

# Questionnaire concerning the Practical Operation of the 1980 Child Abduction Convention

Wherever responses to this Questionnaire make reference to domestic legislation, rules, guidance or case law relating to the practical operation of the 1980 Convention, **please provide a copy of the referenced documentation** in (a) the original language and, (b) wherever possible, accompanied by a translation into English and / or French.

<b>Name of State or territorial unit:</b> <sup>1</sup>	Australia
<i>For follow-up purposes</i>	
Name of contact person:	
Name of Authority / Office:	
Telephone number:	
E-mail address:	
Date:	

## PART I – PRACTICAL OPERATION OF THE 1980 CONVENTION

### Recent developments in your State<sup>2</sup>

1. Since the 2017 SC, have there been any significant developments in your State regarding the **legislation** or **procedural rules** applicable in cases of international child abduction? Where possible, please state the reason for the development and the results achieved in practice.

- No  
 Yes

Please specify:

In 2022, Australia amended the Family Law (Child Abduction Convention) Regulations 1986 (Regulations), which, together with section 111B of the Family Law Act 1975, implement the 1980 Convention into Australian law. The Family Law (Child Abduction Convention) Amendment (Family Violence) Regulations 2022 clarify the judicial handling of family violence risks in matters brought under the 1980 Convention, and codify judicial good practice. Specifically, the Amendment Regulations:

- clarify that court consideration of the ‘grave risk defence’ in paragraph 16(3)(b) of the Regulations can include consideration of any risk that the child would be subjected or exposed to family violence, regardless of whether the court is satisfied that family violence has occurred, will occur or is likely to occur;
- clarify that the court can include conditions on a return order for the purposes of reducing a risk under paragraph 16(3)(b) of the Regulations (being a grave risk that the return of the child would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation), regardless of whether the court considers that the risk will eventuate, is likely to eventuate or has eventuated in the past;
- add a non-exhaustive list of considerations that the court may have regard to when considering whether to include a condition in a return order or other order made to give effect to the Convention; and
- require that where the court is considering whether to refuse to make a return order on the basis of the grave risk defence, and a party to the proceedings raises a

<sup>1</sup> The term “State” in this Questionnaire includes a territorial unit, where relevant.

<sup>2</sup> This Part of the Questionnaire is intended to deal primarily with the developments in law and practice relating to international child abduction which have occurred in your State since the Seventh Meeting of the Special Commission (SC) to review the operation of the 1980 Abduction Convention and the 1996 Child Protection Convention (held from 10 to 17 October 2017) (“2017 SC”).

condition that could be included for the purpose of reducing a paragraph 16(3)(b) risk, that the court must consider whether it is appropriate to include the condition.

2. Following the Covid-19 pandemic,<sup>3</sup> have there been any **improvements** that have remained in your State in the following areas, in particular in relation to the **use of information technology**, as a result of newly adopted procedures or practices applicable to child abduction cases? In each case, please describe the tools, guidelines or protocols put in place.

a) Methods for accepting and processing return and access applications and their accompanying documentation;

Effective methods already in place continue to be used.

b) Participation of the parties and the child (e.g., appearance in court proceedings, mediation);

Post pandemic technology improvements have made it easier for the Court to facilitate the participation of overseas parents in court proceedings and mediation by video link.

Since the COVID pandemic, more hearings and mediations have taken place via video-link rather than in person, where convenient to the Court. This has significantly increased the convenience of hearings, as participants from all over Australia and the world can easily access the hearing in the same way. The mechanism used by the Court is often a videoconference link such as MS-teams, which can be easily forwarded to each interested person. Even where hearings take place in-person, the requesting parent and other overseas witnesses give evidence via videoconference, which is much more convenient than the past practice of setting up an individual AVL Link in the Courtroom which was cumbersome and time consuming.

c) Promoting mediation and other forms of amicable resolution;

Effective methods already in place continue to be used.

In early 2023, the Federal Circuit and Family Court of Australia introduced a new procedure involving convening a Court-based Family Dispute Resolution (FDR) Conference with a Registrar of the Court's Dispute Resolution Service and a child court expert in all 1980 Convention matters. This is an alternative dispute resolution (ADR) process that takes place in 3 parts, usually over one week very close to the final hearing and is free of cost to the user. It is run by two family law mediators (one lawyer and one social scientist) with training and experience in specialised Hague mediations, and attempts to resolve or narrow the issues in both the Convention matter and substantive parenting issues. It is designed to replicate the Hague mediation model developed by Victoria Legal Aid but which was not available in all Hague return proceedings.

d) Making arrangements for organising or securing the effective exercise of rights of access, including while pending return proceedings;

Effective methods already in place continue to be used.

e) Obtaining evidence by electronic means;

Post pandemic technology improvements have increased the quality and reliability of video link communication thereby facilitating the obtaining of evidence from overseas parents.

f) Ensuring the safe return of the child;

Effective methods already in place continue to be used.

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<sup>3</sup> This question aims to gather information about good practices that were developed in those exceptional circumstances and that will continue to be applied regardless of the pandemic.

- g) Cooperation between Central Authorities and other authorities;  
Effective methods already in place continue to be used.
- h) Providing information and guidance for parties involved in child abduction cases;  
Effective methods already in place continue to be used.

The Commonwealth Attorney-General's Department, as the Australian Central Authority, provides useful information on the Attorney-General's Department's website about overseas child abduction, how to make an application, and FAQs.

- i) Other, please specify.  
Please insert text here

3. Please provide the three most **significant decisions concerning the interpretation and application of the 1980 Convention** rendered since the 2017 SC by the relevant authorities<sup>4</sup> in your State.

Case Name	Court Name	Court Level	Brief summary of the ruling
Handbury & State Central Authority and Anor [2020] FamCAFC 5	Family Court of Australia	Full Court of Appeal	Her Honour Justice Bennett considered an application filed by the State Central Authority in relation to the father, who was seeking the return of his child to the UK. In this case the parents had agreed to travel to Australia and remain for a period of two years. Justice Bennett ordered the return of the child from Australia to the United Kingdom, based on the child having been wrongfully retained in Australia beyond the agreed timeframe between the parents (the principle of 'repudiatory retention'). The mother appealed the decision to the then Full Court of the Family Court of Australia. The Full Court approved the principle of law applying to the repudiatory retention of a child in Australia as identified by Justice Bennett, and as relied on in the decision of the UK Supreme Court, In the matter of C (Children) [2018] UKSC 8. The principle states that:  "Repudiatory retention occurs when a retaining parent forms a subjective intention...not to return the child to the state of habitual residence at the expiration of the period which was agreed between the parties as the date on which the child would be returned"

<sup>4</sup> The term "relevant authorities" is used in this Questionnaire to refer to the judicial or administrative authorities with decision-making responsibility under the 1980 Convention. Whilst in the majority of Contracting Parties such "authorities" will be courts (i.e., judicial), in some States Parties administrative authorities remain responsible for decision-making in Convention cases.

