

Questionnaire concerning the Practical Operation of the 1996 Child Protection Convention

Wherever your replies to this Questionnaire make reference to domestic legislation, rules, guidance or case law relating to the practical operation of the 1996 Child Protection 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.

Name of State or territorial unit: ²	Australia
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PART I – FOR CONTRACTING PARTIES

1. Recent developments in your State

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

- No
 Yes

Please specify:

Please insert text here

2. Please provide the three most **significant decisions concerning the interpretation and application of the 1996 Convention** recently rendered by the relevant authorities³ in your State.

Case Name	Court Name	Court Level	Brief summary of the ruling
Zegna & Zegna [2015] FamCA 340	Family Court of Australia	First instance	Decision of Watts J delivered 11 May 2015 in which he interpreted the legislative equivalent of Article 10. His Honour analysed the meaning of proceedings concerning divorce, separation or annulment. Watts J disagreed with an interpretation of another single judge of the family court delivered about a year earlier (in <i>Duckworth v Jamieson</i> [2014] FamCA 40), where that judge preferred a broad interpretation which allowed him to exercise jurisdiction to make a protective measure contemporaneously with making final financial orders. Watts J declined to

² The term “State” in this Questionnaire includes a territorial unit, where relevant.

³ The term “relevant authorities” is used in this Questionnaire to refer to the judicial or administrative authorities with decision-making responsibility under the 1996 Convention. Whilst in the majority of Contracting Parties such “authorities” will be courts (*i.e.*, judicial), in some Contracting Parties administrative authorities remain responsible for decision-making in Convention cases.

			adopt that course. His Honour referred to authorities dealing with Brussels II bis and the Lagarde Report and concluded (at [63] to [67]) that the words must be construed narrowly and related to the end of the relationship and not to ancillary or related proceedings.
Lynch & Hagen (No 2) [2020] FamCA 727	Family Court of Australia	Trial	Decision of Rees J delivered 3 September 2020 where Her Honour made orders to request the competent authority in Norway agree to the Family Court of Australia assuming jurisdiction to take a Commonwealth personal protection measure relating to the child, who held dual Australian and Norwegian citizenship and was habitually resident in Norway. The Court considered that the child had a substantial connection with Australia on the basis of the child's indigeneity, Australian citizenship, and the fact that the child was born in and had lived the first half of her life in Australia, together with the fact that the child's mother was an Australian citizen and a habitual resident of Australia. The Court considered the significance of the child's indigeneity as a substantial connecting factor and held that the Australian court was better placed to determine the best interests of an Aboriginal child. The court requested that the Australian Central Authority request that the Norwegian Central Authority agree to the the Family Court of Australia assuming jurisdiction in respect of the matter.
State Central Authority & Handbury [2019] FAMCA 668	Family Court of Australia	Trial	Decision of Bennett J delivered on 22 August 2019, ordering the return of the child to the United Kingdom, which was determined to be the place of the child's habitual residence under the 1980 Convention. Along with the return order, Her Honour made protective orders under Article 11 of the 1996 Convention seeking recognition and enforceability of the protective orders in the United Kingdom.

3. Please provide a brief summary of **any other significant developments** in your State relating to international child protection, including any regional instruments or bilateral agreements that have been negotiated or which your State has signed and ratified or acceded to (e.g., Memorandum of Understanding on the placement of children abroad):

On 1 September 2021, the Family Court of Australia and the Federal Circuit Court of Australia merged into one court known as the Federal Circuit and Family Court of Australia ('FCFCOA'), pursuant to the (CTH) Federal Circuit and Family Court of Australia Act 2021.

The Court offers a single point of entry and enables Australia to perform obligations under the Hague 1980 (Abduction), 1993 (Inter-country Adoption) and 1996 (Protection of Children) Conventions.

2. Scope of application (Arts 2, 3 and 4, and C&R No 29 of 2017 SC)

4. Have competent authorities in your State experienced any challenges, or have questions arisen, in determining the scope of the 1996 Convention (e.g., which measures of protection fall within the scope of the 1996 Convention)?

- No
 Yes

Please specify:

Noting the long title of the Convention, we think that use of a different shorthand title might assist to promote the various measures of protection that fall within the scope of the Convention, for example the '1996 Convention'. The reference to "protection" in the title of the 1996 Convention may lead those who are not familiar with the Convention to assume that it is a Convention concerning only measures for the personal protection of children in a public child protection sense rather than the Convention's much wider purposes of providing rules between and for contracting states as to which state can make decisions about a child, applicable law and the recognition and enforcement of orders, including in respect of parental responsibility.

3. Jurisdiction to take measures of protection

Habitual residence (Art. 5 and C&R No 31 of 2017 SC)

5. Have competent authorities in your State experienced any challenges when determining the habitual residence of the child in cases falling within the scope of the 1996 Convention?

- No
 Yes

Please specify:

In *Shinton & Ward* [2022] FCWAM 39, Magistrate Andrews considered whether the 1996 Convention applied to an order contravention application brought by the father in circumstances where the child was habitually resident in another country. Her Honour followed the decisions of Bennett J in *Chan & Wiu* [2010] FamCA 615 and Kent J in *Keehan v Keehan* (2019) 60 FamLR 276 and concluded that the father's order contravention application cannot be classed as Commonwealth personal protection measures, and that the Convention and the provisions of s111CD did not apply. Her Honour held that order contravention proceedings are directed to ensuring compliance with existing orders, as distinct from seeking to define or alter the existing rights to which Article 3 refers. Her Honour determined the court had jurisdiction under the provisions of the Family Law Act to determine the father's applications for contravention of the parenting orders,

International child abduction (Arts 7 and 50)

6. Have competent authorities in your State experienced any challenges, or have questions arisen, in **making a determination whether to exercise jurisdiction** in cases of wrongful removal or retention of the child?

- No
 Yes

Please specify:

Although not a challenge relating to the exercise of jurisdiction per se, the Full Court of the Federal Circuit and Family Court made statements in Hays & Department of Communities and Justice [2023] FedCFamC1A 3, which may be relevant. The Court stated that the 1980 Convention was not an appropriate mechanism to obtain the return of the children given the ‘intricacies’ of child abduction convention matters and the length of time proceedings tend to take, noting delays caused by the appointment of an ICL, obtaining a Family Report, and the potential for appeals to the Full Court and High Court. The Full Court appeared to be of the view that the registration of overseas orders in Australia would have been a more efficient course of action. However, the court ultimately upheld the orders made under the Child Abduction Convention.

