

QUESTIONNAIRE CONCERNING THE PRACTICAL OPERATION OF THE 1980 CONVENTION

Wherever your replies 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.

Name of State or territorial unit:¹	Australia
<i>For follow-up purposes</i>	
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PART I: RECENT DEVELOPMENTS²

1. Recent developments in your State

1.1 Since the 2011 / 2012 Special Commission, 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 in the legislation / rules, and, where possible, the results achieved in practice (e.g., reducing the time required to decide cases).

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

1.2 Please provide a brief summary of any significant decisions concerning the interpretation and application of the 1980 Convention rendered since the 2011 / 2012 Special Commission by the relevant authorities³ in your State including in the context of the 20 November 1989 United Nations Convention on the Rights of the Child and relevant regional instruments.

Secretary, Department of Family and Community Services & Padwa [2016] FamCAFC 57 (15 April 2016) - This case considered the question of whether a child could have more than one habitual residence immediately prior to its wrongful retention in Australia. The Court considered, but did not determine, that issue in examining the child's connection to her country of habitual residence and the parent's intention. The Full Court set aside the trial judge's decision and ordered the child's return to the Netherlands.

Commonwealth Central Authority & Cavanaugh [2015] FamCAFC 233 (11 December 2015) - This case related to the question of habitual residence in circumstances where the parents had a shared intention to live in Finland for at least a year. Near the end of that time the father wrongfully retained the children in Australia following a holiday. On the facts, the parents did not have a shared settled intention about where the family would live at the end of that year. The Full Court found that the parents, with their shared intention to leave Australia for a year, had ceased to be habitually resident in Australia. The Full Court found that the trial judge had erred in giving excessive weight to the lack of settled

¹ The term "State" in this Questionnaire includes a territorial unit, where relevant.

² This Part of the Questionnaire is intended to deal primarily with the developments in law and practice relating to international child abduction and international child protection which have occurred in your State since the Sixth Meeting of the Special Commission to review the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* (1-10 June 2011 and 25-31 January 2012) (hereinafter "the 2011 / 2012 Special Commission"). However, if there are important matters which you consider should be raised from *prior* to the 2011 / 2012 Special Commission, please provide such information here.

³ 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 States Parties such "authorities" will be courts (i.e., judicial), in some States Parties administrative authorities remain responsible for decision-making in Convention cases.

common intention to stay in Finland beyond one year and insufficient weight to the shared intention to stay in Finland for the year. Further, the Full Court found that the trial judge had not properly taken into account the actual circumstances of the family while in Finland. The Full Court found that the family had established significant connection with Finland during the year long stay there and as such had acquired habitual residence in Finland at some time during that year.

1.3 Please provide a brief summary of any other significant developments in your State since the 2011 / 2012 Special Commission relating to international child abduction.

The increased complexity of family circumstances has seen the resolution of cases routinely exceeding 6 weeks. Anecdotally, we have found that respondent parents have more frequently raised defences, including that of grave risk. As such, the ACCA and the courts (in considering whether an order for return should be made or refused) request more evidence from parties in order to make an informed assessment or decision. Australian courts often impose conditions in return orders to meet any suggestion of risk or other hurdles that may be considered to arise as well as to ensure the safest and least traumatic return possible for the child(ren).

2. Issues of compliance

2.1 Are there any States Parties to the 1980 Convention with whom you are having particular challenges in achieving successful co-operation? Please specify the challenges you have encountered and, in particular, whether the problems appear to be systemic.

- No
 Yes, please specify:

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. We have also found that in some cases, the court structure, for example for appeals, does not accord with the country profile.

2.2 Are you aware of situations / circumstances in which there has been avoidance / evasion of the 1980 Convention?

- No
 Yes, please specify:

There have been circumstances where 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. There have also been some cases where other 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 consular channels.

PART II: THE PRACTICAL OPERATION OF THE 1980 CONVENTION

3. The role and functions of Central Authorities designated under the 1980 Convention⁴

In general

3.1 Have any challenges arisen in practice in achieving effective communication or co-operation with other Central Authorities?

