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LawTalk Blog



International child abduction & the Hague Convention

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Australia is a party to an international agreement, known as the [Hague Convention](#).

The Hague Convention is an agreement between countries in relation to the issue of international child abduction. If a child is removed from their home country, an application can be brought under the Hague Convention for the return of the child to their home country.

The Hague Convention provides a process where parents can seek to have their child returned to their home country if they have been removed from that country to another country which is also a party to the Hague Convention.

In Australia, the Hague Convention will generally apply in one of two ways:

1. A child born in Australia is removed from Australia by one of their parents to another country which is also a party to the Hague Convention; or
2. A child born in a Hague Convention country is removed from that country and brought to Australia by a parent.

Melissa George, an Australian actress who has two children with Frenchman Jean-David Blanc, has [publicly made it known how she feels "trapped" in France](#) following the breakdown of her relationship with the children's father. Melissa George is currently required to remain in France with her two children and cannot move back to Australia without agreement with her children's father. If Melissa was to move back to Australia without the agreement of her children's father it is likely that she could face a Hague Convention application.

What do I need to consider if my child is removed from Australia?

1. Is the country to which your child has been taken, a signatory of the Hague Convention?

An application under the Hague Convention can only be made to or from a country that is a party to the Convention. You can access a full and up to date list of the [countries that are a party to the Hague Convention](#) online.

2. What are the requirements to be met under a Hague Convention application?

In order for an application under the Hague Convention to be successful the following requirements must be met:

1. The child must be a person under the age of 16 years.
2. The child must be “habitually resident” in the country of which they have been removed from. Put simply, this means that the country in which the child has been removed from must have been the country in which the child normally lives.
3. The parent requesting the return of the child must have “rights of custody”. Each parent of a child will have rights of custody unless there is a court order providing a parent with no right of custody. As well as this, anyone who has any of the following is likely to be regarded as having “rights of custody”:
 - A person with whom a child lives or spends time with under a parenting order; or
 - A person who has [parental responsibility](#) for a child under a parenting order; or
 - A person with whom a child is to communicate under a parenting order.

What do I need to consider if I have removed my child from a country and brought them to Australia?

If a child is removed from a Hague Convention Country and brought to Australia without the permission of the other parent, a Hague Convention application could be made against you for the return of your child to their home country.

The application will be made by a central authority on behalf of the parent requesting the return of the child. Each country that signs the Hague Convention is required to have a central authority to follow and implement the terms of the Hague Convention. In Australia, the central authority is the Australian Central Authority in the Attorney-General's Department.

If an application is brought against you, it is important to consider the following:

Has the State Central Authority satisfied the necessary requirements for a Hague Convention application?

For example, is the child under the age of 16 years, was the child ‘habitually resident’ in the other country and does the parent requesting the return of the child have rights of custody?

Even if the necessary requirements have been met, the court may not order a return of the child under certain exceptions such as:

1. The Hague Convention application was made over one year since the date of the removal of the child from the “home” country. In these circumstances, the court will only make an order returning the child if the court is satisfied that the child has not been settled into their new environment.
2. The parent requesting the return of the child was not exercising rights of custody when the child was removed to Australia. Under this exception, an enquiry is required to be made about the parents “rights of custody” in the country that the child has been removed from.
3. The parent requesting the return of the child consented to the removal of the child. Under this exception, it will need to be proved that the parent requesting the return of the child **consented** to the child being permanently removed from their ‘home’ country and that following the child’s removal, the parent requesting the return of the child accepted that the child would be remaining permanently in Australia.
4. There is a grave risk that if the child was returned to the “home” country that the child would be exposed to physical or psychological harm or otherwise placed in an intolerable position. The parent opposing the return of the child is required to prove that the return of the child would expose the child to physical or psychological harm. There is extensive case law on “the risk of harm” and how this defence will be interpreted by the courts.
5. The child, being of an appropriate age, has expressed a strong objection to the return.

Even if the child is of an appropriate age and expresses views to remain in Australia, this simply means that the views will be taken into consideration by the court and not necessarily result in an automatic order for the child to remain in Australia.

Penalties for removing your child from Australia

Removing your child from Australia without the consent of the other parent can constitute a criminal offence and is punishable by up to three years imprisonment.

If you wish to relocate overseas with your child, it is important that you seek the other parent’s agreement in writing. If agreement cannot be reached, you will need to consider making an application to the [Federal Circuit Court or Family Court of Australia](#) for relocation.

This is a very complex area of law. If you are considering an application to the Hague Convention or an application has been brought against you, it’s important that you seek legal advice from an experienced Family Lawyer.

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