	5	5	1	0
PENDING	3	9	11	13
TOTAL	19	17	14	13

Total abduction and access applications received:

2000-01= 173 2002-03= 177 2004-05= 161 2006-07= 206 2008-09= 141
 2001-02= 172 2003-04= 174 2005-06= 162 2007-08= 205

ABDUCTION AND ACCESS APPLICATIONS: BY COUNTRY as at 31 March 2009

COUNTRY	ABDUCT IN 07/08	ABDUCT OUT 07/08	ACCESS IN 07/08	ACCESS OUT 07/08	ABDUCT IN 08/09	ABDUCT OUT 08/09	ACCESS IN 08/09	ACCESS OUT 08/09
Argentina						1		
Austria							1	
Belgium	1	1			1			
Brazil		1						
Bulgaria	1	2		1		1		
Canada	1	2		1				
Chile		2	1	1		1		1
Croatia	1							
Cyprus	1				1			
Czech Republic	1							1
Denmark						3	1	
Ecuador		2						
Estonia						1		
Fiji				1		1		
Finland	1	1						
France	2	2	1	1				
Germany	1	3	2	1		1		
Greece	1			1	1	1		
Hong Kong		3						
Ireland		3		1	4	2		2
Israel	1							
Italy	1					1		
Latvia						1		
Macedonia						1		
Malta				1				
Mauritius					1			
Mexico		1				1		
Netherlands			1		1	1	1	1
New Zealand	38	30	4	2	28	19	2	4
Norway				1				
Poland		1				1		
Portugal						1		
Romania					1		1	
Serbia (FYR)		1						
Slovakia		1						
South Africa	2	1	1	1		3		
Spain			1		2		1	
Sri Lanka		1						
Sweden	1					3	1	
Switzerland	2		1			1		
Thailand		1				1		
Turkey								
United Kingdom	9	22	4	4	8	7	6	3
USA	11	11	3		3	9		1
Zimbabwe	1					1		
TOTAL	77	92	19	17	51	63	14	13

APPENDIX C

FAMILY LAW ACT 1975
FAMILY LAW (CHILD ABDUCTION CONVENTION) REGULATIONS

IN THE FAMILY COURT OF No. PTW of
WESTERN AUSTRALIA

AT PERTH

IN THE MATTER OF:

..... Respondent

AND

COMMISSIONER, WESTERN AUSTRALIA POLICE Applicant

MINUTE OF CONSENT ORDERS

The parties refer to the Form 2 Application filed on and seek the following orders by consent:

1. That the child, born on be returned to New Zealand in the company of the Respondent departing at approximately [] on [] 2009 on Air New Zealand flight [] arriving at [] at approximately [] on [] 2009.
2. That paragraph 1 of the Order made herein on requiring the Respondent to surrender forthwith to the Registrar of the Family Court of Western Australia all current passports and air tickets relating to him and the child be and is hereby discharged.
3. That paragraph 2 of the Order made herein on authorising all officers of the Australian Federal Police and all officers of the Police Forces and Services in the Commonwealth of Australia to seize all current passports and air tickets of the Respondent and the child and deliver the passports and air tickets to the Registrar of the Family Court of Western Australia be and is hereby discharged.
4. Paragraph 3 of the Order made herein on restraining the Respondent or his agents from removing the child from the Commonwealth of Australia and directing all officers of the Australian Federal Police to give effect to this Order, be and is hereby discharged.

5. That paragraph 4 of the Order made herein on requiring the Australian Federal Police to place the names of the child and the Respondent on the PASS alert system at all airport and seaport terminals in the Commonwealth of Australia be and is hereby lifted to allow the return of the child in accordance with Order 1 (above) and upon the child's departure from the jurisdiction of Australia the said orders be discharged.
6. That paragraph 5 of the Order made herein on restraining the Respondent from changing the residence of the child from the address of, be and is hereby discharged.
7. That paragraph 6 of the Order made herein on restraining the Respondent from bringing any application to apply for any further passports or travel documents for the child, be and is hereby discharged.
8. The application is otherwise dismissed.
9. DATED the day of
- 10.