- No
 Yes, please specify:

The ACCA experiences challenges in its practice with some Central Authorities.

⁴ See also Section 5 below on "Ensuring the safe return of children" which involves the role and functions of Central Authorities.

For example, in some cases, incomplete applications for return are received from a requesting State or the applications are not received in an acceptable form. In some cases, the applications do not satisfy the Hague Convention requirements, or the document outlining the applicable law in the requesting jurisdiction is unclear. We have also, on occasion, experienced difficulties in securing timely communication from our overseas counterparts.

3.2 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 States Parties with whom you have co-operated?

- No
 Yes, please specify:

In some instances the ACCA has experienced problems, and delayed responses, when requesting additional information or updates from other Central Authorities thereby creating unnecessary obstacles in the management of cases. Australia also notes that in some States, the provision or facilitation of legal aid and advice tends to protract cases as opposed to expediting the Hague application process. We sometimes find that our counterparts 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.

3.3 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:

[Please insert text here](#)

Legal aid and representation

3.4 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 you have dealt with?

- No
 Yes, please specify:

[Please insert text here](#)

3.5 Are you aware of any other challenges in your State, or, where cases originate in your State, in any of the requested States you have dealt with, regarding the obtaining of legal aid, advice and / or representation for either left-behind parents or taking parents?⁵

- No
 Yes, please specify:

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

⁵ See paras 1.1.4 to 1.1.6 of the "Conclusions and Recommendations of the Fifth Meeting of the Special Commission to review the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and the practical implementation of the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* (30 October – 9 November 2006) (hereinafter referred to as the "[Conclusions and Recommendations of the 2006 Special Commission](#)") and paragraphs 32 to 34 of the [Conclusions and Recommendations of the Special Commission to review the operation of the Hague Convention of 19 October 1980 on Jurisdiction, Applicable law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children \(1-10 June 2011 and 25-31 January 2012\)](#) (hereinafter the "C&R of the 2011/2012 Special Commission") (available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings").

Locating the child

3.6 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 ACCA has encountered challenges in locating taking parents when they traverse the Schengen Area and in some other jurisdictions. In instances where a child is unable to be located in a Hague Convention country or otherwise, Australia seeks international assistance through Interpol or from partner law enforcement agencies.

3.7 Has your Central Authority worked with any external agencies to discover the whereabouts of a child wrongfully removed to or retained within your State (e.g., the police, Interpol, private location services)?

No

Yes, please share any good practice on this matter:

The ACCA has a number of internal agreements with other government agencies within Australia to assist in locating children - including immigration, social security, and police. The ACCA has found the best mechanism for ensuring proper information sharing is to establish standing Memoranda of Understanding (MOUs) with specific government agencies that stipulate the circumstances and type of information that may be requested and provided.

Information exchange, training and networking of Central Authorities

3.8 Has your Central Authority shared its expertise with another Central Authority or benefited from another Central Authority sharing its expertise with your Central Authority, in accordance with the Guide to Good Practice – Part I on Central Authority Practice?⁶

No

Yes, please specify:

The ACCA has regular contact with the New Zealand, Japan, Singapore, Canadian and United States Central Authorities to discuss matters of mutual interest such as administrative procedures, legal and policy frameworks. The ACCA also regularly attends international meetings and Conferences to share its experience with the Children's Conventions.

3.9 Has your Central Authority organised or participated in any other networking initiatives between Central Authorities such as regional meetings via conference call or videoconference?

No

Yes, please specify:

The ACCA has participated in a range of networking initiatives with key Convention partners. The ACCA regularly networks with other Central Authorities via conference calls to discuss general issues and to discuss changes in policy framework.

Statistics⁷

3.10 If your Central Authority does not submit statistics through the web-based INCASTAT database, please explain why.

The ACCA has attempted to submit statistics through the INCASTAT database. However our experience has been that the system has significant technical difficulties, including the system shutting down and freezing for long periods of time during data entry. As a fall back option the ACCA has regularly forwarded hard copies of statistics to the Permanent Bureau for direct entry. It is hoped that current changes to our case management database will make it easier for Australia's case related data to be uploaded by HCCH to INCASTAT.

