
Hague Convention: (International Abduction of Children)

Australia is a signatory to the Hague Convention on the International Abduction of Children. The Convention was established to assist in the recovery of children taken abroad to countries that have signed the Convention.

Over 70 countries have signed the Convention. Some notable exceptions include Malaysia, Indonesia, India, Singapore and many African nations. If a child is "abducted" to a non-Convention country the remedies under the Convention do not apply. For some countries, such as Singapore, there may be other options.

The Convention enables parents to seek the recovery of children taken abroad unilaterally or retained abroad against the wishes of one of the parents.

An application is made to the State Central Authority by a parent whose child has been abducted to a Convention country. In Australia, the Application is made to the State Central Authority in Canberra. State Government Departments, such as the Department of Human Services Victoria act for the State Central Authority when overseas agencies are seeking to have children returned to Convention countries from Australia.

The recovery of a child may be successfully opposed on one of the following grounds:

- The parent seeking the return of the child was not exercising rights of custody when the child was wrongfully removed
- The child has settled in their new environment
- The child objects to being returned to their country of origin
- The parent seeking the return of the child consented to the removal of the child
- The parent seeking the return of the child acquiesced in (did not object to) the child remaining in the country to which it was removed

- Returning the child would subject the child to a grave risk of physical or psychological harm
- Returning the child to its country of origin would interfere with fundamental human rights and freedoms of the child.

The Hague Convention can also be used by parents to enforce "access rights" (contact or spending time):

- The principles applicable to enforcement of access are not the same as in cases for the recovery of children. The law is very strictly applied and courts have little discretion.
- If a parent wants to oppose the enforcement of access rights, it may be better to apply to change the original access orders.

It is important to act very quickly. Delay may mean that the court finds the parent seeking recovery of a child has acquiesced or consented to the move. It often takes time for the State Central Authorities of both countries to act and there may be delays in the court system.

Courts try to list cases quickly. In Australia, the application must be listed within 42 days. However, cases are often adjourned. There may be further delays before the case can be relisted and judgment is delivered.

It is usually helpful if the parent seeking the return of the child physically appears in the court of the other country. Instructions can be given quickly and in person, and perhaps avoid the need for an adjournment. The judge hearing the matter often understands the matter better by seeing both parties. The application may be dealt with faster if both parties are in court.

Forte Family Lawyers has significant, recent experience in Hague Convention matters.