Signed
SOLICITOR FOR RESPONDENT

Signed
STATE SOLICITOR FOR WESTERN AUSTRALIA
SOLICITOR FOR THE APPLICANT

FAMILY LAW ACT 1975

FAMILY LAW (CHILD ABDUCTION CONVENTION) REGULATIONS

IN THE FAMILY COURT OF
WESTERN AUSTRALIA
AT PERTH

No. (P)PTW .../2009

IN THE MATTER OF :

COMMISSIONER, WESTERN AUSTRALIA POLICE

(Applicant)

AND

.....

(Respondent)

MINUTE OF PROPOSED ORDERS

The Applicant refers to the Form 2 Application filed on2009 and seeks the following orders:

11. That the Respondent file and serve an answer, cross-application and any material which he is seeking to rely upon in this matter by *(usually 14 days)*.
12. That the Applicant Central Authority file and serve any material in reply by *(usually a further 14 days thereafter)*.
13. That a Family Court Counsellor prepare and submit to the court a Family Report in relation to the childborn on addressing each of the following matters –
 - a. Whether the child objects to being returned to New Zealand;
 - b. Whether the child's objection shows a strength of feeling beyond the mere expression of a preference or of ordinary wishes;
 - c. Whether the child has attained an age and degree of maturity, at which it is appropriate to take account of her views.
14. That the Central Authority be at liberty to release the Family Report to the Australian Commonwealth Central Authority, the New Zealand Central Authority, and to

.....

15. That the matter be listed for a hearing before a Judge on the first available date after 2009, time estimate 2 hours.

DATED this

2009

APPENDIX D

Convention of the Rights of the Child New York, 20 November 1989

State Parties	Signature	Ratification/Accession
Afghanistan	27.10.1990.	28.03.1994.
Albania	26.01.1990.	27.02.1992.
Algeria	26.01.1990.	16.04.1993.
Andorra	02.10.1995.	02.01.1996.
Angola	14.02.1990.	05.12.1990.
Antigua Barbuda	and 12.03.1991.	05.10.1993.
Argentina	29.06.1990.	04.12.1990.
Armenia		23.06.1993.
Australia	22.08.1990.	17.12.1990.
Austria	26.01.1990.	06.08.1992.
Azerbaijan		13.08.1992.
Bahamas	30.10.1990.	20.02.1991.
Bahrain		13.02.1992.
Bangladesh	26.01.1990.	03.08.1990.
Barbados	19.04.1990.	09.10.1990.
Belarus	26.01.1990.	01.10.1990.
Belgium	26.01.1990.	16.12.1991.
Belize	02.03.1990.	02.05.1990.
Benin	25.04.1990.	03.08.1990.
Bhutan	04.06.1990.	01.08.1990.
Bolivia	08.03.1990.	26.06.1990.
Bosnia-Herzegovina		01.09.1993
Botswana		14.03.1995.
Brazil	26.01.1990.	24.09.1990.
Brunei Darussalam		27.12.1995.
Bulgaria	31.05.1990.	03.06.1991.
Burkina Faso	26.01.1990.	31.08.1990.
Burundi	08.05.1990.	19.10.1990.