The 1980 Convention is a forum prescriptive treaty. A return application is not preconditioned on any disagreement about forum. The proceedings are directed to the return of the child to the place of the child’s state of habitual residence, which is generally considered to be the jurisdiction in which parents have access to relevant evidence. Although initiation of proceedings in the state of habitual residence or the state in which the child is present may be a consequence of a return application it is largely irrelevant to the determination of a return application. An exception to this is where a taking parent cannot return to the state of the child’s habitual residence to participate effectively in parenting proceedings and this is alleged to constitute an intolerable situation exception (Art.13b) or where the inability to participate in parenting proceedings is alleged to be contrary to fundamental freedom of the requested state (Art.20). Otherwise, the institution of proceedings may, in some sense, inform the exercise of the discretion to refuse return which arises if, and only if, an exception to return is made out.

It is not always the experience that the timely appointment of an independent children’s lawyer (“ICL”) or the requirement for a social science report delays the disposition of return proceedings. Indeed, both have the capacity to expedite the disposition of return proceedings.

The initiating application in the proceeding to which reference is made was filed on 8 April 2022. On 12 April 2022, it was ordered, inter alia, that an ICL be appointed in sufficient time to:

- a. be able to speak to the children (a boy aged 12 years and a girl aged 8 years);
- b. to obtain and familiarise themselves with any social science evidence in relation to the children in the parenting proceedings in the United Kingdom and any statements or records held by the police or prosecuting authorities in the United Kingdom in relation to the interaction of the parents with each other and with the children;
- c. make recommendations about what interim parenting orders for access or communication between the requesting parent and the children ought be made;
- d. cause relevant subpoenas to issue; and
- e. investigate the preparedness of the parents to undertake a specialised Hague mediation.

The taking parent (father) was required to file and serve his response and evidence in opposition to the return application by 28 April 2022.

On 29 April 2022, a social science report was ordered to be prepared in relation to each child and in particular to cover:-

- a. an explanation to the child of the nature of these Hague return proceedings and, in particular, that it is not a final decision about with whom the child will live or in which country the child will live;
- b. the child’s apparent emotional functioning and any acute distress or indicators that the child requires immediate expert assessment or mental health treatment;
- c. what (if any) objections each child has to returning to the United Kingdom;
- d. whether any such objection shows a strength of feeling beyond the mere expression of a preference or of ordinary wishes;
- e. whether the child has attained an age and degree of maturity, at which it is appropriate to take account of his/her views; and
- f. whether, in the opinion of the Court Child Expert, there are other factors to be considered in according weight to the view/objection of each child;
- g. whether returning the child to the United Kingdom (where the courts are seized of parenting proceedings) contrary to any objection by the child, would be harmful to the child and, if so, how and what steps (if any) can be taken to ameliorate such harm;
- h. what communication (if any) each child should have with the mother while the child is in Australia.

The social science report was published on 3 June 2022. The hearing commenced on The taking parent challenged the jurisdictional grounds (rights of custody & habitual residence) and invoked all of the exceptions to return. It is not that the 1980 Convention, or the legislation which gives expression to the Convention in Australia, is ‘intricate’ it is merely that the taking parent in this case argued every available point and very many points which were not available.

The choice of remedy is in the hands of the applicant (here the left behind parent). Had the left behind parent proceeded with recognition and enforcement under Chapter IV of the 1996 Convention, those proceedings are not automatically expedited within the court system (unlike return applications). Furthermore, on the facts of the case referred to, habitual residence would have been controversial in the context of Article 23(2)(a) of the 1996 Convention. Finally, there is no jurisprudence in Australia as to the interpretation of best interests of the child under Article 23 (2)(d) or of Article 28 insofar as it provides that enforcement takes place [...] to the extent provided by such law, taking into consideration the best interest of the child. There is every likelihood that the left behind parent would have sought to oppose both registration using Article 23 (2)(d) and enforcement under Article 28 by seeking to argue best interests principles with the resultant delay in hearing and appeals.

Pending divorce or legal separation of the child's parents (Art. 10)

- 7. Have competent authorities in your State experienced any challenges, or have questions arisen, in making a determination whether to exercise **jurisdiction** in cases where there is a pending divorce or legal separation of the child’s parents (**Art. 10**)?

- No
- Yes

Please specify:
Please insert text here

Transfer of jurisdiction (Arts 8 and 9)

- 8. How often have competent authorities in your State experienced cases of transfer of jurisdiction under **Articles 8 and / or 9** of the 1996 Convention?

- Do not know
- Never
- Rarely

- Sometimes
 Very often
 Always

If possible, please provide supplementary information:

Since last Questionnaire, the Australian courts have considered the following cases:

In *Lynch & Hagen (No 2)* [2020] FamCA 727, the then Family Court of Australia made orders to request the competent authority in Norway to agree to the Family Court of Australia assuming jurisdiction to take a Commonwealth personal protection measure relating to the child, who held dual Australian and Norwegian citizenship and was habitually resident in Norway. The court considered that the child had a substantial connection with Australia on the basis of the child's indigeneity, Australian citizenship, and the fact that the child was born in and had lived the first half of her life in Australia, together with the fact that the child's mother was an Australian citizen and a habitual resident of Australia. The court considered the significance of the child's indigeneity as a substantial connecting factor and held that the Australian court were better placed to determine the best interests of an Aboriginal child. The court asked the Australian Central Authority to request that the Norwegian Central Authority agree the the Family Court of Australia assuming jurisdiction of the matter.

In *Kubat & Kubat* [2019] FamCA 671, the then Family Court of Australia made parenting orders in relation to four children, one of whom was present and habitually resident in Turkey at the time of the hearing. The court ordered the parents seek to have the Orders registered in Turkey on the basis that the Orders have effect as child protection measures in Turkey pursuant to the 1996 Convention.

The ACA currently has an incoming Article 8 request to transfer jurisdiction on foot, referred from a European Central Authority.

9. Has your State developed any **good practices, procedures, guidelines or protocols** to facilitate the transfer of jurisdiction?
- Yes
Please specify and provide the links to relevant documents whenever possible:
Australia has implementing legislation to give effect to the Convention's transfer of jurisdiction provisions. Refer to section 111CG of the Family Law Act 1975 (Cth)
- No
Please specify any reasons:
Please insert text here

4. Special types of measures of protection

Urgent measures of protection (Art. 11)

10. Have competent authorities in your State experienced any challenges, or have questions arisen, with respect to the application of **Article 11** (e.g., the definition of "urgency"; scope, nature and duration of measures)?
- No
 Yes, in cases of international child abduction.
If possible, please provide more details about the experience of your State using Article 11 in cases of international child abduction:

In situations where overseas courts make undertakings (as opposed to orders) relating to protection of children or their property that Australian courts may not be able to register as they may not be considered Commonwealth Measures of Protection.

