HEMMING+HART LAWYERS

Family Law Fact Sheet

International child abduction – unlawful removal of children from Australia

If your child has been abducted from Australia, you must act immediately and obtain legal advice. Failure to act could mean that you lose your right to have your child returned to Australia, or that it is considerably more difficult to ensure your child's return.

The procedure for obtaining the return of the child may depend upon which country your child has been taken to.

Hague Convention Countries

Australia is a party to an international treaty on child abduction, known as the Hague Convention.

There are more than 70 countries that are signatories to the Hague Convention. The Commonwealth Attorney General Department has a list of countries that are convention countries.

When a child has been abducted or detained overseas for a period longer than agreed, the convention enables parents to make an application for the return of their child to Australia. This system only applies if the country your child is in is a Hague Convention Country.

This usually occurs through the exercise of the power of the State Central Authority, which in Queensland is the Commonwealth Attorney General.

Making an application to the Central Authority

The State Central Authority of the country in which the child is in makes an application in a local court for the return of a child to Australia. The application must be made under the terms of the Hague Convention. It is therefore important that you obtain legal advice in the preparation of your application.

Generally, a child who has wrongfully removed from Australia must be returned if you are able to demonstrate the following in your application:

- The child is under 16 years of age;
- You have "rights of custody" or parental responsibility of the child, unless your parental responsibility has been taken away by a Court order;
- You were exercising your rights of custody at the time your child was removed from Australia'
- The child must have been habitually resident in Australia immediately before the child was removed from Australia'
- Your child must have been removed to or kept in a Hague Convention country; and
- You did not agree to the child being taken or kept in the convention country.

The other parent or person who has removed your child from Australia may be able to keep your child in the convention country if they can demonstrate the following:

- More than a year has passed since you made the application for the return of the child to Australia and the child has now settled in their new country;
- You did not have rights of custody or parental responsibility of the child or you did not exercise those rights;
- There is a serious risk of physical or psychological harm, or the child would be placed in an intolerable situation, if the child was returned to where they used to live with you;
- The child does not wish to be returned and has reached an age and level of maturity which requires the Court to consider the views of the child;
- The return of the child would result in the child being denied their fundamental human rights.

What if your child has been removed to a non-convention country?

If your child has been taken to a country which is not a party to the Hague Convention, it may still be possible to have your child returned to Australia. In most cases, a lawyer in the overseas country will have to be employed in order to issue legal proceedings in that country for the recovery of the child in conjunction with Australian proceedings.

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This fact sheet provides general information only and does not constitute legal advice.