<p>Secretary, Department of Family and Community Services &amp; Magoulas [2018] FamCAFC 165</p>	<p>Family Court of Australia</p>	<p>Full Court of Appeal</p>	<p>In this matter, the applicant mother was seeking the return of her child from Australia to Ukraine. The mother’s Hague Convention application was unsuccessful at trial as the respondent father claimed that the child was ‘settled’ in Australia, as the application was filed more than one year after the child’s wrongful removal. The trial judge found in favour of the father, refusing to make a return order.</p> <p>The State Central Authority appealed on the basis that the trial judge erred in failing to exercise their residual discretion under Regulation 16(2) to order the child’s return, even where the child is found to be settled. There was no challenge to the finding that the child was settled in Australia. An independent children’s lawyer (ICL) was appointed on appeal. The ICL also contended that the appeal ought to be dismissed.</p> <p>The Full Court found, by considering previous cases and the Explanatory Statement to the 2004 Amending Regulations of Regulation 16, that there is no residual discretion for judges to order the return of a child where it is established that the child is settled in Australia. In fact, judges must refuse to make a return order where the application was made more than 1 year from the day on which the child was removed to or retained in Australia and the person opposing the return establishes that the child is settled in their new environment. The State Central Authority’s appeal was dismissed.</p>
<p>Walpole &amp; Secretary, Department of Communities and Justice [2020] FamCAFC 65</p>	<p>Family Court of Appeal</p>	<p>Full Court of Appeal</p>	<p>In this matter, the appellant mother left New Zealand with her two children with the assistance of New Zealand police. The respondent father lived in New Zealand and was permanently banned from entering Australia. This matter raised serious concerns of family violence and the appellant mother was granted leave to raise the grave risk defence before the court of appeal. The court considered the pattern of practice in relation to the father and mother’s separation and reconciliation, together with the children’s experience of chronic exposure to family violence as complex trauma. The court considered the</p>

			<p>report of the Family Consultant, which noted that events of the past are more usually the most reliable indicator as to the prediction of current and future family violence. The court allowed the appeal and dismissed the application of the Central Authority as the applicant in the proceedings. The court noted that although the requesting overseas authority and the Central Authority disclosed the mother's application for a protection order and flagged serious risks in relation to family violence, it considered that further attempts could have been made to establish the father's criminal antecedents and the involvement (if any) of child protection agencies in New Zealand in relation to his other children.</p>
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4. Please provide a brief summary of **any other significant developments** in your State since the 2017 SC.

Child Abduction Convention proceedings are becoming more lengthy and costly, with frequent appeals, both to the Full Court of the Federal Circuit and Family Court and the High Court. Matters are rarely disposed of within the 42 days envisaged by the Regulations and the Conventions. In *Barnett v Secretary DCJ* [2023] HCA 7, the High Court reiterated its position in *MW v Director General, DOCS* (2008) 82 ALJR 629 that the speedy disposition of applications must be subordinate to the “making of proper and reasonable enquiries and the gathering of evidence.”

**Issues of compliance**

5. Has your State faced any particular **challenges with other Contracting Parties** to the 1980 Convention in achieving successful cooperation? Please specify the challenges that were encountered and, in particular, whether the problems appear to be systemic.

- No
- Yes

Please specify the challenges encountered:

Australia has experienced a range of issues with other states who are a party to the 1980 Convention. These have included the lack of assessment of a case against the principles of the Convention. In some cases, the only assessment has appeared to have been a best interest style consideration, without reference at all to the requirements of the Convention. We have also experienced difficulty with the level of communication and responsiveness of some Central Authorities on the progress of matters, and in some instances the ACA has needed to communicate directly with overseas applicants in order to secure a response.

There can be difficulty receiving information from overseas CAs about dates for court hearings and/or adjournments, no communication to acknowledge receipt of an application, limited or no response from some overseas CAs regarding the process for Hague matters in their country (such as mediation, legal assistance and filing an application with the court).

There has been an increase in highly resourced taking parents instituting or actively participating in parenting (relocation) proceedings in the requesting state of habitual residence while at the same time opposing the Hague application being heard in the requested state. In such cases the ACA and the Australian courts need to be accurately apprised of overseas domestic proceedings in a timely manner.

In some countries the court structure, for example for appeals, does not accord with the relevant country profile.

In one matter an overseas authority refused to file an application with their court. The overseas Central Authority indicated that this was because the respondent mother produced a letter signed by the applicant father providing his consent to the mother taking the children from Australia to a third country. The applicant provided an explanation, stating that although he had signed the letter he withdrew his consent a week later. The ACA respectfully requested the overseas Central Authority to reconsider its position. However, despite withdrawing his consent, together with the fact that the consent was in relation to taking the children to a third country (and not the requested country), the authority in the requested country was unwilling to reconsider the matter. The applicant then felt he had no option but to pursue access orders in the requested jurisdiction. In this, and other cases, some overseas CAs have refused the application based on questions that ought to have been determined by the overseas court.

There have been applications for return that remain open for several years due to delays in judicial proceedings. Some cases have been open for more than four years. In one case a return order was upheld on appeal to the overseas court, however the matter remains ongoing as the child cannot be located. The ACA's attempts to communicate with the relevant overseas CA have been unsuccessful to date, despite attempts to seek assistance through the International Hague Network of Judges.

In some countries it is not possible to obtain orders preventing a child from being removed from an overseas country while the 1980 proceedings are considered. Many jurisdictions do not have the equivalent of airport watchlist orders and/or travel injunctions and/or orders requiring the surrendering of passports. In some cases this has led to the child being removed from the country prior to the return order being enforced. In some instances, the overseas CA is not involved with the enforcement process and the taking parent has been able to abscond with the child before the return was able to be enforced.

In some cases the ACA has received large volumes of documents that have not been accompanied by a certified English translations and some documents that are irrelevant to 1980 proceedings. In other cases relevant material has not been provided. For example in one matter, during a discussion with the applicant's lawyers, it became apparent to the ACA that there was highly relevant evidentiary material that had not been referred to the ACA by the overseas CA. The applicant's lawyers provided the ACA with those documents but they had not been translated into English and were provided very late to the ACA. The overseas CA did not assist in translating the documents. This impacts the potential success of a request and can place overseas applicants at a significant disadvantage.

In some cases we have been unable to obtain the correct contact details to refer an application to an overseas CA. In some jurisdictions parents receive very limited assistance to engage an overseas lawyer. In this respect we note that of course some countries have made a reservation against costs under Articles 26 and 42.

6. Are you aware of situations or circumstances in which there has been **avoidance or improper application** of the 1980 Convention as a whole or any of its provisions in particular?



- No  
 Yes

Please specify:

Some requested States have been slow in their response when return applications are made increasing the risk that abducted child/children will become settled in their new environment. In some cases Central Authorities have been slow to provide information about outcomes or have not provided any information at all. There have also been some cases where there has been no acknowledgment at all of applications that have been referred and assistance has been sought through diplomatic channels. By way of example, one matter was referred to an overseas CA, filed in court and then adjourned until further notice due to unforeseen circumstances involving the court's Judges. The matter was not heard for over 18 months and the ACA were required to continually seek updates to pass onto the applicant. Updates from the overseas CA would provide little to no information about how or when the matter would be likely to progress.

There have also been cases where an overseas CA has claimed that an application cannot be progressed due to being unable to locate the subject child, yet have performed a welfare check on the child, suggesting that the location of the child is known. Such delays can disadvantage an applicant's application under article 12 and are not consistent with article 11 of the Convention. As noted in response to the question above, in one matter an overseas CA has been unable to locate a child following a return order being upheld on appeal. The overseas CA has not responded to any communications at all, despite assistance being sought through the International Hague Network of Judges.

### Addressing delays and ensuring expeditious procedures

7. The 2017 SC encouraged States to review their procedures (including, where applicable, at the Central Authority, judicial, enforcement and mediation / other alternative dispute resolution - "ADR" phases)<sup>5</sup> in order to identify possible sources of delay and implement the adjustments needed to secure shorter time frames consistent with Articles 2 and 11 of the Convention. Please indicate any identified sources of delay at the following phases:

#### Central Authority

- No  
 Yes  
 Procedure not yet revised

If the answer to the above is YES, please share any measures that have been implemented to address the delays:

In some instances, delay is still encountered where applications received by the ACA do not contain sufficient evidence to satisfy the requirements of the Hague Convention. In those cases, the ACA has procedures to ensure that any missing information is sought quickly from the requesting jurisdiction. There continue to be many cases where it takes applicants months to provide additional information required by the ACA or the Australian court. This can significantly delay the filing of applications in an Australian court.

