

Taking Children Overseas and Recovering Them



This fact sheet summarises the Ask LOIS webinar on this topic, presented Anna Swain, Lawyer, Women's Legal Service NSW on 21 June 2016

This webinar can be viewed for free at www.asklois.org.au/webinars/past-webinars.

This factsheet looks at:

- When is it lawful to take children overseas?
- The Family Law Watchlist
- The Hague Convention on Child Abduction
- How to take action to recover children take overseas
- Other organisations and agencies that may be able to assist

When is it lawful to take children overseas?

- Generally, a child should not travel overseas unless both parents consent or there is a Court order permitting overseas travel
- It is a Commonwealth offence to travel in certain circumstances
- **If your client is afraid the child may be taken from Australia without consent, she should get legal advice straight away**

What if your client doesn't consent to the other party taking the child overseas?

- If your client's child does not have a passport, they can lodge a Child Alert Request through the Australian Passports Office
- If the child already has a passport, your client will need to apply to have the child named on the Family Law Watchlist
- If your client is concerned the other party has a passport for the child from another country, they should contact that country's embassy

Child Alert Request

- If the child does not have a passport – and your client is concerned that the other parent will take the child overseas without their consent – your client can apply for a 'Child Alert Request' through the Australian Passports Office
- A Child Alert Request notifies the Australian Passports Office that a parent has not provided consent for their child to be issued with an Australian passport.
- A Child Alert Request will not prevent a child from being taken overseas if they already have a valid Australian or foreign passport
- If the child has a foreign passport, your client can contact the foreign country's embassy in Australia to determine what procedures they have in place to prevent the child from travelling overseas.



The Family Law Watchlist (or Airport Watchlist)

- The Family Law Watchlist is maintained by the Australian Federal Police (AFP) and is designed to alert the AFP of the movement of children or any flight risks
- Any child named on the Family Law Watchlist (or Airport Watchlist) will be stopped before boarding a plane or ship that is leaving Australia

Applying to have a child named on the Family Law Watchlist

- Submit a Family Law Watchlist Request form (this can be obtained online through the Australian Federal Police); **AND** provide the AFP with:
 - A copy of a final parenting order (or a court application for a parenting order) which limits or prevents overseas travel and requests the AFP place the child on the Family Law Watchlist; **or**
 - A Court order (or a Court application) made under s34 or s68B Family Law Act 1975 which prevents a child from travelling overseas and empowers the AFP to name a child on the Family Law Watchlist; **or**
 - A Court appeal made against an order of the Court which limits or prevents overseas travel and requests the AFP place the child on the Family Law Watchlist
- An urgent Court order can be made if there is an imminent risk – your client can call the Family Law National Enquiry Centre (24 hrs). Contact details listed at end of these slides
- Generally, a child cannot be taken off the Family Law Watchlist until further court order or until the child is 18 years of age.

The Hague Convention on International Child Abduction

- 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

Hague Convention Countries

- If the child is taken to a Hague convention country, the parent will need to show that the child was taken from their habitual place of residence and that the person applying has the legal right to determine where the child lives
- It is not necessary for the person who lost the child to have had a parenting order at the time. Only that:
 - The child is aged 16 or under;
 - The child usually lives in the country they were taken from; and
 - The person who lost the child has a legal right under the law of that country to determine where they may live.
- The child may not be returned if:
 - The parent seeking the return has not had any contact with the child for some time;
 - There is a grave risk of harm if the child is returned (i.e. Domestic or Family violence);
 - The child is of a mature age and has expressed strong views that they do not want to return;
 - The child has been away from their home country for more than a year and is settled.

*Also refer to past Ask LOIS webinar & factsheet on this topic 'Relocating Overseas: International Child Abduction and the Hague Convention'



Non Hague Convention Countries

- If the child is taken to a country that is not a signatory of the Hague Convention, it can be difficult to have the child returned to Australia
- May need to seek legal assistance in the country where the children have been taken

Recovery of children – taking action

- Report the child missing – local police or Federal Police
- Hague Convention Country (or country with bilateral agreement - Egypt or Lebanon): apply to the Attorney-General's Department
- Non-Hague country: seek assistance from Department of Foreign Affairs & Trade (1300 555 135, 24/7)

Organisations & agencies to assist

- Australian Federal Police:
call 000 or airport security on 131 237 (131 AFP)
- Family Law National Enq 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 4 pm 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

Helpful links

- AFP Family Law Kit:
www.afp.gov.au/policing/family-law/family-law-kit
- Attorney General's Department website:
www.ag.gov.au/FamiliesAndMarriage/Families/InternationalFamilyLaw/Pages/Internationalparentalchildabduction.aspx
- List of Hague Convention countries:
<https://www.ag.gov.au/FamiliesAndMarriage/Families/InternationalFamilyLaw/Pages/HagueConventionontheCivilAspectsofInternationalChildAbduction.aspx>
- Information on forced marriage:
<https://www.mybluesky.org.au>