⁶ Available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice". See, in particular, Chapter 6.5 on twinning arrangements.

⁷ See paras 1.1.16 to 1.1.21 of the Conclusions and Recommendations of the 2006 Special Commission (*supra*. note 5).

Prompt handling of cases

3.11 Does your Central Authority have mechanisms in place to ensure the prompt handling of cases?

- No
 Yes, please specify:

The ACCA has internal procedures and guidelines in place to ensure the prompt handling of cases.

3.12 If your Central Authority is experiencing delays in handling cases please specify the main reasons for these delays:

In some instances, delay is encountered where applications received by the ACCA are not sufficient to satisfy it that the application meets the requirements of the Hague Convention. In those cases, the ACCA has procedures to ensure that any missing information is sought quickly from the requesting jurisdiction. There have been many cases where it has taken applicants months to provide additional information required by the ACCA or the Family Court.

4. Court proceedings & promptness

4.1 Has your State limited the number of judicial or administrative authorities who can hear return applications under the 1980 Convention (*i.e.*, concentration of jurisdiction)?⁸

- Yes
 No, please indicate if such arrangements are being contemplated:

Please insert text here

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

- No
 Yes, please explain:

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.

4.3 If your response to the previous question 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 explain:

 Yes, please explain:

Please insert text here

4.4 If your State is experiencing delays in handling return decisions please specify the main reasons for these delays:

The increased complexity of family circumstances has seen the resolution of cases routinely exceed 6 weeks. Anecdotally, we have found that respondent parents more frequently raised defences, including that of grave risk. As such, the ACCA and the courts (in considering whether an order for return should be made or refused) request more evidence from parties in order to make an informed assessment/decision. Australian courts regularly impose conditions in return orders to meet any suggestion of risk or other hurdles that may be considered to arise as well as to ensure the safest and least traumatic return possible for the child(ren).

The increased use of modern technology and the increased accessibility of international travel has, in some cases, contributed to delays in return proceedings. Where previously decisions were made summarily and often on the basis of papers alone, the level of complexity, and the ease of availability of parties, has seen an increased incidence of oral

⁸ See, *The Judges' Newsletter* on International Child Protection – [Vol. XX / Summer-Autumn 2013](#) the special focus of which was "Concentration of jurisdiction under the *Hague Convention of 25 October 1980 on the civil aspects of International Child Abduction* and other international child protection instruments".

evidence being given, and cross-examination sought of the parties or witnesses being sought. These practices necessarily lengthen the hearing time.

4.5 Do your courts regularly order immediate protective measures when initiating the return procedure, so as to prevent a new removal and minimize the harm to the child (e.g., prohibit removal of the child from the jurisdiction, retain documentation, grant provisional access rights to the left-behind parent)?

- No, please explain:
Please insert text here

- Yes, please explain:

At the request of the ACCA, courts may make orders preventing further removal of abducted children from Australia while the Hague Convention application is being determined. In other instances where obstacles to return appear to be obvious at the onset, the courts may impose protective measures such as making arrangements for interim care of the child(ren) or interim contact, pending the resolution of the Hague proceedings, to help mitigate problematic return issues. The Australian courts regularly hold the passports of the child(ren) and the respondent parent pending the outcome of proceedings. The preparation of Family Reports, and the appointment of Independent Children's Lawyers is also regularly employed by the Family Court of Australia in appropriate cases. This ensures that children's views are before the Court in appropriate cases and that children are prepared for the possible outcomes of the proceedings.

4.6 Do your courts make use of direct judicial communications to ensure prompt proceedings?

- Yes
 No, please explain:

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.

4.7 If your State has not designated a sitting judge to the International Hague Network of Judges does your State intend to do so in the near future?