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<sup>5</sup> See C&R No 4 of the 2017 SC, "The Special Commission acknowledges that some States have made progress in reducing delays and encourages States to review their procedures (including, where applicable, at the Central Authority, judicial, enforcement and mediation / ADR phases) in order to identify possible sources of delay and implement the adjustments needed to secure shorter time frames consistent with Articles 2 and 11 of the Convention."

For outgoing matters (applications from Australia to an overseas Central Authority) the ACA encourages applicants to seek assistance from International Social Services Australia (ISS Australia) to prepare their application. ISS Australia is a funded non-government organisation, that receives funding from the Australian Government to provide legal advice, prepare outgoing Hague applications and provide social support services to people affected by international parental child abduction. The involvement of ISS Australia ensures that applications are prepared by lawyers experienced with Convention applications. This minimises the potential for delays to be caused by insufficient evidence.

### Judicial proceedings

- No  
 Yes  
 Procedure not yet revised

If the answer to the above is YES, please share any measures that have been implemented to address the delays:

As noted under question 4 above, Child Abduction Convention proceedings are becoming more lengthy and costly, with frequent appeals, both to the Full Court of the Federal Circuit and Family Court and the High Court. Matters are rarely disposed of within the 42 days envisaged by the Regulations and the Conventions. In *Barnett v Secretary DCJ* [2023] HCA 7, the High Court reiterated its position in *MW v Director General, DOCS* (2008) 82 ALJR 629 that the speedy disposition of applications must be subordinate to the “making of proper and reasonable enquiries and the gathering of evidence.”

All return applications filed in the Federal Circuit and Family Court are triaged, safeguarding orders made and then allocated for final hearing by one of Australia's Hague Network judges who are ideally placed to monitor any delays.

### Enforcement

- No  
 Yes  
 Procedure not yet revised

If the answer to the above is YES, please share any measures that have been implemented to address the delays:

Australia has a successful enforcement regime in place. With appropriate mechanical orders included in return orders, it is unusual for the ACA to have to return to court to seek enforcement of a return order

We are seeing many respondents intentionally seeking to delay their compliance with return orders, We respond to these situations by proactively seeking very specific orders outlining the mechanics of the child's return in cases where it becomes apparent that a respondent may not comply with a standard return order.

A number of significant practical issues with enforcement of returns that arose during the pandemic have now resolved due to the opening of international borders and the end of mandatory hotel quarantine.

### Mediation / ADR

- No



- Yes
- Procedure not yet revised

If the answer to the above is YES, please share any measures that have been implemented to address the delays:

Effective methods already in place continue to be used.

In early 2023, the Federal Circuit and Family Court of Australia introduced a new procedure involving convening a Court-based Family Dispute Resolution (FDR) Conference with a Registrar of the Court’s Dispute Resolution Service and a child court expert in all 1980 Convention matters. This is an alternative dispute resolution (ADR) process that takes place in 3 parts, usually over one week very close to the final hearing and is free of cost to the user. It is run by two family law mediators (one lawyer and one social scientist) with training and experience in specialised Hague mediations, and attempts to resolve or narrow the issues in both the Convention matter and substantive parenting issues. It is designed to supplement and replicate the successful Hague mediation model developed by Victoria Legal Aid but which is not available in all Hague return proceedings

It is unclear whether, or how, this new procedure may impact on the time taken to resolve Convention matters. The new procedure is likely to allow some parents to resolve the Hague matter but even where it doesn't it has the potential to benefit the family by ensuring that consideration is given to preparing both the parents and the child(ren) for both judicial outcomes of the matter (return or non return).

**Court proceedings and promptness**

8. Does your State have mechanisms in place to deal with return decisions within six weeks (e.g., production of summary evidence, limitation of appeals, swift enforcement)?

- No
- Yes

Please specify:

Australian domestic laws incorporating the Hague Convention provide for expedited determination, and makes provisions for reasons to be sought where an application has not been determined within 42 days - subregulations 15(2) and 15(4) of the Family Law (Child Abduction) Regulations 1986

As noted under question 4, Child Abduction Convention proceedings are becoming more lengthy and costly, with frequent appeals, both to the Full Court of the Federal Circuit and Family Court and the High Court. Matters are rarely disposed of within the 42 days envisaged by the Regulations and the Conventions. In *Barnett v Secretary DCJ* [2023] HCA 7, the High Court reiterated its position in *MW v Director General, DOCS* (2008) 82 ALJR 629 that the speedy disposition of applications must be subordinate to the “making of proper and reasonable enquiries and the gathering of evidence.”

It is not unusual for cases to take more than 6 weeks to be resolved.

9. If the response to question 8 above is “No”, does your State contemplate implementing mechanisms to meet the requirement of prompt return under the 1980 Convention (e.g., procedures, bench-books, guidelines, protocols)?

- No  
Please specify:  
Please insert text here
- Yes

Please specify:  
Please insert text here

10. Do the courts in your State make use of direct judicial communications<sup>6</sup> to ensure prompt proceedings?

- No  
 Yes

Please specify:

Direct judicial communication is used for dealing with general enquiries between contracting states and for dealing with specific case related issues subject to appropriate natural justice and due process requirements being met. Judicial communication cannot take place without the consent of all parties to the return application (but invariably consent is given).

11. If your State has not designated a judge to the International Hague Network of Judges (IHNJ) does your State intend to do so in the near future?

- No  
 Yes

Please specify:

Australia has designated three sitting judges to the International Hague Network of Judges

12. Please comment upon any cases ( where your State was the requested State) in which the judge (or decision-maker) has, before determining an application for return, communicated with a judge or other authority in the requesting State regarding the issue of the child's safe return. What was the specific purpose of the communication? What was the outcome?

There are several cases in which a judge has used direct judicial communication with a judge of the requesting State regarding the issue of the child's safe return.

In Department of Communities and Justice & Bamfield [2021] FedCFamC1F 263 (8 December 2021), her Honour enquired of a Belgian judge of the 'simple and rapid' procedure available under the 1996 Convention to have orders proposed to be made enforceable in Belgium. Having satisfied herself that certain return conditions in the orders could be made enforceable in Belgium, her Honour proceeded to make those orders.

In State Central Authority v Muteki (No 2) [2018] FamCA 783, the parties consented to direct judicial communication between Justice Bennett and the Hague Network Judge for New Zealand about protection orders from the Family Court of New Zealand under the Family Violence Protection Act 1995 (NZ). The purpose of the direct judicial communication was in relation to ascertaining what protective orders could be made for the mother and the child on return. Direct judicial communication was used to effect the safe return of the child to New Zealand. The outcome was that a return order was issued. Regarding the direct judicial communication in relation to protective conditions, Justice Bennett held that the most efficacious way to effect the protective orders in New Zealand was to hold the mother responsible for obtaining such protective orders, such as a Domestic Violence Order, on her return.

In State Central Authority & Del Rosario [2019] FamCA 607 (14 August 2019), information relating to conditions imposed on the return order was accessed through central authorities and confirmed by direct judicial communication between Justice Bennett and

<sup>6</sup> For reference, see "Direct Judicial Communications - Emerging Guidance regarding the development of the International Hague Network of Judges and General Principles for Judicial Communications, including commonly accepted safeguards for Direct Judicial Communications in specific cases, within the context of the International Hague Network of Judges".

Brazil. The parties consented to the direct judicial communication between Justice Bennett and the judge designated to the International Hague Network of Judges for Brazil. Justice Bennett posed the following questions: (i) can the parties file consent orders in the Family Court of Brazil that can be made into interim court orders regarding temporary rights of custody and visitation in terms of the proposed conditions..., (ii) is there any other means by which an order could be obtained in the Family Court in Brazil in terms of the proposed conditions..., (iii) does the mother have to be present before the Court for the order to be made and if not present personally would she need to be represented, (iv) does the Court have any facility for holding the child's passport in safe custody pursuant to an order of that Court, and (v) can the Brazilian Central Authority investigate whether there is any outstanding warrant for the arrest of the mother or whether she facing criminal charges.