Parents seeking to register agreements reached overseas instead of consent orders.

Yes, in other situations.

Please describe in which other situations a competent authority in your jurisdiction has applied Article 11:
Please insert text here

Provisional measures (Art. 12)

11. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying **Article 12** (e.g., definition as to what may constitute a "provisional character"; scope, nature and duration of measures)?

No

Yes

Please describe:

Please insert text here

5. Applicable law (Chap. III)

12. Have competent authorities in your State experienced any challenges, or have questions arisen, in relation to the applicable law rules provided by **Articles 15, 16 and 17** of the 1996 Convention?

No

Yes

Please describe:

Please insert text here

6. Recognition and enforcement

13. Have competent authorities in your State experienced any challenges, or have questions arisen, in relation to the **recognition of measures of protection**, from the perspective of the requested State?

No

Yes

Please describe:

As noted in the previous Questionnaire, the ACA occasionally receives requests to register orders for arrangements that simply cannot work, for example, for contact to occur weekly over weekends. We sometimes receive requests for the registration of surrogacy orders, which are specifically excluded from the Convention by Art.4. Parents whose children were born through a surrogacy arrangement point to the fact that many surrogacy orders also deal with the attribution of parental responsibility, which, of course, is one of the measures within the scope of the Convention.

Advance recognition (Art. 24)

14. How often have competent authorities in your State experienced cases of requests for **advance recognition**?

Do not know

Never

- Rarely
 Sometimes
 Very often
 Always

If possible, please provide supplementary information:

Australian courts have used Article 24 for advance recognition of parenting orders in an overseas court of competent jurisdiction, particularly where parents are seeking relocation orders. Refer also to question 34.

15. Have **judicial or administrative procedures, guidelines, or protocols** been adopted in your State to facilitate the application of Article 24?

- Yes, but there have been no changes since the last SC meeting
 Yes, with changes since the last SC meeting.
 Please specify:
 Please insert text here
 No

Declaration of enforceability or registration for the purpose of enforcement (Arts 26, 27 and 28)

16. In relation to the *simple and rapid procedure* for declaring enforceable or registering for the purpose of enforcement of measures of protection taken in another Contracting Party (Art. 26), what is the practice in your State?

a) Which authority declares enforceable or registers a measure of protection taken in another Contracting Party? Please specify:

A request to register overseas court orders in Australia may be made to the ACA by an applicant or an overseas Central Authority. If the request is in accordance with the Convention, the foreign court orders are registered by the Registrar of the relevant registry of the Federal Circuit and Family Court of Australia.

The Federal Circuit and Family Court of Australia and the Family Court of Western Australia register the court orders as foreign measures, enforceable pursuant to regulation 12 of the Family Law (Child Protection Convention) Regulations 2003 or under similar state legislation [New South Wales (s25, Child Protection (International Measures) Act 2006); Queensland (s25, Child Protection (International Measures) Act 2003); and Tasmania (s25, Child Protection (International Measures) Act 2003 (TAS))]. Please refer to the attached legislation.

Once registered under the Commonwealth Regulations, the foreign measure has the same effect as a Commonwealth measure pursuant to regulation 12(2) of the Regulations. Once registration has been effected, the registrar will provide a certified copy of the registered order. This is then sent to the applicant or their legal representative (if they have one).

An overseas child order registered in a court under section 70G of the Family Law Act 1975 has the same force and effect as if it were an order made by that court under Part VII of the Act.

b) What time frames are applied to ensure that the procedure is rapid? Please explain:

Once the request for registration of orders has been received and is accepted by the ACA, it will usually only require, at most, a couple of weeks for the orders to be registered.

In Australia, the Hague Network Judges, Justice Jill Williams (associate.justicewilliams@fcfcoa.gov.au) and Justice Victoria Bennett (associate.justicebennett@fcfcoa.gov.au) can be useful in expediting the registration of a protective measure and invite communications from other Network Judges in this regard.

c) Is legal representation required? Please explain:

Legal representation is not required for the registration process where a request to register orders is made to the ACA. Foreign measures may be lodged directly with the Federal Circuit and Family Court of Australia or the Family Court of Western Australia and the applicant may elect to have legal representation to assist them to do so, however this is not required.

Individuals seeking to enforce the orders, once registered, must do so in proceedings initiated at their own expense, for which they may choose to engage legal representation.

17. Are you aware of any challenges, or have questions arisen, in applying **Articles 26, 27 and / or 28** in your State?

- No
 Yes

Please describe:

Please insert text here

7. Cooperation (Chap. V)

Central Authority practice

18. Are you aware of any challenges, or have questions arisen, in applying **Article 30** in your State (e.g., in relation to the timeliness of responses to requests)?

- No
 Yes

Please describe:

Some Australian state jurisdictions have experienced challenges with sourcing criminal histories via the co-operation provisions.

The ACA has generally found overseas Central Authorities responsive to requests.

Services available

19. If your State answered the 2016 Questionnaire, please indicate whether since then there have been any changes in relation to the services provided by your Central Authority:

- No. Please proceed to question No 22
 Yes. Please continue answering the following questions

20. With the understanding that services provided by Central Authorities under the 1996 Convention may vary, does your Central Authority provide assistance to **individuals habitually resident in your**

State who request it in connection with the following matters? If so, please specify the nature of the assistance provided.

Matter	Service(s) provided
a) A request to organise or secure effective exercise of rights of access in another Contracting Party (requested State) ⁴	<input type="checkbox"/> 1. None <input type="checkbox"/> 2. Assistance in obtaining information on the operation of the 1996 Convention <input type="checkbox"/> 3. Assistance in obtaining information on the relevant laws and procedures in the requested State <input type="checkbox"/> 4. 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 <input type="checkbox"/> 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State <input type="checkbox"/> 6. 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"/> 7. Assistance in providing or facilitating the provision of legal aid and advice <input type="checkbox"/> 8. Assistance in obtaining private legal counsel or mediation services, where needed in the requested State <input type="checkbox"/> 9. Referral to other governmental and / or non-governmental organisations for assistance <input type="checkbox"/> 10. Provision of regular updates on the progress of the application <input type="checkbox"/> 11. Other, please specify: Please insert text here
b) A request to secure the return to your State of a child subject to international abduction where the 1980 Convention is <u>not</u> applicable	<input type="checkbox"/> 1. None <input type="checkbox"/> 2. Assistance in obtaining information on the operation of the 1996 Convention <input type="checkbox"/> 3. Assistance in obtaining information on the relevant laws and procedures in the requested State <input type="checkbox"/> 4. 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 <input type="checkbox"/> 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State <input type="checkbox"/> 6. Assistance in discovering the whereabouts of a child who has been wrongfully removed or retained <input type="checkbox"/> 7. Assistance in taking provisional / urgent measures of protection to prevent further harm to the child <input type="checkbox"/> 8. Assistance in securing the voluntary return of the child or in bringing about an amicable resolution of the issue <input type="checkbox"/> 9. Assistance in initiating judicial or administrative proceedings with a view to obtaining the return of the child <input type="checkbox"/> 10. Assistance in providing or facilitating the provision of legal aid and advice <input type="checkbox"/> 11. Assistance in providing such administrative arrangements as may be necessary and appropriate to secure the safe return of the child <input type="checkbox"/> 12. Assistance in obtaining private legal counsel or mediation services <input type="checkbox"/> 13. Referral to other governmental and / or non-governmental organisations for assistance <input type="checkbox"/> 14. Regular updates on the progress of the application <input type="checkbox"/> 15. Other, please specify: Please insert text here
	<input type="checkbox"/> 1. None