- Yes
 No, please explain:

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

4.8 Please comment upon any cases (whether your State was the requesting or 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?

In a case where Australia was the requesting State, the judge from the requested State liaised with the Central Authorities of both States to make enquiries regarding potential grave risk defences raised, the domestic legal process in Australia and the timeframes involved in obtaining divorce orders in Australia. The ACCA liaised with its Department of Foreign Affairs and Trade and its Department of Immigration and Border Protection to provide the relevant responses to the requesting Central Authority.

In other cases Australian judges have sought the assistance of the Australian Hague Network Judges to obtain information about laws in other Convention countries or to seek the release of material that is held by an overseas court (such as social science reports).

The Australian Hague Network Judges have also, on occasion, and with the consent of both parties, arranged for simultaneous mirror orders to be made in Australia and the requesting jurisdiction.

The ACCA has also sought the assistance of the Australian Hague Network Judges to obtain information from the Network Judges in other jurisdictions where contact with the relevant Central Authority has failed to secure information.

The Network has also been used to facilitate communication in domestic parenting cases and to establish the likely time frames for securing a court hearing upon return in Hague cases.

5. **Ensuring the safe return of children**⁹

*Methods for ensuring the safe return of children*¹⁰

5.1 What measures has your Central Authority taken to ensure that the recommendations of the 2006 and 2011 / 2012 Special Commission meetings¹¹ regarding the safe return of children are implemented?

The ACCA notes the recommendations made at the 2011/2012 Special Commission meeting regarding facilitating the safe return of children, specifically: the values of assistance provided by Central Authorities and other relevant authorities and direct judicial communication, the link between the 1980 and the 1996 Convention in giving regard to the impact that domestic violence may have on a child; and consideration of foreign civil protection orders made in the context of domestic violence cases. Where able to do so, Australia has attempted to implement these recommendations. The Australian courts regularly place conditions upon return orders to ensure the safe return of children. These soft landing orders may include accommodation, financial assistance and orders around contact that remain in place until new orders can be made in the requesting jurisdiction. These are achieved through a range of means. They might be made conditions precedent to the return, or they may be achieved through mirror orders that are enforceable in both jurisdictions. In some cases the 1996 Convention, or reciprocal bilateral arrangements, can be used to register some conditions.

5.2 In particular, in a case where the safety of a child is in issue and where a return order has been made in your State, how does your Central Authority ensure that the appropriate child protection bodies in the *requesting* State are alerted so that they may act to protect the welfare of a child upon return (until the appropriate court in the requesting State has been effectively seised)?

Such advice is provided to the Central Authority of the requesting state with a request to make appropriate arrangements with domestic authorities or services to enable the safe return of the child. The ACCA would ensure that the relevant Central Authority had been contacted and was satisfied about the welfare arrangements made. Where the 1996 Convention is in force arrangements can be made to ensure that any child protection concerns are appropriately communicated and, where appropriate, any urgent measures that have been taken are registered or recognised in the requesting jurisdiction upon return. Australian courts may also make orders, in the context of a return, on an urgent basis to deal with such concerns. These enable recognition and enforcement of those associated orders in the requesting jurisdiction if that jurisdiction is also a party to the 1996 Convention.

5.3 Where there are concerns in the requested State regarding possible risks for a child following a return, what conditions or requirements can the relevant authority in your State put in place to minimise or eliminate those concerns?

See the discussion in relation to the use of conditions precedent on return orders at 5.1 above.

Use of the 1996 Convention to ensure a safe return

5.4 If your State is not Party to the 1996 Convention, is consideration being given to the possible advantages of the 1996 Convention in providing a jurisdictional basis for urgent protective measures associated with return orders (**Arts 7 and 11**), in providing for their recognition by operation of law (**Art. 23**), and in communicating information relevant to the protection of the child (**Art. 34**)?

No

⁹ See **Art. 7(2) h** of the 1980 Convention.

¹⁰ Where relevant, please make reference to the use of undertakings, mirror orders and safe harbour orders and other such measures in your State.