The direct judicial communication was related to the child's safe return, as the mother was arguing that the child's return to Brazil would expose the child to a grave risk of harm or otherwise place the child in an intolerable situation. Justice Bennett (with the assistance of the information obtained in the direct judicial communication) found the grave risk defence must fail, and ordered the return of the child to Brazil.

## The role and functions of Central Authorities designated under the 1980 Convention

### In general

13. Have any of the duties of Central Authorities, as set out in **Article 7** of the 1980 Convention, raised any particular problems in practice either in your State, or in Contracting Parties with which your State has cooperated?

- No  
 Yes

Please specify:

In some instances the ACA has experienced delayed responses, when requesting additional information or updates from other Central Authorities. This can create unnecessary obstacles in the management of cases.

In some Contracting states, the provision or facilitation of legal aid and advice tends to protract cases as opposed to expediting the Hague application process.

Some overseas Central Authorities are unable to provide information that our court requires, for example information about applicable laws or about entitlements for taking parents on return. The country profile does not always provide sufficient detail about the legal procedures in some countries.

14. Has your Central Authority encountered any challenges with the application of **any of the 1980 Convention provisions**? If so, please specify.

- No  
 Yes

Please specify:

In Secretary, NSW Department of Communities and Justice and Barnett [2021] FamCA 439, involving an incoming return request from Ireland, the issue in dispute was whether the father had rights of custody to satisfy jurisdictional facts. Difficulties obtaining a transcript of oral reasons for decision, supporting the father's rights of custody, resulted in significant complexity and delay.

In future cases where oral reasons will be relevant to the determination of a Hague application it would be extremely helpful if Central Authorities would ensure that

applicants take the necessary steps to obtain transcripts of the relevant oral decision at an early stage of proceedings.

### Legal aid and representation

15. Do the measures your Central Authority takes to provide or facilitate the provision of legal aid, legal advice and representation in return proceedings under the 1980 Convention (**Art. 7(2)(g)**) result in delays in proceedings either in your own State, or, where cases originate in your State, in any of the requested States that were dealt with?

- No  
 Yes

Please specify:

16. Are you aware of any other challenges in your State, or, where cases originate in your State, in any of the requested States your Central Authority has dealt with, regarding the **obtaining of legal aid, advice and / or representation for either left-behind parents or taking parents?**<sup>7</sup>

- No  
 Yes

Please specify:

The ACA notes that in some jurisdictions, there are significant delays for applicants seeking legal aid or pro bono representation. In some jurisdictions, eligibility for legal aid from the requested State cannot be determined until eligibility has been assessed in the applicant's requesting State. This can lead to delays and confusion - particularly where notional eligibility for legal aid in the requesting jurisdiction may similarly be dependent on having been rejected in the requested jurisdiction resulting in a stand-off situation.

### Locating the child

17. Has your Central Authority encountered any **challenges with locating children** in cases involving the 1980 Convention, either as a requesting or requested State?

- No  
 Yes

Please specify the challenges encountered and what steps were taken or are considered to be taken to overcome these challenges:

The ACA has encountered challenges locating children who have been moved by their parent within the Schengen Area as well as in some other jurisdictions. In instances where a child is unable to be located Australia seeks international assistance through Interpol or from partner law enforcement agencies.

The ACA has sometimes encountered issues with seeking a Yellow notice or EU notice where required.

The ACA has a number of information sharing agreements with other government agencies within Australia to assist in locating the taking parent and child(ren). These agreements, with the agencies responsible for immigration and social security

<sup>7</sup> See paras 1.1.4 to 1.1.6 of the C&R of the Fifth Meeting of the SC to review the operation of the 1980 Child Abduction and the practical implementation of the 1996 Child Protection Convention (30 October – 9 November 2006) (2006 SC C&R) and paras 32 to 34 of the C&R of the Sixth Meeting of the SC to review the operation of 1980 and 1996 Conventions (1-10 June 2011 and 25-31 January 2012) (2012 SC C&R), available on the HCCH website at [www.hcch.net](http://www.hcch.net) under “Child Abduction Section” then “Special Commission meetings”.

matters, stipulate the circumstances and type of information that may be requested and provided.

Australian courts can order the provision of information from persons or agencies that are believed to know the location of the taking parent and the child(ren).

In some instances, albeit rarely, private investigators have been used to locate respondents and children.

In one outgoing case, the overseas central authority requested that the applicant parent provide further information regarding the location of the the respondent. The authority requested that the applicant try contacting the respondent to ascertain their whereabouts before the authority would conduct further searches. This was concerning because the applicant had an Apprehended Violence Order in place against them that prohibited them from contacting the respondent.

### **Voluntary agreements and bringing about an amicable resolution of the issues**

18. How does your Central Authority (either directly or through any intermediary) take, or is considering taking, appropriate steps under **Article 7(c)** to bring about an amicable resolution of the issues? Please explain:

The ACA encourages voluntary agreement by encouraging parties to participate in mediation where appropriate. In such instances, the ACA can offer international family mediation, through a funded non-government agency, or through the courts, for the purpose of reaching an amicable resolution.

As previously above, the Federal Circuit and Family Court of Australia has recently introduced a new procedure involving convening a Court-based Family Dispute Resolution (FDR) Conference with a Registrar of the Court's Dispute Resolution Service in all 1980 Convention matters. This is an ADR process that takes place in 3 parts, is run by an experienced Family Law mediator, and attempts to resolve or narrow the issues in both the Convention matter and substantive parenting issues.

A Judge led mediation has recently been offered by the Family Court of Western Australia.

In initial correspondence with respondents, it is often expressly noted that a voluntary return is available to avoid the proceedings - and some respondents take the opportunity to voluntarily return the child back to the country of habitual residence.

19. In the case that your Central Authority offers mediation services, or other alternative dispute resolution methods to bring about an amicable resolution of the issues, has your Central Authority reviewed these procedures in the light of the framework of international child abduction cases (e.g., by providing trained, specialised mediators, including with cross-cultural competence and necessary language skills<sup>8</sup>)?

Please specify:

Specialised NGO mediators have provided mediation services in appropriate cases. Hague mediations have also been conducted through Victoria Legal Aid and Australia's family

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<sup>8</sup> For reference, please see the recommendation in the Guide to Good Practice on Mediation, item 3.2, paras 98-105, "Specific training for mediation in international child abduction cases", available on the HCCH website at [www.hcch.net](http://www.hcch.net) under "Child Abduction Section" then "Guides to Good Practice".

courts have more recently arranged in-house mediation using court mediators or through the provision of a judge led mediation.

20. Should the services mentioned in the question above not yet be provided, does your Central Authority intend to provide them in the future?

Please provide comments:

Please see the discussion about ADR above.

21. Has your State considered, or is it in the process of considering, the establishment of a central service for international family mediation to facilitate access to information on available mediation services and related issues for cross-border family disputes involving children?<sup>9</sup>

No

Please explain:

This task has been entrusted to the Central Authority

Yes

Please explain:

Please insert text here

### Ensuring the safe return of children<sup>10</sup>

22. How does the competent authority in your State obtain information about the protective measures available in the requesting State when necessary to ensure the safe return of the child?

Please explain:

The ACA requests this information from the overseas requesting authority. In our experience such information is readily given.

Where the 1996 Convention is in force, arrangements can be made to ensure that any child protection concerns are appropriately communicated, Australian courts can, and do, make orders, in the context of a return, on an urgent basis under article 11 to deal with child safety concerns. These enable recognition and, if necessary, enforcement of those associated orders in the requesting jurisdiction upon the child's return if that jurisdiction is also a party to the 1996 Convention.

