

INTERNATIONAL PARENTAL CHILD ABDUCTION

to a Hague Signatory Country



Information for professionals
about the 1980 Hague Convention on the Civil
Aspects of International Child Abduction
("the Convention")

The Convention

Is a treaty that governs the return of children under 16 years of age who have been wrongfully removed or retained from their country of habitual residence.

Signatory countries

Firstly, you should check whether the overseas country is a signatory to the Convention and importantly, whether the overseas country enforces this treaty with Australia. The Attorney-General's Department's (AGD) website has the most up to date list of countries that enforce this treaty with Australia.



Removal or retention?

Removal occurs when a parent unilaterally takes the child out of Australia without the consent of the left-behind parent or without a court order allowing them to do so.

Retention occurs where both parents agree to the child travelling overseas for a defined period (such as a holiday), but then the taking parent reneges and decides not to return the child to Australia



Time limitation

An applicant must have filed their return application and commenced proceedings in the overseas court within 12 months of the date of the child's wrongful removal or retention. It is critical to obtain the approximate date of retention or removal.

Parental responsibility

As a result of the presumption of equal shared parental responsibility under Australian family law, parents are jointly responsible for the major long term decisions regarding the care, welfare and development of a child. A parent cannot unilaterally make decisions about a child's residence without the consent of the other parent. This means that a parent cannot remove a child from Australia without the other parent's consent or without a court order. Parental responsibility can only be varied or removed by a court order.

To be eligible to make an application for the child's return, the applicant must have "rights of custody", which usually arise from the applicant being a parent of the child and consequently having 'parental responsibility'.

What to do

- The applicant should speak to a lawyer from ISS Australia to understand their legal avenues
- The applicant must inform the other parent of their request for the child to be returned to Australia
- The applicant must ensure that their documentation is lodged as soon as possible so that court proceedings can commence well before 12 months of the date of the child's wrongful removal or retention from Australia

REQUIREMENTS

In order to make an application through the Convention the applicant must satisfy the following conditions

Child is under 16 years of age

Once a child is 16 years or over, the Convention will no longer apply

Rights of custody

The applicant must have held and been exercising 'rights of custody' for the child at the time of removal or retention

Habitual residence

The child must have been habitually resident in Australia at the time of removal or retention

Wrongful removal or retention

The removal or retention must have been 'wrongful', in that it occurred without the consent of the applicant or a valid court order

DEFENCES

In response to an application, the respondent can raise the following defences against the child's return to Australia

Grave risk and/or intolerable circumstances

Returning the child to Australia would expose them to physical or psychological harm.

For example, there may have been family violence incidents and the Australian protection systems have failed to protect the respondent and consequently exposed the child to family violence. There might be financial circumstances which would not allow for the respondent to support themselves and their dependents.

There may be mental health concerns which could affect the primary carer's ability to care for the child if a return is ordered.

Consent

The applicant may have consented to the child relocating internationally.

Child's objection

The child is of sufficient maturity to express an opinion as to their living circumstances and comprehend the consequences of this long term decision

Settlement

12 months have passed since the date of wrongful removal or retention, and the child is settled into life overseas

1

Client should obtain legal advice at the earliest opportunity.

Call ISS Australia on 1300 657 843 for free legal advice

2

Prepare an application and a supporting affidavit.

Where possible, ISS Australia will prepare these documents for clients free of charge.

3

Submit documentation to the Australian Central Authority ("ACA").

4

The ACA assess the application, and if accepted will forward it onto the Central Authority overseas for further assessment.

5

If the overseas CA accepts the application, then court proceedings or mediation may commence, depending the country's processes.

6

If overseas court proceedings do proceed, several hearings may take place before the judge makes a final determination as to whether the child should be returned to Australia.

7

Once the decision has been issued by the judge, both parties have a period of time in which they can appeal the final order.

The material in this publication is a general guide only. It is not legal advice. Please seek legal advice about your situation.

The legal process for the return of a child



**International
Social Service**
AUSTRALIA

Who can I talk to?

International Social Service (ISS) Australia

Our office is funded by the AGD to provide legal advice, emotional support, and help prepare documents for return applications free of charge.

Call us on 1300 657 843 or visit our website on www.iss.org.au

Mediation

ISS Australia provides an international family mediation service for parents separated by borders who wish to discuss parenting matters

Attorney General's Department

Contact their hotline on 1800 100 480 for further information