¹¹ See the [Conclusions and Recommendations](#) of the Special Commission of 2006 (*supra*. note 5) at paras 1.1.12 and 1.8.1 to 1.8.2 and 1.8.4 to 1.8.5 and the Appendix to the Conclusions and Recommendations and the Conclusions and Recommendations of the 2011 / 2012 Special Commission (*supra*. note 5).at paras 39-43.

- Yes, please explain:
Australia is a party to the 1996 Convention. See the discussion above at 5.2.

Protection of primary carer

5.5 Are you aware of cases in your State where a primary carer taking parent, for reasons of personal security (e.g., domestic or family violence, intimidation, 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 alledged 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 place the child in an intolerable situation. If such a risk cannot be sufficiently 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.

5.6 In particular, would your authorities consider putting in place measures to protect the primary carer upon return in the requesting State as a mean to secure the safe return of the child? Please explain and provide case examples where possible.

Australian 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. As described above, enforceable strategies are used, and undertakings are not.

Post-return information

5.7 In cases where measures are put in place in your State to ensure the safety of a child upon return, does your State (through the Central Authority, or otherwise) attempt to monitor the effectiveness of those measures upon the child's return? Would you support a recommendation that States Parties should co-operate to provide each other with follow-up information on such matters, insofar as is possible?

The ACCA's role ceases upon fulfilment of Australia's obligations under the 1980 Hague Convention. Such a recommendation would therefore be outside the scope of the ACCA's role.

5.8 If your State is not Party to the 1996 Convention, is consideration being given to the possible advantages of the 1996 Convention in providing a jurisdictional basis for requesting a report on the situation of the child upon return to the State of habitual residence (**Art. 32-(a)**)?

- No
 Yes, please explain:
Australia is party to the 1996 Convention.

6. Voluntary agreements and mediation

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

The ACCA encourages voluntary agreement and mediation where appropriate by urging parties to participate in mediation. In such instances, the ACCA manages applications by providing international family mediation, through a funded non-government agency, for the purpose of reaching an amicable resolution. The Australian courts also, in some cases, will refer parties to mediation, not necessarily as a way to resolve the return case, although that is possible. Mediation is also used as a means to ensure that parties have prepared themselves, and their children, for the possible outcomes of the Hague application, including consideration of any proposed conditions that might assist with a return outcome.

6.2 In what ways have you used the "Guide to Good Practice on Mediation"¹² for the purpose of implementing the 1980 Convention in your State? Please explain:

Australia's protocol in relation to mediation in all access matters, and the use of mediation by the Australian courts in abduction matters, is consistent with the Guide to Good Practice on Mediation.

6.3 Has your State considered or is it in the process of considering the establishment of a Central Contact Point for international family mediation to facilitate access to information on available mediation services and related issues for cross-border family disputes involving children, or has this task been entrusted to the Central Authority?¹³

- No, please explain:
This task has been entrusted to the Central Authority
- Yes, please explain:
Please insert text here

7. **Preventive measures**

7.1 Has your State taken steps to advance the development of a travel form under the auspices of the International Civil Aviation Organisation?¹⁴

- No
- Yes, please describe:
Please insert text here

7.2 Regardless of whether the International Civil Aviation Organisation adds the development of a travel form to its work programme, would your State support the development of a non-mandatory model travel form under the auspices of the Hague Conference?

- Yes
- No, please explain:
Australia already has a range of safeguards in place, including the inclusion of warnings issued by the Australian passports office and on the Department of Foreign Affairs' smarttraveller.gov.au website.

8. **The Guide to Good Practice under the 1980 Convention**

8.1 In what ways have you used the Parts of the Guide to Good Practice¹⁵ to assist in implementing for the first time, or improving the practical operation of, the 1980 Convention in your State?

- a. Part I on Central Authority Practice. Please explain:
As an established Central Authority, the ACCA finds the Guide to Good Practice

¹² Available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice".