23. If requested as a safe return measure (e.g., in accordance with the 1996 Convention), would your Central Authority be in a position to provide, either directly or through intermediaries, a report on the situation of the child after a certain period of time after the return?

No

Yes

Please specify:

The ACA will generally be able to arrange for a report on the situation of the child post return if the request is made under the 1996 Convention.

### Information exchange, training and networking of Central Authorities

<sup>9</sup> As it has been encouraged in the Guide to Good Practice on Mediation, Chapter 4, on "Access to Mediation". paras 114-117. See also 2011 / 2012 SC C&R at para. 61.

<sup>10</sup> See Art. 7(2)(h) of the 1980 Convention.



24. Has your Central Authority shared experiences with other Central Authority(ies), for example by organising or participating in any networking initiatives such as regional meetings of Central Authorities, either in person or online?<sup>11</sup>

- No  
 Yes

Please specify:

The ACA has regular contact with many overseas Central Authorities to discuss matters of mutual interest such as administrative procedures, legal and policy frameworks. The ACA also regularly attends international meetings and Conferences to share its experience with the Children's Conventions and to learn from other Central Authorities.

### Case management and collection of statistical data on applications made under the Convention

25. Has your Central Authority developed any protocols or internal guidelines for the processing of incoming and outgoing cases?

- No  
 Yes

Please specify and share the relevant instruments whenever possible:

The ACA has internal administrative procedures in place to ensure the prompt handling of cases.

26. Does your Central Authority operate a case management system for processing and tracking incoming and outgoing cases?

- No  
 Yes

Please specify:

The ACA has a case management system called IFaM.

27. Does your State collect statistical data on the number of applications made per year under the 1980 Convention (e.g., number of incoming and / or outgoing cases)?<sup>12</sup>

- No  
 Yes

In case this information is publicly made available, please share the links to the statistical reports:

Limited information is published in the Attorney-General's Department's Annual Reports, see: <https://www.ag.gov.au/about-us/accountability-and-reporting/annual-reports>.

### Transfrontier access / contact<sup>13</sup>

28. Since the 2017 SC, have there been any significant developments in your State regarding Central Authority practices, legislation, procedural rules or case law applicable in cases of transfrontier access / contact?

<sup>11</sup> See, in particular, Chapter 6.5, on twinning arrangements, of the Guide to Good Practice – Part I – Central Authority Practice, available on the HCCH website at [www.hcch.net](http://www.hcch.net) (see path indicated in note 8).

<sup>12</sup> In the Country Profile for the 1980 Child Abduction Convention, question No 23(e), States are asked to inform whether statistics related to applications under the Convention are publicly available. Please note that, at its meeting of 2021, according to Conclusion & Decision (C&D) No 19, the Council on General Affairs and Policy (CGAP) mandated the discontinuance of INCASTAT.

<sup>13</sup> See C&R Nos 18-20 of the 2017 SC.

- No
  - Yes
- Please specify:

29. Has your Central Authority encountered any problems as regards cooperation with other States in making arrangements for organising or securing the effective exercise of rights of access / contact?

- No
  - Yes
- Please specify:

Some jurisdictions will not accept an affidavit of law as to a requesting parent's rights of access as sufficient evidence to accept an application and require a determination of enforceability by a court before they will take action. It may be difficult for an Australian parent to obtain a determination of this kind from an Australian court as courts may be reluctant to exercise jurisdiction when a child is not in Australia. This has created difficulties for some parents.

Access applications have been refused by overseas central authorities without providing reasons for refusal in accordance with Article 27 of the Convention.

In some cases applications for access have been refused because there was no abduction that preceded the request.

30. Has your State had any challenges, or have questions arisen, in making arrangements for organising or securing the effective exercise of rights of access / contact under **Article 21** when the application was *not* linked to an international child abduction situation?<sup>14</sup>

- No
  - Yes
- Please specify:

Some overseas CAs have refused to accept an access application from a parent in Australia solely because there was no abduction of the child preceding that request.

The enforcement of access arrangements presents a challenge across many jurisdictions.

31. In the case of access / contact applications under **Article 21**, which of the following **services** are **provided by your Central Authority**?

Position	Services provided
A request of assistance to organise or secure effective exercise of rights of access in <b>another Contracting Party</b> (as requesting State)	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> 1. Assistance in obtaining information on the operation of the 1980 Convention</li> <li><input checked="" type="checkbox"/> 2. Assistance in obtaining information on the relevant laws and procedures in the requested State</li> <li><input checked="" type="checkbox"/> 3. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide</li> <li><input checked="" type="checkbox"/> 4. Transmission of the request to the Central Authority or to the competent authorities in the requested State</li> </ul>

<sup>14</sup> According to C&R No 18 of the 2017 SC, “The Special Commission agrees that an application to make arrangements for organising or securing the effective exercise of rights of access / contact under Article 21 can be presented to Central Authorities, independently of being linked or not, to an international child abduction situation.”

	<input type="checkbox"/> 5. Assistance in initiating judicial or administrative proceedings with a view to making arrangements for organising or securing the effective exercise of rights of access <input type="checkbox"/> 6. Assistance in providing or facilitating the provision of legal aid and advice <input type="checkbox"/> 7. Assistance in obtaining private legal counsel or mediation services, where needed in the requested State <input checked="" type="checkbox"/> 8. Referral to other governmental and / or non-governmental organisations for assistance <input checked="" type="checkbox"/> 9. Provision of regular updates on the progress of the application <input type="checkbox"/> 10. Other, please specify: Please insert text here
A request of assistance to organise or secure effective exercise of rights of access in your State (as requested State)	<input checked="" type="checkbox"/> 1. Providing information on the operation of the 1980 Convention and / or the relevant laws and procedures in your State <input type="checkbox"/> 2. Assistance in initiating judicial or administrative proceedings with a view to making arrangements for organising or securing the effective exercise of rights of access <input type="checkbox"/> 3. Assistance in providing or facilitating the provision of legal aid and advice <input type="checkbox"/> 4. Assistance in obtaining private legal counsel or mediation services available in your State <input checked="" type="checkbox"/> 5. Referral to other governmental and / or non-governmental organisations for assistance <input checked="" type="checkbox"/> 6. Regular updates on the progress of the application <input type="checkbox"/> 7. Other, please specify: Please insert text here

32. Should your State also be a Contracting Party to the 1996 Convention, are you aware of any use being made of **provisions of the 1996 Convention**, including those under Chapter V, **in lieu of or in connection with an application under Article 21** of the 1980 Convention?

- No  
 Yes

Please specify:

The ACA regularly receives requests for the registration of overseas measures of protection under the Family Law (Child Protection Convention) Regulations 2003. The ACA also assists parents in Australia to make similar requests for recognition of Australian parenting orders in outgoing matters. Many orders are registered in Australia under that regime, avoiding the need for parents to make an application seeking contact with a child under Australia's domestic law framework.

The Australian Central Authority only offers mediation in relation to applications for access under the 1980 Convention so the ability to enforce a registered order can be advantageous.

## Special topics

### Obtaining the views of a child in a child abduction case

33. When obtaining the views of a child in a child abduction proceeding in your State's jurisdiction, what are the elements normally observed and reported by the person hearing the child (e.g., expert, judge, guardian *ad litem*? (E.g., the views of the child on the procedures, the views of the child on the subject of return, the maturity of the child, any perceived parental influence on the child's statements)?

Please explain:

Elements are observed and reported on by Family Consultants in 1980 Convention matters. Courts tend to limit the questions asked of a Family Consultant to those necessary to determine the relevant matters under the Convention arising in that case.

An Independent Children's Lawyer (ICL) may also be appointed by a court.

34. Are there any procedures, guidelines or principles available in your State to guide the person (e.g, expert, judge, guardian *ad litem*) in seeking the views of the child in a child abduction case?