⁴ See in this context, e.g., the [Practical Handbook](#) on the Operation of the 1996 Child Protection Convention, sections 11(E)(d) and 13(B) (2014).

<p>c) A request to secure the return to your State of a runaway child (see Art. 31(c))</p>	<ul style="list-style-type: none"> <input type="checkbox"/> 2. Assistance in obtaining information on the operation of the 1996 Convention <input type="checkbox"/> 3. Assistance in obtaining information on the relevant laws and procedures in the requested State <input type="checkbox"/> 4. 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 <input type="checkbox"/> 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State <input type="checkbox"/> 6. Assistance in discovering the whereabouts of a runaway child <input type="checkbox"/> 7. Assistance in initiating judicial or administrative proceedings with a view to obtaining the return of the child <input type="checkbox"/> 8. Assistance in providing or facilitating the provision of legal aid and advice <input type="checkbox"/> 9. Assistance in providing such administrative arrangements as may be necessary and appropriate to secure the safe return of the child <input type="checkbox"/> 10. Assistance in obtaining private legal counsel <input type="checkbox"/> 11. Referral to other governmental and / or non-governmental organisations for assistance <input type="checkbox"/> 12. Regular updates on the progress of the application <input type="checkbox"/> 13. Other, please specify: Please insert text here
<p>d) A request for a report on the situation of a child habitually resident in another Contracting Party (e.g., a child returned as a result of child abduction proceedings or a child who has moved as a result of a relocation) (see Art. 32(a))</p>	<ul style="list-style-type: none"> <input type="checkbox"/> 1. None <input type="checkbox"/> 2. Assistance in obtaining information on the operation of the 1996 Convention <input type="checkbox"/> 3. Assistance in obtaining information on the relevant laws and procedures in the requested State <input type="checkbox"/> 4. 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 <input type="checkbox"/> 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State <input type="checkbox"/> 6. Other, please specify: Please insert text here
<p>e) A request that the competent authorities of another Contracting Party decide on the recognition or non-recognition of a measure taken in your State (see Art. 24)</p>	<ul style="list-style-type: none"> <input type="checkbox"/> 1. None <input type="checkbox"/> 2. Assistance in obtaining information on the operation of the 1996 Convention <input type="checkbox"/> 3. Assistance in obtaining information on the relevant laws and procedures in the requested State <input type="checkbox"/> 4. 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 <input type="checkbox"/> 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State <input type="checkbox"/> 6. Assistance in obtaining private legal counsel <input type="checkbox"/> 7. Regular updates on the progress of the request <input type="checkbox"/> 8. Other, please specify: Please insert text here
<p>f) A request that the competent authorities of another State Party declare enforceable or register for the purpose of enforcement</p>	<ul style="list-style-type: none"> <input type="checkbox"/> 1. None <input type="checkbox"/> 2. Assistance in obtaining information on the operation of the 1996 Convention <input type="checkbox"/> 3. Assistance in obtaining information on the relevant laws and procedures in the requested State <input type="checkbox"/> 4. 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

measures taken in your State (see Art. 26)	<input type="checkbox"/> 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State <input type="checkbox"/> 6. Assistance in obtaining private legal counsel <input type="checkbox"/> 7. Regular updates on the progress of the request <input type="checkbox"/> 8. Other, please specify: Please insert text here
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21. With the understanding that services provided by Central Authorities under the 1996 Convention may vary, if your Central Authority were to receive a request of assistance from **another Central Authority** on behalf of an individual residing abroad, in connection with the following matters, please specify the nature of the assistance that your Central Authority provides or would provide if the situation were to arise.

Matter	Service(s) provided
a) A request to organise or secure effective exercise of rights of access in another Contracting Party (requested State) ⁵	<input type="checkbox"/> 1. None <input type="checkbox"/> 2. Assistance in obtaining information on the operation of the 1996 Convention <input type="checkbox"/> 3. Assistance in obtaining information on the relevant laws and procedures in the requested State <input type="checkbox"/> 4. 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 <input type="checkbox"/> 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State <input type="checkbox"/> 6. 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"/> 7. Assistance in providing or facilitating the provision of legal aid and advice <input type="checkbox"/> 8. Assistance in obtaining private legal counsel or mediation services, where needed in the requested State <input type="checkbox"/> 9. Referral to other governmental and / or non-governmental organisations for assistance <input type="checkbox"/> 10. Provision of regular updates on the progress of the application <input type="checkbox"/> 11. Other, please specify: Please insert text here
b) A request to secure the return to your State of a child subject to international abduction where the 1980 Convention is <u>not</u> applicable	<input type="checkbox"/> 1. None <input type="checkbox"/> 2. Assistance in obtaining information on the operation of the 1996 Convention <input type="checkbox"/> 3. Assistance in obtaining information on the relevant laws and procedures in the requested State <input type="checkbox"/> 4. 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 <input type="checkbox"/> 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State <input type="checkbox"/> 6. Assistance in discovering the whereabouts of a child who has been wrongfully removed or retained <input type="checkbox"/> 7. Assistance in taking provisional / urgent measures of protection to prevent further harm to the child <input type="checkbox"/> 8. Assistance in securing the voluntary return of the child or in bringing about an amicable resolution of the issue <input type="checkbox"/> 9. Assistance in initiating judicial or administrative proceedings with a view to obtaining the return of the child

⁵ See in this context, e.g., the [Practical Handbook](#) on the Operation of the 1996 Child Protection Convention, sections 11(E)(d) and 13(B) (2014).