¹³ As it has been encouraged in the Guide to Good Practice on Mediation, Chapter 4, on "Access to Mediation". par. 114-117. See also Conclusions and Recommendations of the 2011 / 2012 Special Commission (*supra*. note 5) at par. 61.

¹⁴ See the Conclusions and Recommendations of the 2011 / 2012 Special Commission (*supra*. note 5) at par. 92.

¹⁵ All Parts of the Guide to Good Practice under the 1980 Convention are available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice".

useful, particularly in discussions with newer Central Authorities. The ACCA's operating procedures satisfy the key operating principles outlined in the Guide and the ACCA works closely with other Central Authorities in respect to the operation of the Hague Convention. The ACCA 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. Please explain:

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

c. Part III on Preventive Measures. Please explain:

Australia actively works with local and international law enforcement authorities as well as courts to reduce where possible the incidence of wrongful removal or retention of children. The ACCA also raises awareness of international parental child abduction through various channels such as websites and publications. The ACCA's website 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.

d. Part IV on Enforcement. Please explain:

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

8.2 How have you ensured that the relevant authorities in your State have been made aware of, and have had access to, the Guide to Good Practice?

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

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

Please insert text here

9. Publicity and debate concerning the 1980 Convention

9.1 Has the 1980 Convention given rise to (a) any publicity (positive or negative) in your State, or (b) any debate or discussion in your national parliament or its equivalent?

No

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

Recent cases relating to the wrongful removal of children have raised interest in the operation of the Hague Convention and the perceived need for criminalisation of taking parents. There has been significant media in Australia over the past 18 months following a high profile case involving Australia and a non-Convention country. While not a 1980 Convention matter, this created significant media interest in wrongful removal and retention more generally.

The Civil Law and Justice Legislation Amendment Bill (CLJLAB) was introduced and read a first time in the Australian Senate on 22 March 2017. That Bill, if passed, would create two new offences. These offences would make it unlawful to retain a child outside of Australia otherwise than in accordance with a court order, or the written consent of relevant parties, when a parenting order is in force or is pending in relation to that child. These proposed offences will complement existing provisions (sections 65Y and 65Z of the Family Law Act 1975) that already make it an offence to wrongfully remove a child from Australia in similar circumstances.

9.2 By what methods does your State disseminate information to the public about the 1980 Convention?

The Attorney-General's Department publishes information on its website about the ACCA and its role in administering the 1980 Hague Convention

(www.ag.gov.au/childabduction). The ACCA also works with partner agencies who publish information on the 1980 Hague Convention and the role of the ACCA on their websites, as well as non-governmental organisations. 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) and the Children and Parental Consent brochure which it produces through its Passport Office.

**PART IV: TRANSFRONTIER ACCESS / CONTACT AND
INTERNATIONAL FAMILY RELOCATION**

10. Transfrontier access / contact¹⁶

10.1 Since the 2011 / 2012 Special Commission, have there been any significant developments in your State regarding Central Authority practices, legislation, procedural rules or case law applicable in cases of transfrontier contact / access?

No

Yes, please explain:

Australia now manages access applications by providing international family mediation, through a funded non-government agency, for the purpose of allowing an amicable resolution to be reached about access to the child. Consent of both parties is sought for international family mediation to take place. In the event that one party does not consent to mediation, it would be necessary for the requesting parent to apply under Australia's domestic family law legislation to seek orders for contact with the child(ren). Such an application would be a private matter for the applicant parent, and at their own expense.

10.2 Please indicate any important developments in your State, since the 2011 / 2012 Special Commission, in the interpretation of **Article 21** of the 1980 Convention.

Australia now manages access applications by offering international family mediation. The ACCA's role no longer extends to initiating or assisting in the institution of proceedings to secure a party's peaceful enjoyment of access rights. There are a number of matters that were filed with the court prior to the change in policy, which have not yet been finalised. No new access matters are filed by the ACCA.

10.3 What problems have you experienced, if any, as regards co-operation with other States in respect of:

a. the granting or maintaining of access rights;

Nil

b. the effective exercise of rights of access; and

Some states require a determination of enforceability by a court before they will take action. 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. However, 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.

c. the restriction or termination of access rights.