Cambodia		15.10.1992.
Cameroon	25.09.1990.	11.01.1993.
Canada	28.05.1990.	13.12.1991.
Cape Verde		04.06.1992.
Central African Republic	30.07.1990.	23.04.1992.
Chad	30.09.1990.	02.10.1990.
Chile	26.01.1990.	13.08.1991.
China	29.08.1990.	02.03.1992.
Colombia	26.01.1990.	28.01.1991.
Comoros	30.09.1990.	22.06.1993.
Congo (Dem. Rep.)	20.03.1990.	27.09.1990.
Congo		14.10.1993.
Cook Islands		06.06.1997
Costa Rica	26.01.1990.	21.08.1990.
Côte d'Ivoire	26.01.1990.	04.02.1991.
Croatia		12.10.1992.
Cuba	26.01.1990.	21.08.1991.
Cyprus	05.10.1990.	07.02.1991.
Czech Republic		22.02.1993.
Denmark	26.01.1990.	19.07.1991.
Djibouti	30.09.1990.	06.12.1990.
Dominican Republic	08.08.1990.	11.06.1991.
Dominica	26.01.1990.	13.03.1991.
Ecuador	26.01.1990.	23.03.1990.
Egypt	05.02.1990.	06.07.1990.
El Salvador	26.01.1990.	10.07.1990.
Equatorial Guinea		15.06.1992.
Eritrea	20.12.1993.	03.08.1994.
Estonia		21.10.1991.
Ethiopia		14.05.1991.
Fiji	02.07.1993.	13.08.1993.
Finland	26.01.1990.	20.06.1991.
Former Yugoslav Republic of		02.12.1993.

Macedonia		
France	26.01.1990.	07.08.1990.
Gabon	26.01.1990.	09.02.1994.
Gambia	05.02.1990.	08.08.1990.
Georgia		02.06.1994.
Germany	26.01.1990.	06.03.1992.
Ghana	29.01.1990.	05.02.1990.
Greece	26.01.1990.	11.05.1993.
Grenada	21.02.1990.	05.11.1990.
Guatemala	26.01.1990.	06.06.1990.
Guinea-Bissau	26.01.1990.	20.08.1990.
Guinea		13.07.1990.
Guyana	30.09.1990.	14.01.1991.
Haiti	26.01.1990.	08.06.1995.
Holy See	20.04.1990.	20.04.1990.
Honduras	31.05.1990.	10.08.1990.
Hungary	14.03.1990.	07.10.1991.
Iceland	26.01.1990.	28.10.1992.
India		11.12.1992.
Indonesia	26.01.1990.	05.09.1990.
Iran (Islamic Rep.of)	05.09.1991.	13.07.1994.
Iraq		15.06.1994.
Ireland	30.09.1990.	28.09.1992.
Israel	03.07.1990.	03.10.1991.
Italy	26.01.1990.	05.09.1991.
Jamaica	26.01.1990.	14.05.1991.
Japan	21.09.1990.	22.04.1994.
Jordan	29.08.1990.	24.05.1991.
Kazakhstan	16.02.1994.	12.08.1994.
Kenya	26.01.1990.	30.07.1990.
Kiribati		11.12.1995.
Korea (Dem.People's Rep.)	23.08.1990.	21.09.1990.
Korea (Republic of)	25.09.1990	20.11.1991

Kuwait	07.06.1990.	21.10.1991.
Kyrgyzstan		07.10.1994.
Lao Dem.Rep.	People's	08.05.1991.
Latvia		14.04.1992.
Lebanon	26.01.1990.	14.05.1991.
Lesotho	21.08.1990.	10.03.1992.
Liberia	26.04.1990.	04.06.1993.
Libyan Jamahiriya	Arab	15.04.1993.
Liechtenstein	30.09.1990.	22.12.1995.
Lithuania		31.01.1992.
Luxembourg	21.03.1990.	07.03.1994.
Madagascar	19.04.1990.	19.03.1991.
Malawi		02.01.1991.
Malaysia		17.02.1995.
Maldives	21.08.1990.	11.02.1991.
Mali	26.01.1990.	20.09.1990.
Malta	26.01.1990.	30.09.1990.
Marshall Islands	14.04.1993.	04.10.1993.
Mauritania	26.01.1990.	16.05.1991.
Mauritius		26.07.1990.
Mexico	26.01.1990.	21.09.1990.
Micronesia		05.05.1993.
Moldova (Republic of)		26.01.1993.
Monaco		21.06.1993.
Mongolia	26.01.1990.	05.07.1990.
Montenegro (Republic of)		23.10.2006
Morocco	26.01.1990.	21.06.1993.
Mozambique	30.09.1990.	26.04.1994.
Myanmar		15.07.1991.
Namibia	26.09.1990.	30.09.1990.
Nauru		27.07.1994.
Nepal	26.01.1990.	14.09.1990.