	<input type="checkbox"/> 10. Assistance in providing or facilitating the provision of legal aid and advice <input type="checkbox"/> 11. Assistance in providing such administrative arrangements as may be necessary and appropriate to secure the safe return of the child <input type="checkbox"/> 12. Assistance in obtaining private legal counsel or mediation services <input type="checkbox"/> 13. Referral to other governmental and / or non-governmental organisations for assistance <input type="checkbox"/> 14. Regular updates on the progress of the application <input type="checkbox"/> 15. Other, please specify: Please insert text here
<p>c) A request to secure the return to your State of a runaway child (see Art. 31(c))</p>	<input type="checkbox"/> 1. None <input type="checkbox"/> 2. Assistance in obtaining information on the operation of the 1996 Convention <input type="checkbox"/> 3. Assistance in obtaining information on the relevant laws and procedures in the requested State <input type="checkbox"/> 4. 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 <input type="checkbox"/> 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State <input type="checkbox"/> 6. Assistance in discovering the whereabouts of a runaway child <input type="checkbox"/> 7. Assistance in initiating judicial or administrative proceedings with a view to obtaining the return of the child <input type="checkbox"/> 8. Assistance in providing or facilitating the provision of legal aid and advice <input type="checkbox"/> 9. Assistance in providing such administrative arrangements as may be necessary and appropriate to secure the safe return of the child <input type="checkbox"/> 10. Assistance in obtaining private legal counsel <input type="checkbox"/> 11. Referral to other governmental and / or non-governmental organisations for assistance <input type="checkbox"/> 12. Regular updates on the progress of the application <input type="checkbox"/> 13. Other, please specify: Please insert text here
<p>d) A request for a report on the situation of a child habitually resident in another Contracting Party (e.g., a child returned as a result of child abduction proceedings or a child who has moved as a result of a relocation) (see Art. 32(a))</p>	<input type="checkbox"/> 1. None <input type="checkbox"/> 2. Assistance in obtaining information on the operation of the 1996 Convention <input type="checkbox"/> 3. Assistance in obtaining information on the relevant laws and procedures in the requested State <input type="checkbox"/> 4. 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 <input type="checkbox"/> 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State <input type="checkbox"/> 6. Other, please specify: Please insert text here
<p>e) A request that the competent authorities of another Contracting Party decide on the recognition or non-recognition of a measure taken in</p>	<input type="checkbox"/> 1. None <input type="checkbox"/> 2. Assistance in obtaining information on the operation of the 1996 Convention <input type="checkbox"/> 3. Assistance in obtaining information on the relevant laws and procedures in the requested State <input type="checkbox"/> 4. 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 <input type="checkbox"/> 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State

<p>your State (see Art. 24)</p>	<p><input type="checkbox"/> 6. Assistance in obtaining private legal counsel <input type="checkbox"/> 7. Regular updates on the progress of the request <input type="checkbox"/> 8. Other, please specify: Please insert text here</p>
<p>f) A request that the competent authorities of another Contracting Party declare enforceable or register for the purpose of enforcement measures taken in your State (see Art. 26)</p>	<p><input type="checkbox"/> 1. None <input type="checkbox"/> 2. Assistance in obtaining information on the operation of the 1996 Convention <input type="checkbox"/> 3. Assistance in obtaining information on the relevant laws and procedures in the requested State <input type="checkbox"/> 4. 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 <input type="checkbox"/> 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State <input type="checkbox"/> 6. Assistance in obtaining private legal counsel <input type="checkbox"/> 7. Regular updates on the progress of the request <input type="checkbox"/> 8. Other, please specify: Please insert text here</p>

Mediation, conciliation or similar methods (Art. 31(b))

22. How does your Central Authority (either directly or through public authorities or other bodies) take appropriate steps under **Article 31(b)** to facilitate, by mediation, conciliation or similar means, agreed solutions for the protection of the person or property of the child in situations to which the 1996 Convention applies?

Please explain:

The ACA provides details of suitable agencies who can provide mediation in the context of international family law disputes. We often refer parents to International Social Service Australia (ISS), which is an organisation funded by the Attorney-General's Department. The ACA does not cover any costs of mediation under 1996 Convention cases. ISS may be able to provide legal advice, information, counselling, mediation and referrals to other support services at the expense of the parents.

The Australian Central Authority does not participate in mediation of return cases but facilitates the parties to do so provided that mediation runs parallel to, and does not delay, the expeditious determination of the return application.

The Australian Central Authority, by itself and through its delegations to State Central Authorities, participates in and encourages education of stakeholders around the benefits of and acquisition of particular skills for cross border mediation. A conference attended by central authorities, lawyers, our IHNJs, social scientists, independent children’s lawyers and mediators proved particularly effective in promoting the concept of mediation of these intractable, high conflict matters. If there is no agreement reached between the taking parent and the left behind parent as to whether the child will be returned, the expectation is that the parents will mediate conditions of return; parenting arrangements in the event of return; parenting arrangements in the event of non-return. The Central Authority and presiding judges recognise that specialised Hague mediation must be carefully timetabled and supported to coincide with information necessary to test viability of conditions to return.

Placement and provision of care abroad (Art. 33)

23. Have authorities in your State experienced any challenges, or have questions arisen, in relation to:

- a) the **scope of application of Article 33** (e.g., in case of placement with relatives, migrant children)

Please provide further details, if possible:

Australia has experienced challenges relating to identity documentation and customary adoption evidence, for countries where they do not undertake formal adoptions, or documentation is not able to be sourced. The evidence is required due to having to satisfy regulations relating to parental custody prior to the grant of a visa for a minor.

Requests for cooperation to provide assessments may be received without preliminary issues being fully determined, such as appropriate immigration pathways for entry and ability to remain on a permanent basis (see below).

- b) **time frames** of consultations under Article 33

Please provide further details, if possible:

Australia has experienced significant challenges in situations where the overseas Central Authority has not consulted with the Australian Central Authority within a reasonable timeframe. The Australian Central Authority has experienced circumstances where court orders have been made by an overseas court without the prior knowledge of the ACA, which poses significant pressures for Australia, as the requested State, to implement the placement, which also potentially has negative impacts on the welfare of the child.

One example is where the Requesting State made a request to the ACA seeking information about the process and timeframe for completing a kinship assessment. The ACA was advised in the initial request that a court hearing was scheduled to take place four days after receipt of the request by the ACA, advising the ACA that in the absence of a response from the ACA, the Requesting authority would, at the hearing, seek a 12 week timeline for the relevant Australian authorities to make the suitability assessment.