- No  
 Yes

Please specify:

Section 68L of the Family Law Act 1975 provides that the court may make an order that the child's interests in the proceedings ought to be independently represented by a lawyer (an Independent Children's Lawyer). In its current form, subsection 68L(3) restricts the appointment of ICLs to 'exceptional circumstances', however on 29 March 2023, the Family Law Amendment Bill 2023 was introduced into the Australian Parliament. The Bill proposes, among other things, the repeal of the subsection 68L(3) restriction. If passed, this will enable judges to appoint ICLs in proceedings under the 1980 Convention on the same basis that they would do so in domestic proceedings.

## Article 15

35. As requesting State (outgoing applications), how often have judicial or administrative authorities in your State received requests for Article 15 decisions or determinations?

- Do not know  
 Never  
 Rarely  
 Sometimes  
 Very often  
 Always

36. As requested State (incoming applications), how often have judicial or administrative authorities in your State requested Article 15 decisions or determinations?

- Do not know  
 Never  
 Rarely  
 Sometimes  
 Very often  
 Always

37. Please indicate any good practices your State has developed to provide as complete as possible information in the return applications as required under Article 8 with a view to speed up proceedings?

Please indicate:

The ACA has internal administrative procedures to assist in the processing of applications under the Convention. In the event an application appears not to meet any of the key requirements of the Convention, the ACA will write to the applicant and advise that the ACA is considering rejecting the application, including the basis for doing so. The applicant is provided with an opportunity to provide additional information or evidence to address the issue. If the applicant is unable to provide further evidence/information to satisfy the ACA that the key requirements of the Convention are met, then the ACA will proceed to make a

decision on the information and evidence that has been provided. If the application is rejected the applicant is notified of the decision and provided with a statement of reasons. Such decisions are judicially reviewable administrative decisions.

As noted above, the Australian Government funds ISS Australia to prepare outgoing applications for Australian applicants free of charge. The quality of these applications is high as they are prepared by dedicated lawyers familiar with the Convention.

38. Considering C&R No 7 of the 2017 SC,<sup>15</sup> what information do you suggest adding to the Country Profile for the 1980 Convention, either as requested State or requesting State in relation to Article 15?

Please insert your suggestions:

Information about family violence and financial support services available on return or website addresses where such information can be accessed.

### Relationship with other international instruments on human rights

39. Has your State faced any challenges, or have questions arisen, in processing international child abduction cases where there was a **parallel refugee claim** lodged by the taking parent?

- No  
 Yes

If possible, please share any relevant case law or materials that are relevant to this type of situation in your State or, alternatively, a summary of the situation in your State:  
 Please insert text here

- Do not know

40. Has the concept of the **best interest of the child** generated discussions in your State in relation to child abduction proceedings? If it is the case, please comment on any relevant challenges in relation to such discussions.

- No  
 Yes

Please provide comments:

There has been significant public and media commentary regarding the best interest of the child in 1980 Convention matters, particularly in the context of family violence and grave risk, and also in the context of First Nations children.

This position has been judicially considered. For example, in *DP v Commonwealth Central Authority* (2001) 206 CLR 401; their Honours Gaudron, Gummow and Hayne JJ concluded that it was not possible to assess grave risk without considering the best interests of the child, and a court can't avoid doing so by saying that it is not for them to consider merits of custody. Their Honours stated at paragraph 41 that:

“In a case where the person opposing return raises the exception, a court cannot avoid making that prediction by repeating that it is not for the courts of the country to which or in which a child has been removed or retained to inquire into the best interests of the child. The exception requires courts to make the kind of inquiry and prediction that will inevitably involve some consideration of the interests of the child.

<sup>15</sup> See C&R No 7: “The Special Commission recommends amending the Country Profile for the 1980 Convention to include more detailed information on the Article 15 procedure. It is further recommended that an Information Document on the use of Article 15 be considered with, if necessary, the assistance of a small Working Group.”

Such a position has also been supported by more recent cases such as *Commonwealth Central Authority v Sangster* [2018] FamCA 765, in which her Honour Justice Bennett emphasised "the independent child's lawyer was an advocate for the children's best interests, to the extent that best interest considerations are relevant in these proceedings" [at paragraph 102]. In *Department of Communities and Justice v Hays* [2022] FedCFamC1F 752, his Honour Justice Strum emphasised: "Accordingly, the best interests of the children, although not irrelevant, are not the paramount consideration. Rather, these proceedings are merely to determine in which forum their best interests will be litigated between their parents' [at paragraph 1].

As mentioned under question 1, Australia amended the Family Law (Child Abduction Convention) Regulations 1986, Australia's implementing legislation, through the Family Law (Child Abduction Convention) Amendment (Family Violence) Regulations 2022, to clarify the judicial handling of family violence risks in matters brought under the 1980 Convention, and codify judicial good practice.

### Use of the 1996 Convention<sup>16</sup>

41. If your State is not Party to the 1996 Convention, is consideration being given to the possible advantages of the 1996 Convention (please comment where applicable below):
- (a) providing a jurisdictional basis for urgent protective measures associated with return orders (**Arts 7 and 11**)  
Please insert text here
  - (b) providing for the recognition of urgent protective measures by operation of law (**Art. 23**)  
Please insert text here
  - (c) providing for the advance recognition of urgent protective measures (**Art. 24**)  
Please insert text here
  - (d) communicating information relevant to the protection of the child (**Art. 34**)  
Please insert text here
  - (e) making use of other relevant cooperation provisions (e.g., **Art. 32**)  
Please insert text here
42. If your State is a Party to the 1996 Convention, does your State make use of the relevant cooperation provisions (e.g., Art. 32) to provide, if requested, either directly or through intermediaries, a report on the situation of the child after a certain period of time after the return?<sup>17</sup>
- No  
 Yes  
Please specify:  
These are rarely sought, but can be provided in appropriate cases.

<sup>16</sup> For this part of the Questionnaire, the [Practical Handbook on the Operation of the 1996 Child Protection Convention](#) can provide helpful guidance, available on the HCCH website at [under "Child Protection Section"](#).

<sup>17</sup> See C&R No 40 of the 2017 SC: "The Special Commission notes that many Central Authorities may provide certain degrees of assistance (both when the 1980 Convention and / or the 1996 Convention apply), both to individuals within their own State and to foreign Central Authorities on behalf of an individual residing abroad. Requests for assistance may encompass such matters as: securing rights of access; the return of children (both when the 1980 Convention and / or the 1996 Convention apply); the protection of runaway children; reporting on the situation of a child residing abroad; post-return reports for children returned to their habitual residence; the recognition or non-recognition of a measure taken abroad (advanced recognition); and, the enforceability of a foreign measure of protection." (Emphasis added.)



## Primary carer and protective measures

43. Are you aware of any cases in your State where a primary carer taking parent, for reasons of personal security (e.g., domestic or family violence, intimidation, coercive control, harassment, etc.) or others, has refused or has not been in a position to return with the child to the requesting State? How are such cases dealt with in your State?

Please explain and provide case examples where possible:

In circumstances where a primary carer, who is also the taking parent, is unwilling to return with the child to the requesting State for reasons of personal security, the court has imposed conditions upon a return order for the child to mitigate the suggested risks of personal harm that have been alleged by the taking parent. In some cases, the court may find that the inability of a taking parent to return to the requesting jurisdiction poses a grave risk of harm to the child(ren) or would otherwise place the child(ren) in an intolerable situation. If such risks cannot be mitigated through the use of conditions, the court may refuse to order the return of the child(ren). Australian courts do not seek undertakings from requesting parents relating to non-molestation of the taking parent as such undertakings are not enforceable and raise an unrealistic expectation of protection on the part of the taking parent. Where necessary, conditions relating to non-molestation, such as mirror orders or some other enforceable mechanism, might be used.

44. Would the authorities of your State consider putting in place measures to protect the primary carer upon return in the requesting State if they were requested as a means to secure the safe return of the child?

