



Family matters

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Child Abduction

It is estimated that 2 to 3 children are taken illegally by a parent into and out of Australia every week.

Generally, a child will be 'abducted' if they have been removed from Australia or retained here without the consent of the other parent.

International abduction is governed by a United Nations Convention commonly known as the "Hague Convention". Not all countries are signatories to this convention and therefore the protection offered by this convention is not world wide.



Cases of abduction governed by the Hague Convention will involve a determination of the Court looking at the following matters:

1. The child's habitual place of residence;
2. Whether the relevant countries are "Convention Countries";
3. Rights of custody;
4. Consent/acquiescence;
5. Grave risk of exposure to harm.

Habitual residence

The Court needs to establish where the child usually lives and does this by looking at where the child lived before removal, with whom they lived and how long they lived there. It will examine schools, relationships and family. The Court will consider all of the circumstances of a child's life at the relevant time, including the intentions of the parents, as to where the child would reside.

Convention Country

A convention country is one that is a party to the Hague Convention. Signatories to the Convention are entitled to the protection and arrangements for the return of children either wrongfully removed or retained outside of their habitual place of residence. The objective of the Convention is to get children back to where they live to allow the local courts of that country to resolve parenting issues, and more particularly, issues of residence, between the parents.

Rights of Custody

Only a person who has a right of custody is eligible to seek the return of a child. A person who has parental responsibility for a child in the country of which the child is habitually resident will have a right of custody.

Consent/Acquiescence

Did one party agree to the removal or do nothing after it happened? These are exceptions to the act of removal. Consent must arise prior to the act of removal, and acquiescence can only arise after the act. The Court says that consent must be real, positive and unequivocal. It does not have to be in writing, even though this is advised. Acquiescence is about proving that no steps were taken to have the child returned after their removal.

Grave risk of exposure to harm

This is an exception to the return of the child. If the Court finds that the child's habitual place of residence is the country they were removed from and that there was no consent or acquiescence, then the child may still not be returned if the Court finds that there is a grave risk of exposure to harm for the child if it is returned. The harm has to be substantial and not merely trivial.

You cannot remove your child from where they usually live and take them to another country, without the consent of the other parent. If you get consent, get it in writing in the form of a parenting order.

What do you do if your child has been abducted?

1. Immediately contact your solicitor for instructions regarding the procedures;
2. If you do not know where the child is, telephone the police and report them as missing;
3. Contact the Australian Federal Police and request information on airport departures;
4. Determine if the child has been taken to a Convention country;
5. If yes, contact the Central Authority (the authority responsible for child abduction) in the Convention country; and
6. Prepare an Application to seek the child be returned.