Requests have been made to the ACA for the placement of child(ren) in Australia long after the child(ren) have been cared for in Australia. By the time the request is made, the child(ren) had been residing in Australia for several years. Such requests have meant that there was no opportunity for meaningful consultation or consent. In these matters, it appears that assessments regarding the appropriateness of placement of the child in Australia had not been conducted via the Central Authorities, and therefore Australia was not provided with an opportunity for consultation or consent prior to the placement.

The ACA was also made aware of a case when advised that the overseas court was about to issue an order permanently placing the child into the care of an Australian family. The child was to be placed with an extended family member (and their family) that the child had never met. In that case, the child's eligibility for a visa had not been considered and it also emerged that that child did not have a passport and no ability to obtain one for a range of complex reasons. The proposed placement in Australia was going to be a significant adjustment for the child. The ACA asked the overseas Requesting authority request the court to consider making interim orders (rather than a final order). The ACA also asked that a 'plan B' be developed, just in case, to ensure that arrangements were in place if the placement did not work out. The court kindly made those interim orders. Sadly however, the child and the family failed to adjust and the plan B had to be put into effect and the child returned to out of home care in the other jurisdiction. However, the fact that there had been significant consultation between the overseas Requesting authority and Australian authorities (between the interim orders being made and the placement occurring) meant that the child's transition back to the overseas jurisdiction was able to be managed as smoothly as possible in the obviously difficult circumstances.

in another matter the request came from an overseas Requesting authority in 2018. The relevant Australian State Central Authority provided details of external assessors and advised that the requirements of articles 33 and 37 would need to be followed. In

December 2019, with no further contact from the overseas Requesting authority in the interim, the ACA was asked to register orders in respect of the same child. The ACA discovered that the child was already in Australia (on a visa that would only permit the child to stay until the age of 18).

- c) the availability of **equivalent measures** of protection in the other Contracting Party or differences in the applicable domestic legislation
Please provide further details, if possible:
It would be helpful if an overview with links to the relevant legal and legislative process in other Contracting States was made available

- d) **financial costs** involved in the placement / provision of care abroad
Please provide further details, if possible:

- e) other **practical issues** arising from the placement / provision of care abroad (e.g., documentation, immigration matters)
Please provide further details, if possible:
See example above at Q23b where the child's eligibility for a visa had not been considered and the child did not have a passport/no ability to obtain one for complex reasons, prior to orders being made by the overseas court for the child's permanent placement in Australia.

Parties often make enquiries/commence processes too late in relation to securing the relevant visa for a child prior to placement of the child in Australia. This creates difficulties when it comes to the practical placement of a child in Australia after consent has been sought and court orders made. It is imperative that visa eligibility (or citizenship/citizenship by descent) is confirmed at the earliest possible stage.

- f) other issues relating to Article 33.
Please specify:
Please insert text here

24. Have **judicial or administrative procedures, guidelines, or protocols** been adopted in your State to deal with the placement procedure under Article 33?

- No
 Yes

Please describe and also provide a link or attach any relevant documents, preferably translated into English or French:

Australian legislation contains provisions on Article 33 co-operation, specifically in relation to seeking the consent of a Contracting State prior to placement of a child. See s111CU Family Law Act 1975 (Cth); s32 of the Child Protection (International Measures) Act 2006 (NSW); s31 of the Child Protection (International Measures) Act 2003; s31 of the Child Protection (International Measures) Act 2003 (TAS). Please refer to the attached legislation.

25. After the placement of the child abroad to another Contracting Party, does your State seek **follow up information on the situation** of that child?

- No
 Yes

Please describe:

The ACA has sometimes sought such information, particularly in respect of more challenging placements.

Reports (Arts 32, 33 and 34)

26. Have authorities in your State experienced any challenges, or have questions arisen, in providing or obtaining reports or information under **Article 32, 33 or 34**?

- No
 Yes

Please describe:

Requests from overseas Central Authorities are often made under a very short time frame. One of our State Central Authorities (a child protection agency) regularly uses Article 34 to obtain overseas child protection histories of children. They find that many State Parties are sending that material through without issue, while others do not send anything.

In particular, under Article 33, requests are often made with limited information such that the Australian Central Authority involved is unable to make a meaningful judgement.

Additionally, requests for assessments and background reports from overseas are sometimes made with very short time expectations and little explanation is provided about the overseas legal process.

27. Do authorities in your State use a standard template when providing a report on the (situation of the) child under Article 32 or 33?

- No
 Yes

Please attach the template to your response (preferably translated into English or French):

One of our State Central Authorities (a child protection agency) has indicated that they use their own template. They have indicated that something more standardised, particularly for the purposes of Article 32 would be useful. They have also noted that some overseas States are using private agencies to undertake assessments when that authority would prefer that requests came to the Central Authority, at least in the first instance.

Another State Central Authority (also a child protection agency) has indicated that as other States usually have specific questions they would like answered in relation to the particular child their report will be directed towards answering those and then providing any other comments they consider important for ensuring decisions are made in the child's best interests.

Given these conflicting views we would suggest that perhaps a general template could be developed as a guide upon which to base these reports.

Australia would be happy to provide redacted versions of these reports if they could be of use in designing such a template.

Assistance from the authorities of another Contracting Party

28. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying **Article 35**?

- No
 Yes

Please describe:

The access provisions in the 1996 Convention are more specific to those in the 1980 Convention. However, the use of those processes require parties to undertake domestic proceedings to seek access rights in the country of the child's habitual residence at their own expense. They helpfully allow evidence to be provided about a parent residing overseas to enable an informed decision to be reached on the question of access.

29. Have judges in your State used direct judicial communications in cases falling under the 1996 Convention?

- No
 Yes

Please specify in relation to which specific matters (e.g., transfer of jurisdiction, placement of a child)::

The Australian courts have used direct judicial communication in several matters since the previous Questionnaire. Direct judicial communication was most often used by the court to facilitate obtaining a declaration of enforceability or registration of Orders for the purpose of enforcement.

For example, in the orders made by Bennett J on 11 January 2022 in the Department of Communities and Justice & Bamfield (No 2) [2022] FedCFamC1F 2, the court noted that the parties consented to direct judicial communication between the Australian and Belgian judges designated for the International Hague Network of Judges for the purpose of obtaining simple and rapid enforcement of the interim parenting arrangements included in her orders under the 1996 Convention in Belgium in relation to a 1980 Convention matter.

In Kubat & Kubat [2019] FamCA 671, the then Family Court of Australia made Orders that there be direct judicial communication to facilitate the enforcement of the Australian court Orders in relation to one of the children, who was present and habitually resident in Turkey.