Please explain and provide case examples where possible:

Australia has in the past put in place protective measures in cases where there appear to be obstacles to the return of the primary carer to the requesting State. Examples of protective measures utilised are conditions and mirror orders. For example, in some recent cases conditions have been aimed at ensuring that the primary carer is not faced with criminal proceedings upon returning to the requesting State. Other conditions have included requiring the requesting parent is to meet some financial obligations in relation to the child/children. In some cases the applicant parent is not informed of the details of the return arrangements. As described above, enforceable strategies are used, and undertakings are not. Protective measures are often made following judicial enquiries between International Hague Network Judges to confirm their enforceability.

The most common method of enforcing a condition for safe return is to make compliance a condition precedent to return. For example (and only if adjudged to be necessary for the safe return to occur) if funds are not available for airfares, accommodation, immediate financial support or mirror/protective orders are not obtained, then the return does not take place.

45. In cases where the return order was issued together with a protective measure to be implemented upon return, are you aware of any issues encountered by your State in relation to the enforcement of such protective measures?

- No  
 Yes

Please explain and distinguish between such measures being recognised and enforced under the 1996 Convention:

46. In cases where the return order was issued together with an undertaking given by either party to the competent authority of the requested State, are you aware of any issues encountered by your State in relation to the enforcement of such undertakings?

- No

- Yes  
Please specify:  
As described above, Australian courts avoid using undertakings.

47. If your State is a Contracting Party to the 1996 Convention, is Article 23 of that Convention being used or considered for the recognition and enforcement of undertakings given by either party while returning a child under the 1980 Convention?

- No  
 Yes  
Please specify:  
Undertakings made in the context of a Hague return proceeding have been registered in Australia, but it is extremely unusual. Undertakings are rarely utilised in Australian Hague proceedings because they are unenforceable or not recognised by the state to which child is returned - conditions and conditions precedent are used whenever possible.  
 N/A

48. In cases where measures are ordered in your State to ensure the safety of a child upon return, does your State (through the Central Authority, competent Court or otherwise) attempt to monitor the effectiveness of those measures upon the child's return?

- No  
 Yes  
Please specify:  
The ACA is considering utilising the 1996 Convention to follow up on these issues post return.

### International family relocation<sup>18</sup>

49. Has your State adopted specific procedures for international family relocation?

- Yes  
Please describe such procedures, if possible:  
Please insert text here  
 No  
Please describe how the authorities deal with international family relocation cases, if possible:  
As with other parenting arrangements, where international relocation is in issue, Australia encourages the parties to agree on the best outcome for their children. Where a relocation matter progresses to the Australian courts, the court will examine a range of issues in deciding which parenting orders are appropriate. In deciding these matters, the paramount consideration is always what is in the best interests of the child.

### Publicity and debate concerning the 1980 Convention

50. Considering any potential impact on its practical operation, has your State had any recent publicity (positive or negative) or has there been any debate or discussion in your national parliament or its equivalent about the 1980 Convention?

<sup>18</sup> See the C&R of the 2006 SC at paras 1.7.4-1.7.5, C&R No 84 of the 2012 SC, and C&R No 21 of the 2017 SC, the latter of which says: "The Special Commission recalls the importance of securing effective access to procedures to the parties in international family relocation cases. In this regard, the Special Commission notes that: i) mediation services may assist the parties to solve these cases or prepare for outcomes; ii) the Washington Declaration of 25 March 2010 on Cross-border Family Relocation may be of interest to competent authorities, in particular in the absence of domestic rules on this matter. The Special Commission recommends joining the 1996 Convention."

- No  
 Yes

Please indicate the outcome of this debate or discussion, if any:

During the 2022 election period in Australia, the Attorney-General committed to seeking advice 'on what changes could be made to ensure the Hague Convention cannot be abused, and whether its implementation could be made safer for women fleeing violence.' There has been criticism from media and parliamentarians that Australian courts do not take domestic violence into account when considering Convention matters.

As noted above, the Australian Government amended the law to codify the consideration of allegations of family and domestic violence in matters arising under the 1980 Convention. The amendment to the Family Law (Child Abduction) Convention Regulations 1986 (Regulations) was effected by the Family Law (Child Abduction Convention) Amendment (Family Violence) Regulations 2022 (Amendment Regulations), which were made on 8 December 2022 and entered into force on 10 December 2022.

The Amendment Regulations clarify that:

- court consideration of the 'grave risk defence' in paragraph 16(3)(b) of the Regulations can include consideration of any risk that the child would be subjected or exposed to family violence, regardless of whether the court is satisfied that family violence has occurred, will occur or is likely to occur;
- the court can include conditions on a return order for the purposes of reducing a risk under paragraph 16(3)(b) of the Regulations (being a grave risk that the return of the child would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation), regardless of whether the court considers that the risk will eventuate, is likely to eventuate or has eventuated in the past;
- add a non-exhaustive list of considerations that the court may have regard to when considering whether to include a condition in a return order or other order made to give effect to the Convention; and
- require that where the court is considering whether to refuse to make a return order on the basis of the grave risk defence, and a party to the proceedings raises a condition that could be included for the purpose of reducing a paragraph 16(3)(b) risk, that the court must consider whether it is appropriate to include the condition.

In addition, on 29 March 2023, the Australian Government introduced the Family Law Amendment Bill 2023, which proposes important legislative reforms to Australia's family law system, including proposed changes to improve the safety of the family law system and place the best interest of children at the centre of the system and its operation. As noted above, section 68L of the Family Law Act 1975 provides that the court may make an order that the child's interests in the proceedings ought to be independently represented by a lawyer (an Independent Children's Lawyer). In its current form, subsection 68L(3) restricts the appointment of ICLs to 'exceptional circumstances'. However the Family Law Amendment Bill 2023 removes this restriction, bringing judicial discretion to appoint ICLs in proceedings under the 1980 Convention in line with discretion to appoint ICLs in domestic proceedings.

51. By what methods does your State disseminate information to the public and raise awareness about the 1980 Convention?

Please explain:

The Attorney-General's Department publishes information on its website about the Convention, the ACA and its role in administering the 1980 Hague Convention ([www.ag.gov.au/childabduction](http://www.ag.gov.au/childabduction)). Australia's Department of Foreign Affairs and Trade (DFAT) provides information about International Parental Child Abduction on its webpages

and other publications ([smartraveller.gov.au](http://smartraveller.gov.au)) and the Children and Parental Consent brochure which it produces through its Passport Office.

## PART II – TRAINING, EDUCATION AND POST-CONVENTION SERVICES

### Training and education

52. Please provide below details of any training sessions / conferences organised in your State to support the effective functioning of the 1980 Convention, and the influence that such sessions / conferences have had:

Please provide details:

Sessions are provided by the ACA to other Government agencies, NGOs and Law Societies whenever the opportunity arises.

### The tools, services and support provided by the PB

53. Please comment or state your reflections on the specific tools, services and support provided by the PB to assist with the practical operation of the 1980 (and 1996) Conventions, including:

a. The Country Profile available under the Child Abduction Section, including the addition and / or revision of its questions.

While useful it is currently limited as it does not always provide a full explanation of the processes in each State. The regular update of the country profile information by States Parties would be appreciated as the information is sometimes outdated

b. INCADAT (the international child abduction database, available at [www.incadat.com](http://www.incadat.com)). INCADAT contains useful information that Australia relies on in its day-to-day management of cases. The case law search and analysis sections are particularly useful and regular updating is appreciated (especially pertinent analyses translated from languages other than English).

c. *The Judges' Newsletter* on International Child Protection - the HCCH publication which is available online for free;<sup>20</sup>

This is a useful publication

d. The specialised “Child Abduction Section” of the HCCH website ([www.hcch.net](http://www.hcch.net));

The Child Abduction Section is particularly useful. The table of accessions is very useful, referred to often, but is relatively buried on the website. It would be helpful to have that more accessible.

e. Providing technical assistance and training to Contracting Parties regarding the practical operation of the 1980 (and 1996) Conventions. Such technical assistance and training may involve persons visiting the PB or, alternatively, may involve the PB (including through its Regional Offices) organising, or providing assistance with organising, national and international judicial and other seminars and conferences concerning the Convention(s) and participating in such conferences;

Australia welcomes the work of the Permanent Bureau to increase knowledge about the Children's Conventions and to support the Central Authorities, on behalf of States Parties, to develop strong relationships to ensure the smooth future function of the Conventions.

