

What happens if my ex-partner abducts my child to another country

With many families having ties to other countries there can be risks that one party will seek to remove a child from Australia following a separation. For a family domiciled in Australia, in the event of separation, if there is a dispute about the living arrangements of the children and what country they should reside in the parties are encouraged under the *Family Law Act 1975* to participate in family dispute resolution. This is a type of mediation with an accredited Family Dispute Resolution Practitioner (FDRP) who will assist the parties to try and resolve the parenting issues in dispute.

Often where what country the children will reside in is an issue that cannot be resolved via mediation. In this event the party seeking to relocate the children to another country would need to apply to the Federal Circuit and Family Court of Australia ('FCFCOA') seeking orders to permit them to relocate the children to another jurisdiction. This is the appropriate and correct procedure to follow.

In some cases, a parent simply takes the children without the consent of the other parent and flees the country to another jurisdiction. This is known as international child abduction. In 1980 the *Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention)* was entered into between Australia and a number of other countries (but not all) and a list of those participating countries is **found here**. This is a multi-lateral treaty enforced between Australia and those other countries that provides a lawful procedure for the return of abducted children to their home countries. The Convention is implemented in Australia through section 111B of the *Family Law Act 1975* and the *Family Law (Child Abduction Convention) Regulations 1986*. The Attorney-General's Department of the Australian Government is responsible for administering the implementation of the Hague

Convention in Australia. In the event that a child is abducted from Australia, the parent will need to contact the Australian Central Authority to commence the process to make an application for the return of the child to Australia. The Australian Central Authority will then contact the relevant Government Department in the other country to institute proceedings in that country for the return of the child to Australia.

If there is a risk that your child will be abducted from Australia this can be prevented by having your children's names placed on the airport watchlist. You should obtain legal advice from a specialist family lawyer as a matter of urgency about this or contact the Australian Federal Police.

If a child's name is placed on the airport watchlist, this will prevent a child from departing the Commonwealth of Australia at any international airport located in Australia. If a person attempts to leave Australia with a child who is named on the watchlist, then they will be prevented from doing so by the Australian Federal Police.

You will need to complete an application for the return of your child to Australia and that application form is located on the Australian Government Attorney-General's Department website and is submitted to the Australian Central Authority. In determining whether a child is to be returned to Australia, the issues to be determined are:

1. Whether the child is under the age of 16 years.
2. Whether the child was a habitual resident of Australia immediately before the wrongful removal or retention.
3. Whether the removal or retention of the child breached the left behind parents "rights to custody".

It is important to note that Hague Convention matters are different to parenting proceedings in that they do not determine who a child shall live with or the living arrangements of the child. The Hague Convention matters are solely about the question of whether or not a child should be returned to their country of habitual residence. Once the child has returned to that country then proceedings are issued in that country (in Australia the FCFCOA) to deal with the parenting arrangements of the child.

A child's habitual residence is considered the country where they usually live and is a matter to be determined by the law of the Court. The child's level of connection and integration with that country as well as the intention of the parents is considered.

In respect of rights of custody, they exist under the law of the country of habitual residence, and the abduction must be in breach of those rights that the applicant must have held and been exercising at the time.

There are exceptions set out in the Hague Convention for the return of the child. If one of the exceptions is established then the Court does not have to return the child but has the discretion to do so. Those are:

1. If the person that is opposing the order for return of the child can show that the applicant had provided prior consent to or subsequent approval of the abduction. This is why it is important to get legal advice from a specialist family lawyer as soon as possible in these matters as you do not want to inadvertently take or fail to take any action that could be considered as subsequent approval of the abduction.

2. That the person opposing the return can show that there is a grave risk to the child of physical, psychological harm or place the child in any intolerable situation. For example, the child being subjected or exposed to family violence.
3. That the child has attained an age and a degree of maturity at which it is appropriate to take into account their views and they object to being returned.
4. That the child should not be returned by principles relating to human rights.

In the event that a parent is making an application for the return of a child from Australia back to another country, those proceedings are heard in the Federal Circuit and Family Court of Australia and are referred to as Hague Convention proceedings. It is important to note that the test under Hague proceedings is different to that set out under the *Family Law Act* namely that the best interest of the child of the paramount consideration. The test that is applied is as detailed above.

In Australia for applications filed 12 months after the abduction the Court may consider the child is now settled and which case there is no discretion to return.

This is a complex area of the law and requires specialist advice from a family lawyer.

The information in this article is general in nature and was accurate at the time of publication. Laws and circumstances can change. For advice specific to your situation, please seek professional legal advice.