

# Relocating Overseas: International Child Abduction and the Hague Convention



This factsheet summarises the Ask LOIS webinar on this topic, presented by Louisa Stewart, Solicitor, Women's Legal Services NSW on 12 November 2013. This webinar can be downloaded for free at [www.asklois.org.au/webinars/past-webinars](http://www.asklois.org.au/webinars/past-webinars).

## This fact sheet covers:

- What is the Hague Convention on International Child Abduction?
- How is it applied?
- What happens if my client wants to move overseas to escape domestic violence?
- What if my client has come to Australia with her children to escape domestic violence?
- Defences to an application
- What are the relevant organisations that can assist your client

## What is the Hague Convention on International Child Abduction ('the Convention')?

The Hague Convention is an international agreement covering abduction of children by one of their parents. Countries who are signatories agree to promptly return the child to their country of residence. This is in force between Australia and the countries listed below:

- |                          |                      |                       |   |
|--------------------------|----------------------|-----------------------|---|
| • Albania                | • Dominican Republic | • Macau (China)       | • Singapore                                 |
| • Argentina              | • Ecuador            | • Malta               | • Slovakia                                  |
| • Armenia                | • El Salvador        | • Mauritius           | • Slovenia                                  |
| • Austria                | • Estonia            | • Mexico              | • South Africa                              |
| • Bahamas                | • Fiji               | • Moldova, Republic   | • Spain                                     |
| • Belarus                | • Finland            | • Monaco              | • Sri Lanka                                 |
| • Belgium                | • France             | • Montenegro          | • Sweden                                    |
| • Belize                 | • Georgia            | • Netherlands         | • Switzerland                               |
| • Bosnia and Herzegovina | • Germany            | • New Zealand         | • Thailand                                  |
| • Brazil                 | • Greece             | • Nicaragua           | • The Former Yugoslav Republic of Macedonia |
| • Bulgaria               | • Guatemala          | • Norway              | • Trinidad & Tobago                         |
| • Burkina Faso           | • Honduras           | • Panama              | • Turkey                                    |
| • Canada                 | • Hong Kong (China)  | • Paraguay            | • Turkmenistan                              |
| • Chile                  | • Hungary            | • Peru                | • Ukraine                                   |
| • Colombia               | • Iceland            | • Poland              | • UK  |
| • Costa Rica             | • Ireland            | • Portugal            | • USA                                       |
| • Croatia                | • Israel             | • Romania             | • Uruguay                                   |
| • Cyprus                 | • Italy              | • Saint Kitts & Nevis |   |
| • Czech Republic         | • Latvia             | • San Marino          |   |
| • Denmark                | • Lithuania          | • Serbia              |   |
| • Uzbekistan             | • Luxembourg         | • Zimbabwe            |   |
|                          | • Venezuela          |                       |   |

The below States have agreed to the Convention, but it is not yet in force between these countries and Australia:

- |              |           |         |
|--------------|-----------|---------|
| • Seychelles | • Russia  | • Gabon |
| • Morocco    | • Andorra | • Korea |

Australia also has bilateral agreements on international parental child abduction with Egypt and Lebanon.

Originally the Convention was created because the parent the child did not live with was seen as the primary abductor. It is now about 70% more likely that the abductor will be the parent the child usually lives with (resident parent).



### How is it applied?

- Each signatory country enacts the Convention into their laws and has a Central Authority
- In Australia the Central Authority is the Attorney General's Department
- The Central Authority can apply on behalf of the parent left behind
- The Australian Central Authority differs slightly from those in some other countries as they do not 'represent' the left behind parent, they take more of a 'representative of the State' approach
  - Ie, they do not accept instructions from the left behind parent but instead carry out their own case on behalf of the parent and the country

### What happens if my client wants to move overseas to escape DV?

- Advise your client to seek legal advice
- Your client can attempt to get consent orders from the father if possible:
  - Family Dispute Resolution (FDR) may be appropriate for your client. Shuttle conferencing and legally assisted conferences are available where your client has been in a domestic violence relationship. If the parties can agree on a parenting order, they can seek this be made into consent orders so they are legally enforceable.
  - If the parents can't agree and FDR has been unsuccessful or unsuitable the best thing to do is apply for orders from the Family Law Courts. Relocation overseas can be difficult, your client can improve the strength of her case if she can show that the move is:
    - In the best interests of the child – eg, same or better family support, educational opportunities, medical care, employment opportunity for mother, need to keep the child safe from harm; and/or
    - The time spent/communication with the father will remain of a similar quality and she can afford to maintain contact for the child with the father
- If your client moves overseas with the children without the father's consent, this may lead to costly court proceedings especially where she has escaped to a country that is a Hague signatory. Ultimately your client may be left with the choice of:
  - Returning to Australia with the child until a final hearing of the Family Court can be arranged; or
  - Sending the child back to live with in Australia until the matter is finalised; or
  - Trying to argue a defence, such as risk of grave harm

### What if my client has come to Australia from overseas?

- Clients escaping domestic violence with their children and coming to Australia should seek legal advice
- Where the family have been living overseas in another convention country her options may be:
  - Defending an application by the Attorney General's Department (Australia Central Authority) to send her children back to the country of residence; or
  - Returning to that country to have them decide the relocation matter before coming back to Australia

### What are the defences to an application?

- There is a grave risk that the child's return would expose the child to physical or psychological harm, or otherwise place the child in an intolerable situation



- Unless there is a detailed and well-reported history of domestic violence/child abuse in the country of residence or here in Australia (preferably reports made in both countries and medical evidence) there is a risk that orders to return the child will be made
- Applicant was not having contact before child was taken
- Consent was given by the applicant
- Child in new country for 12 months+ (settled)
- Child objects and is old enough/mature
- Key requirements of convention not met

### How to take action for return of a child

- If the child has been taken to a **non-Hague country**, your client should seek private legal advice in that country and contact the Department of Foreign Affairs and Trade (DFAT) who may be able to assist
- If the child has been taken to a **Hague country**, or to Egypt or Lebanon (Australia has bilateral agreements) you client should:
  - Report the child missing – local police or Federal Police
  - Apply to the Australian Central Authority
  - Seek advice about support and financial assistance

#### Relevant Organisations

- Australian Federal Police – call 000 or airport security on 131 237 (131 AFP) – if your client is concerned her partner will take the children overseas without her permission, she can contact the Federal Police to have them placed on the Airport Watchlist
- Family Law National Enquiry Centre (24 hrs) - 1300 352 000 for urgent orders after hours
- International Social Service (ISS) Australia – 1300 657 843 for counselling, support, information, referrals
- Family Relationships Advice line - 1800 050 321 between 8 am and 8 pm Monday to Friday, and 10 am to 4pm on Saturdays
- LawAccess - 1300 888 529 – legal advice and information and referrals to legal aid or private solicitors
- Department of Foreign Affairs & Trade (DFAT) - 1300 555 135 – limited consular help for parents whose children are overseas