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<sup>20</sup> Available on the HCCH website at under “Child Abduction Section” and “Judges' Newsletter on International Child Protection”. For some volumes of *The Judges' Newsletter*, it is possible to download individual articles as required.

- f. Encouraging wider ratification of, or accession to, the 1980 (and 1996) Conventions, including educating those unfamiliar with the Convention(s);<sup>21</sup>

Australia welcomes this work

- g. Supporting communications between Central Authorities, including maintaining updated contact details on the HCCH website or intervening to facilitate contact in cases where obstacles arise.

Australia welcomes this approach

- h. Supporting communications among Hague Network Judges and between Hague Network Judges and Central Authorities, including maintaining a confidential database of up-to-date contact details of Hague Network Judges or intervening to facilitate contact in cases where obstacles arise.

Australia supports this work. The IHNJ is a crucial element of the 1980 and 1996 Children's Conventions framework.

- i. Responding to specific questions raised by Central Authorities, Hague Network Judges or other operators regarding the practical operation or interpretation of the 1980 (and 1996) Conventions.

Australia welcomes this approach

### **Guides to Good Practice under the 1980 Convention**

- 54. For any of the Guides to Good Practice<sup>22</sup> which you may have used to assist in implementing for the first time, or improving the practical operation of, the 1980 Convention in your State please provide comments below:

- a. Part I on Central Authority Practice.

As an established Central Authority, the ACA finds the Guide to Good Practice useful, particularly in discussions with newer Central Authorities. The ACA's procedures align closely with the principles outlined in the Guide and the ACA works closely with other Central Authorities in respect to the operation of the Hague Convention. The ACA holds regular meetings with a number of other Central Authorities on the practical operation of the Convention and also participates in international meetings discussing the Convention.

- b. Part II on Implementing Measures.

As above, Australia is an established Central Authority and has significant experience implementing the Convention.

- c. Part III on Preventive Measures.

Australia actively works with local and international law enforcement and other authorities as well as with courts to reduce where possible the incidence of wrongful removal or retention of children. The ACA also raises awareness of international parental child abduction through various channels such as websites and publications. The ACA's website [www.ag.gov.au/childabduction](http://www.ag.gov.au/childabduction) contains a significant amount of information to assist people whether they are considering wrongfully removing their child from Australia, or fear the other parent might, or a child has already been wrongfully removed or retained.

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<sup>21</sup> Which again may involve State delegates and others visiting the PB or, alternatively, may involve the PB organising, or providing assistance with organising, national and international judicial and other seminars and conferences concerning the 1980 (and 1996) Conventions and participating in such conferences.

<sup>22</sup> All Parts of the Guide to Good Practice under the 1980 Convention are available on the HCCH website at [www.hcch.net](http://www.hcch.net) under "Child Abduction Section" then "Guides to Good Practice".



d. Part IV on Enforcement.

Australia has a successful enforcement regime in place. With appropriate mechanical orders included in return orders, it is unusual for the ACA to have to return to court to seek enforcement of a return order.

e. Part V on Mediation

As previously mentioned, the Federal Circuit and Family Court of Australia recently introduced a new procedure involving convening a Court-based Family Dispute Resolution (FDR) Conference with a Registrar of the Court's Dispute Resolution Service in all 1980 Convention matters. This is an ADR process that takes place in 3 parts, is run by an experienced Family Law mediator, and attempts to resolve or narrow the issues in both the Convention matter and substantive parenting issues. The Family Court of Western Australia has recently offered judge led mediation.

f. Part VI on Article 13(1)(b)

Australian case law demonstrates that Australian courts adhere to the principles contained in the 13(1)(b) Guide to Good Practice.

g. Transfrontier Contact Concerning Children – General Principles and Guide to Good Practice

As mentioned above, Australia only provides mediation in incoming access requests.

55. How has your Central Authority ensured that the relevant authorities in your State have been made aware of, and have had access to the Guides to Good Practice?

Relevant agencies are aware of, and have access to, the Guides through the HCCH website.

56. Do you have any other comments about any Part of the Guide to Good Practice?

Please insert text here

57. In what ways have you used the *Practitioner's Tool: Cross-Border Recognition and Enforcement of Agreements Reached in the Course of Family Matters Involving Children*<sup>23</sup> to assist in improving the practical operation of the 1980 Convention in your State?

We have not used this tool.

## Other

58. What other measures or mechanisms would you recommend:

a. to improve the monitoring of the operation of the 1980 Convention;  
Greater utilisation of the 1996 Convention or informal arrangements between State Parties to enable follow up of children's welfare post return.

b. to assist States in meeting their Convention obligations; and  
Please insert text here

c. to evaluate whether serious violations of Convention obligations have occurred?  
Please insert text here

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<sup>23</sup> The *Practitioner's Tool* is available at the HCCH website at [www.hcch.net](http://www.hcch.net) under "Child Abduction Section" then "Guides to Good Practice".



## PART III – NON-CONVENTION STATES

59. Are there any States that you would particularly like to see become a Contracting Party to the 1980 Convention? If so, what steps would you suggest could be taken to promote the Convention and encourage ratification of, or accession to, the Convention in those States?

Please explain:

Please insert text here

60. Are there any States which are not Party to the 1980 Convention or not Members of the HCCH that you would like to see invited to the SC meeting in 2023?

Please indicate:

Please insert text here

### The “Malta Process”<sup>24</sup>

61. Do you have any suggestions of activities and projects that could be discussed in the context of the “Malta Process” and, in particular, in the event of a possible Fifth Malta Conference?

Please explain:

Please insert text here

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<sup>24</sup> The “Malta Process” is a dialogue between certain Contracting Parties to the 1980 and 1996 Conventions and certain States which are not Parties to either Convention, with a view to securing better protection for cross-border rights of contact of parents and their children and addressing the problems posed by international abduction between the States concerned. For further information see the HCCH website at [www.hcch.net](http://www.hcch.net) under “Child Abduction Section” then “Judicial Seminars on the International Protection of Children”.

## **PART IV – PRIORITIES AND RECOMMENDATIONS FOR THE 2023 SC AND ANY OTHER MATTERS**

### **Views on priorities and recommendations for the SC**

62. Are there any particular issues that your State would like the SC meeting to discuss in relation to the 1980 Convention?

Please specify and list in order of priority if possible:

Australia would welcome a discussion of the Guide to Good practice on Art 13(1)(b) and how the principles contained within the Guide are operating in Member States.

Australia would appreciate an opportunity to discuss the subject of "coercive abuse and coercive control", as this is becoming more of an issue in the cases that Member States are handling under the 1980 Child Abduction Convention. It may be that the inclusion of this subject with any discussion about the Art 13(1)(b) Guide would be appropriate.

63. Are there any proposals your State would like to make concerning any particular recommendation to be made by the SC?

Please specify:

Please insert text here

### **Bilateral meetings**

64. Should your State be interested in having bilateral meetings during the SC meeting, please indicate, for the PB's planning purposes, an estimate of how many States with which it intends to meet:

Please insert number:

6

### **Any other matters**

65. States are invited to comment on any other matters which they may wish to raise at the 2023 SC meeting concerning the practical operation of the 1980 Convention.

Please provide comments:

Please insert text here