Nil

Please provide case examples where possible.

[Please insert text here](#)

10.4 In what ways have you used the "General Principles and Guide to Good Practice on Transfrontier Contact Concerning Children"¹⁷ to assist in transfrontier contact / access cases in your State? Can you suggest any further principles of good practice?

¹⁶ See the [Conclusions and Recommendations](#) of the 2006 Special Commission (*supra.* note 5) at paras 1.7.1 to 1.7.3.

No

11. International family relocation¹⁸

11.1 Since the 2011 / 2012 Special Commission, have there been any significant developments in your State regarding the legislation, procedural rules or case law applicable to international family relocation? Where possible, please explain these developments in the legislation, procedural rules or case law:

No

PART V: NON-CONVENTION CASES AND NON-CONVENTION STATES

12. Non-Convention cases and non-Convention States

12.1 Are there any States that you would particularly like to see become a State 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:

Australia would like to see continued encouragement provided to India, Malaysia, Indonesia and Vietnam. Promotion of the Convention to these countries can be done through extending invitations to future Special Commission meetings and plenary sessions and regional meetings that focus on the Asia-Pacific region. Additionally, the benefit of legal remedies can be highlighted through the experiences that member States have had through their judicial systems in working within the framework of the Hague Children's Convention.

12.2 Are there any States which are not Parties to the 1980 Convention or not Members of the Hague Conference that you would like to see invited to the Special Commission meeting in 2017?

India, Malaysia, Indonesia and Vietnam.

*The "Malta Process"*¹⁹

12.2 In relation to the "Malta Process":

- a. Do you have any comment to make on the "Principles for the Establishment of Mediation Structures in the context of the Malta Process" and the accompanying Explanatory Memorandum?²⁰

Australia has implemented a mediation structure, which is already in use in Hague matters. Australia offered mediation in a recent matter involving a non-Hague country with which Australia has a bilateral agreement. Unfortunately, on that occasion

¹⁷ Available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice".

¹⁸ See the Conclusions and Recommendations of the 2006 Special Commission meeting at paras 1.7.4 to 1.7.5: "1.7.4 The Special Commission concludes that parents, before they move with their children from one country to another, should be encouraged not to take unilateral action by unlawfully removing a child but to make appropriate arrangements for access and contact preferably by agreement, particularly where one parent intends to remain behind after the move. 1.7.5 The Special Commission encourages all attempts to seek to resolve differences among the legal systems so as to arrive as far as possible at a common approach and common standards as regards relocation."

¹⁹ The "Malta Process" is a dialogue between certain States 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 Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Judicial Seminars on the International Protection of Children".

²⁰ The Principles and Explanatory Memorandum were circulated to all Hague Conference Member States and all States participating in the Malta Process in November 2010. They are available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Judicial Seminars on the International Protection of Children".

one of the parents refused to participate in mediation.

- b. Have any steps been taken towards the implementation of the Malta Principles in your State and the designation of a Central Contact Point, in order to better address cross-border family disputes over children involving States that are not a Party to the 1980 and 1996 Hague Conventions?

No
 Yes, please explain:
 Please insert text here

- c. What is your view as to the future of the "Malta Process"?

The Malta process represents a good opportunity to agree on standard mediation practices and to engage with non-Hague countries. Of key concern is the need to develop a clear understanding of the interaction between voluntary mediation processes and more formalised court processes, which may be required to operate concurrently.

PART VI: TRAINING AND EDUCATION AND THE TOOLS, SERVICES AND SUPPORT PROVIDED BY THE PERMANENT BUREAU

13. Training and education

13.1 Can you give 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?

Funding was provided to the Family Law Section of the Law Council of Australia to develop resources for the legal profession in relation to international parental child abduction. This resource was finalised and made publicly available in September 2015. It is accessible at https://www.familylawsection.org.au/images/documents/FLS_IPCA-Handbook_DIGITAL_FINAL.pdf.