Netherlands	26.01.1990.	06.02.1995.
New Zealand	01.10.1990.	06.04.1993.
Nicaragua	06.02.1990.	05.10.1990.
Nigeria	26.01.1990.	19.04.1991.
Niger	26.01.1990.	30.09.1990.
Niue		20.12.1995.
Norway	26.01.1990.	08.01.1991.
Oman		09.12.1996
Pakistan	20.09.1990.	12.11.1990.
Palau		04.08.1995.
Panama	26.01.1990.	12.12.1990.
Papua New Guinea	30.09.1990.	02.03.1993.
Paraguay	04.04.1990.	25.09.1990.
Peru	26.01.1990.	04.09.1990.
Philippines	26.01.1990.	21.08.1990.
Poland	26.01.1990.	07.06.1991.
Portugal	26.01.1990.	21.09.1991.
Qatar	08.12.1992.	03.04.1995.
Romania	26.01.1990.	28.09.1990.
Russian Federation	26.01.1990.	16.08.1990.
Rwanda	26.01.1990.	24.01.1991.
Saint Kitts and Nevis	26.01.1990.	24.07.1990.
Saint Lucia	30.09.1990.	16.06.1993.
Saint Vincent Grenadines	20.09.1993.	26.10.1993.
Samoa	30.09.1990.	29.11.1994.
San Marino		25.11.1991.
Sao Tome and Principe		14.05.1991.
Saudi Arabia		26.01.1996.
Senegal	26.01.1990.	31.07.1990.
Serbia (Republic of)		12.03.2001
Seychelles		07.09.1990.
Sierra Leone	13.02.1990.	18.06.1990.

Singapore		05.10.1995.
Slovakia		28.05.1993.
Slovenia		06.07.1992.
Solomon Islands		10.04.1995.
South Africa	29.01.1993.	16.06.1995.
Spain	26.01.1990.	06.12.1990.
Sri Lanka	26.01.1990.	12.07.1991.
Sudan	24.07.1990.	03.08.1990.
Suriname	26.01.1990.	01.03.1993.
Swaziland	22.08.1990.	07.09.1995.
Sweden	26.01.1990.	29.06.1990.
Switzerland	01.05.1991.	24.02.1997
Syrian Republic	Arab 18.09.1990.	15.07.1993.
Tajikistan		26.10.1993.
Tanzania (United Rep.of)	(United 01.06.1990.	10.06.1991.
Thailand		27.03.1992.
Timor-Leste		16.04.2003
Togo	26.01.1990.	01.08.1990.
Tonga		06.11.1995.
Trinidad and Tobago	and 30.09.1990.	05.12.1991.
Tunisia	26.02.1990	30.01.1992
Turkey	14.09.1990.	04.04.1995.
Turkmenistan		20.09.1993.
Tuvalu		22.09.1995.
Uganda	17.08.1990.	17.08.1990.
Ukraine	21.02.1990.	28.08.1991.
United Emirates	Arab 03.01.1997	
United Kingdom	19.04.1990.	16.12.1991.
Uruguay	26.01.1990.	20.11.1990.
Uzbekistan		29.06.1994.
Vanuatu	30.09.1990.	07.07.1993.
Venezuela	26.01.1990.	13.09.1990.

Viet Nam	26.01.1990.	28.02.1990.
Yemen	13.02.1990.	01.05.1991.
Zambia	30.09.1990.	06.12.1991.
Zimbabwe	08.03.1990.	11.09.1990.