8. General provisions

Article 40 Certificates

30. How often have competent authorities in your State issued **Article 40 certificates** indicating the capacity in which a person having parental responsibility or entrusted with the protection of the child's person or property is entitled to act and the powers conferred upon him or her?

- Do not know
 Never
 Rarely
 Sometimes
 Very often
 Always

31. Has your State experienced any challenges, or have questions arisen, in relation to **requests under Article 40**?

- No
 Yes
 Please describe:

Issues in relation to the property of the child (Arts 55 and 60)

32. How often have competent authorities in your State dealt with **measures for the protection of the property of the child by using the framework of the Convention?**

- Do not know
 Never
 Rarely
 Sometimes
 Very often
 Always

If possible, please provide supplementary information:

Australia has not had any matters relating to the property of the child under Arts 55 and 60, and has not made a reservation under these provisions.

9. Special topics

International family relocation

33. 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.

34. Are you aware of any use being made of Article 24, which provides for advance recognition, in lieu of or in connection with international family relocation?

- No
 Yes
 Please explain:
 Refer also to question 14.

In *Jefford & Jefford* [2022] FedCFamC1F 539, The Federal Circuit and Family Court of Australia made parenting orders granting the mother with sole parental responsibility for all "major long-term issues" (as defined in s4(1) of the Family Law Act 1975 (Cth)) in relation to the children. The court ordered that the mother was to be restrained from relocating the children's residence outside Australia until, and conditional on her filing and serving on the father an affidavit verifying that she had requested a decision from a competent jurisdiction in the UK about the recognition of the orders in the UK pursuant to Article 24 of the 1996 Convention, together with obtaining a declaration of registration and enforceability of the orders in the UK pursuant to Article 26. Similar orders were made by the then Family Court of Australia in *Lane & Armstrong* [2018] FamCA 424.

In *Mannix & Mannix* [2020] FamCA 81, the then Family Court of Australia made orders contingent on the mother serving on the father and Independent Children's Lawyer documentary proof that she had requested a decision from a court of competent jurisdiction in Northern Ireland about recognition of the orders in Northern Ireland (Article 24) and a declaration of registration and enforceability of the orders under Article 26.

The then Family Court of Australia made similar orders in *Contadini & Georgiou* [2018] FamCA 701, where the court ordered that the mother was to make relevant enquiries for the purpose of determining whether the court was able to make a proposed order that she obtain recognition of the orders in Country B under Article 24 of the 1996 Convention. Such enquiries were to be made during the period of adjournment.

35. Are you aware of any use being made of other provisions of the 1996 Convention in cases where a parent wishes to relocate with his or her child to another State?

- No
 Yes

Please explain:

The use of the recognition and enforcement provisions is the most common type of request and such requests are often made in anticipation of a relocation to another jurisdiction. We receive such requests in both incoming and outgoing cases. Often the recognition and enforcement provisions are used in combination with Article 26 to seek a declaration of registration and enforceability of orders on an overseas court of competent jurisdiction.

Children subject to international abduction

36. Have authorities in your State experienced any challenges, or have questions arisen, in relation to the application of the 1996 Convention (e.g., Art. 50) in cases of child abduction where the 1980 Convention was not applicable (see Questions 20(b) and 21(b) above)?

- No
 Yes

Please describe:

Although we have not experienced any challenges, we note a case relating to determining jurisdiction. In *Salamon & Salamon* [2021] FedCFamC1F 140, the mother and father had consented to one of their children being resident in Russia for a period of a year, at the least. The child had been residing with his maternal grandparents in Russia and the mother had issued a Power of Attorney to the grandparents authorising them to act as guardians of the child in Russia. The father initiated a civil case in Russia against the maternal grandparents and the mother regarding the return of the child from Russia to Australia pursuant to the 1996 Convention, with the father claiming that the child had been illegally retained on the territory of the Russian Federation and should be returned to the place of permanent residence, Australia. The District court in Russia held that the father's claims were not satisfied on the basis that the child had been residing in Russia for over a year and had fully adapted to the social and educational environment. The District court also considered that the father was not deprived of his ability to exercise his parental rights in other ways. The District court's decision was upheld on appeal.

The Federal Circuit and Family Court of Australia considered whether it had jurisdiction to consider the orders sought by the father, being orders in relation to the care of the child, which would be considered to be a 'Commonwealth Personal Protection

Measure' under the Family Law (Child Protection Convention) Regulations 2003. The FCFCA noted it would have jurisdiction if the child was present in Russia, but habitually resident in Australia, and considered the issue of the relevant time at which habitual residence is to be determined, which it held was at the date of the hearing. The court held that the child was not habitually resident in Australia but rather in the Russian Federation, and that it therefore did not have power to exercise the jurisdiction sought by the father.

37. In cases of child abduction where both the 1980 Convention and the 1996 Convention were applicable, have authorities in your State made use of provisions under the 1996 Convention (e.g., Art. 50) in addition to or instead of provisions of the 1980 Convention?

- No
 Yes

Please specify the provisions and explain:

Australian court sometimes make orders under Article 11 on the basis that they are urgent in nature if they are considered necessary to ensure the safe return of a child under the 1980 Convention.

Where a party seeks to enforce orders made in the country of habitual residence, in the country where the children are present while abduction proceedings are on foot this can create complexities in resolution of the abduction proceedings.

One request was made by the country where the children had been retained, pursuant to the 1980 Hague convention. The request was for the purpose of obtaining answers to a raft of questions, including those not applicable to activities or functions undertaken by the agency. The request was subsequently amended to include articles 30 and 32 of the 1996 Child Protection Convention relevant to providing assessments of the home environment and background checks in respect of the retained children. Reference was also made to Article 50 and the ability to invoke provisions for the purposes of obtaining the return of a child who has been wrongfully removed or retained.

38. In cases of child abduction, whether or not the 1980 Convention is applicable, have authorities in your State used the cooperation provisions in Chapter V of the 1996 Convention to determine whether adequate measures of protection are available in the State of the habitual residence of the child (e.g., to facilitate the safe return of the child)?

- No
 Yes

Please explain:

Such inquiries are usually handled by direct discussion between the relevant Central Authorities for the Abduction Convention involved in the matter. It is common for information about protection measures to be provided by the overseas Central Authority and put before the Australian court. We provide similar information for provision to overseas courts in outgoing matters.

In one case, a request for cooperation was sought by the requested state to provide background information on the children prior to making a decision on the return of the children. Articles 30 and 32 were relied on to facilitate the request and provide the relevant documentation and information. Reference was also made to Article 31 c) of the 1996 Convention whereby assistance can be provided on request from a competent authority in locating missing children in need of protection.