Support was provided for international family mediation training in 2012 for senior family dispute resolution practitioners to provide a pool of mediators located near the registries of the Family Court of Australia that hear Hague Convention matters.

Grants of funding were provided to support a delegation of Australian mediators from a combination of Legal Aid, International Social Services (Australia), and Family Court Registry Family Consultants to attend mediation training in Japan in September 2015.

14. The tools, services and support provided by the Permanent Bureau

In general

14.1 Please comment or state your reflections on the specific tools, services and support provided by the Permanent Bureau to assist with the practical operation of the 1980 and 1996 Conventions, including:

- a. The Country Profile available under the Child Abduction Section.

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 would be appreciated as the information is sometimes outdated.

- b. INCADAT (the international child abduction database, available at < 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 other languages other than English).

- c. *The Judges' Newsletter* on International Child Protection - the publication of the Hague Conference on Private International Law which is available online for free;²¹ [This is a useful publication.](#)
- d. The specialised "Child Abduction Section" of the Hague Conference website (< www.hcch.net >);
The Child Abduction Section is particularly useful. However, the Country Profile information would be more useful if it was expanded to include a complete and up-to-date list of all Central Authorities. 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. INCASTAT (the database for the electronic collection and analysis of statistics on the 1980 Convention);²²
While useful in theory, our practical experience is that both inputting and retrieving data from INCASTAT is extremely difficult. Our experience has been that the system tends to freeze and lose data, making input extremely difficult, frustrating and time consuming. The ACCA is currently upgrading its case management system. We hope that the reports produced by the new system produces will, in future, be more compatible with the INCASTAT system.
- f. Providing technical assistance and training to States Parties regarding the practical operation of the 1980 and 1996 Conventions.²³ Such technical assistance and training may involve persons visiting the Permanent Bureau or, alternatively, may involve the Permanent Bureau 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 supports 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.](#)
- g. Encouraging wider ratification of, or accession to, the Convention(s), including educating those unfamiliar with the Convention(s);²⁴
[Australia welcomes this work.](#)
- h. Supporting communications between Central Authorities, including maintaining their contact details updated on the HCCH website;
[Australia welcomes this approach.](#)
- i. 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
[Australia supports this work.](#)

Other

14.2 What other measures or mechanisms would you recommend:

- a. To improve the monitoring of the operation of the Conventions;
[No comment](#)
- b. To assist States in meeting their Convention obligations; and
[No comment](#)

²¹ Available on the Hague Conference website at < www.hcch.net > 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.

²² Further information is available via the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "INCASTAT".

²³ Such technical assistance may be provided to judges, Central Authority personnel and / or other professionals involved with the practical operation of the Convention(s).

²⁴ Which again may involve State delegates and others visiting the Permanent Bureau or, alternatively, may involve the Permanent Bureau organising, or providing assistance with organising, national and international judicial and other seminars and conferences concerning the Convention(s) and participating in such conferences.

- c. To evaluate whether serious violations of Convention obligations have occurred?
[No comment](#)

PART VII: PRIORITIES AND RECOMMENDATIONS FOR THE SPECIAL COMMISSION AND ANY OTHER MATTERS
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15. Views on priorities and recommendations for the Special Commission

15.1 Which matters does your State think ought to be accorded particular priority on the agenda for the Special Commission? Please provide a brief explanation supporting your response.

[Grave risk and the importance of ensuring that concerns about family violence are appropriately dealt with within the Convention's framework and do not undermine the operation of the Convention.](#)

[Ensuring that all States have enforcement mechanisms that are accessible and effective.](#)

[The benefits of using the 1996 Convention and 1980 Convention together in appropriate cases.](#)

15.2 States are invited to make proposals concerning any particular recommendations they think ought to be made by the Special Commission.

[Please insert text here](#)

16. Any other matters

16.1 States are invited to comment on any other matters which they may wish to raise concerning the practical operation of the 1980 Convention.

[Please insert text here](#)