39. In cases of child abduction, have competent authorities in your State taken measures of protection under Article 11, as an alternative to measures of protection in the form of mirror orders or undertakings, to facilitate the safe return of the child?

- No
 Yes

Please explain:

These are routinely used in our 1980 Convention matters.

In the Department of Communities and Justice & Bamfield (No 2) [2022] FedCFamC1F 2, the orders made by Bennett J the court noted the interim parenting arrangements were deemed 'urgent orders' under Article 11, and so they would be recognised in Belgium. The parties also consented to direct judicial communication between the Australian and Belgian International Hague Network of Judges to ensure simple and rapid enforcement of the order.

Unaccompanied and separated children⁶ and emergency situations (Art. 6)

40. How often have competent authorities in your State dealt with **cases involving refugee children, internationally displaced children, or children whose habitual residence cannot be established** by using the framework of the 1996 Convention?

- Do not know
 Never
 Rarely
 Sometimes
 Very often
 Always

If possible, please provide supplementary information:

The ACA recently received a co-operation request in relation to a child who is from a displaced persons camp.

41. Where the **habitual residence of a child present in your State could not be established**, have authorities in your State used any of the cooperation provisions of the 1996 Convention in determining the child's place of habitual residence?

- No
 Yes
 Please specify:
 N/A

42. Have competent authorities in your State had experience with providing assistance to **discover the whereabouts of children** that went missing due to disturbances occurring in their State of habitual residence by using the framework provided by the 1996 Convention?

- No
 Yes
 Please specify:
 As noted above we have recently received our first request of this kind.

43. Have **procedures, guidelines, or protocols** been adopted in your State to deal with the protection of unaccompanied or separated children in the context of the 1996 Convention?

- No
 Yes

⁶ In relation to this section of the Questionnaire, see [Prel. Doc. No 7 of February 2020](#), "The application of the 1996 Child Protection Convention to unaccompanied and separated children".

Please describe and also provide a link or attach any relevant documents, preferably translated into English or French:

Although not necessarily specific to the 1996 Convention, Australia is a party to the seven core international human rights law treaties and, specifically, ratified the Convention on the Rights of the Child (CRC) on 17 December 1990. Australia also ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC) on 26 September 2006 and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC) on 8 January 2007.

Australia's obligations under the CRC and the Optional Protocols, including the protection of children's rights in humanitarian situations, are implemented through a range of legislation policies and programs at the Commonwealth, state and territory levels.

All Australian Ministers and Departments share a responsibility for protecting and promoting the rights of children. Matters such as education, child protection, healthcare, and youth justice primarily fall within the constitutional responsibility of states and territories, as a result many of them have Ministers for children and youth. The National Children's Commissioner (the Commissioner) monitors the national implementation of the Convention on the Rights of the Child, and reports on the enjoyment and exercise of human rights by children and young people. The Commissioner conducts inquiries into children's issues, makes submissions to other inquiries and undertakes projects involving children's rights, such as youth dialogues and education projects. The Commissioner consults widely with children and young people and their representatives.

44. In emergency situations, such as a humanitarian crisis, have authorities in your State experienced any challenges, or have questions arisen, in regard to the **exchange of information** among authorities of the Contracting Parties, in particular taking into account Articles 36 and 37 of the 1996 Convention?

During crisis there have been challenges associated with satisfying the Australian Regulations with regards to parental custody, where documentation is unavailable or unsafe to obtain.

45. Are you aware of whether **Preliminary Document No 7 of February 2020, "The application of the 1996 Child Protection Convention to unaccompanied and separated children"**, has been brought to the attention of the competent authorities in your State?

- No
 Yes

Please specify:

Preliminary Document 7 on the application of the 1996 Child Protection Convention was circulated to Australia's Hague Liaison Judges and to various Australian Government agencies for comment. Comments received were subsequently provided to the Permanent Bureau.

International access / contact cases involving children

46. Should your State also be a Contracting Party to the 1980 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?

⁷ The Explanatory Report (Lagarde) on the 1996 Convention notes that cooperation under Art. 35(1) between authorities of States Parties with respect to rights of access "serves in a certain way to complete and reinforce the co-operation,

- No
 Yes

Please explain:

The ACA regularly receives requests for the registration of orders under the Family Law (Child Protection Convention) Regulations 2003 and similar requests 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.

Practical Handbook

47. Do you have any observations or comments to share concerning the **Practical Handbook** on the Operation of the 1996 Child Protection Convention?

- No
 Yes

Please specify:

Please insert text here

Agenda Items for the next SC meeting

48. Are there any **particular issues** that your State would like the SC meeting to discuss in relation to the 1996 Convention? Please specify and list in order of priority:

In light of the challenges experienced by the Australian & State Central Authorities, as raised above in relation to Q23, we would appreciate if the consultation requirements under Article 33 of the Convention could be raised and discussed at the SC meeting. We also think it would be beneficial to discuss the practical aspects of any proposed placement, including visa and passport issues. These issues are important when considering the placement of children into the care of a person in another country, and Contracting States should ensure that the consultation requirements of the Convention are met, and that other matters such as immigration status are thoroughly considered and resolved at an early stage.

More broadly, Australia considers the Convention establishes an important framework for the recognition and enforcement of protection measures between Contracting States. This framework should be seen as an integral part of the global system for the protection of children, particularly in cases of international child relocation and children who are in out of home care.

We understand that the Permanent Bureau is undertaking work on e-country profiles for the 1996 Convention. The availability of country profiles will be a significant advantage in managing future cases.

We seek that each contracting state be urged to establish simple and rapid procedures as required by Article 26(2) if they have not already done so and, in a way, that the IHNJ for that jurisdiction can have some visibility of the process.

which is not always effective, provided for the same purpose between Central Authorities” under Art. 21 of the 1980 Convention. Explanatory Report, para. 146 (1997).

PART II – FOR NON-CONTRACTING PARTIES

49. Is your State currently considering **signing and ratifying or acceding to the 1996 Child Protection Convention**?

- Yes
If possible, please provide further information:
[Please insert text here](#)
- No
If possible, please provide further information:
[Please insert text here](#)

50. In considering how your State would **implement the 1996 Child Protection Convention**, have you encountered any **issues of concern**?

- No
- Yes
Please explain:
[Please insert text here](#)

51. Are there any **particular issues** that your State would like the SC meeting to discuss in relation to the 1996 Child Protection Convention?

- No
- Yes
Please specify and list in order of priority:
[Please insert text here](#)

52. Do you have any observations or comments to share concerning the **Practical Handbook on the Operation of the 1996 Child Protection Convention**?

- No
- Yes
Please specify:
[Please insert text here](#)