



# FAQ

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## International Family Law

*This document summarises some of the more commonly asked questions regarding international family law. Refer to the useful links section of our website for more general information on international family law. If your question is not answered here or you need further advice please phone us on 02 6651 8440 or email [info@bryantmckinnon.com.au](mailto:info@bryantmckinnon.com.au).*



### CHILD PROTECTION & ABDUCTION

#### What is the Hague Convention?

The Hague Convention on the Civil Aspects of International Child Abduction (referred to in this document as simply the Hague Convention) is a multi-country agreement that sets out a legal procedure for seeking to return abducted children to their home country. The Convention also provides guidelines for international child access, when parents or guardians live in different countries.

#### Which countries are signatories?

[Click here](#) to access a full list of countries in the Hague Convention.

#### What can I do if my child has been abducted to another country by my ex-partner?

The first step is to report the matter to your local police immediately. Once you have done this, here are some additional steps you can take:

##### Family Law Watchlist:

The Australian Federal Police maintain a Family Law Watchlist. If your child has not yet left the country, the watchlist will alert police when an attempt is made to take your child out of the country. You will need to complete the [Family Law Watchlist Request Form](#) plus you may require a court order.

##### Federal Government Support:

The federal government may be able to assist. If your child has been

taken to a country that is a signatory to the Hague Convention then the [Australian Central Authority](#) in the Attorney-General's Department is responsible. If your child has been taken to a country that is not a member of the Hague Convention, you may get assistance from the Consular Branch of the [Department of Foreign Affairs and Trade](#).

##### Legal Counsel:

We strongly recommend that you seek legal advice to help you navigate court orders and provide you with ongoing counsel. Neither the police, nor the federal government will be able to provide legal assistance. [International Social Service \(ISS\) Australia](#) provides a range of services, including free legal assistant in child abduction cases.

## What is the process to have my child returned from a Hague Convention country?

If you believe your child has been wrongfully abducted to a Hague Convention country you must submit an [Application Form](#) to the Australian Central Authority (ACA).

The ACA will only accept cases that meet their guidelines. Check this [Guide for Applicants](#) before submitting your application.

*The Hague Convention is an agreement that sets out a legal procedure for seeking to return abducted children to their home country.*

If the ACA agrees to accept your application then the process that follows is likely to be lengthy and may include mediation as well as multiple court hearings. Your child will return only once there is a voluntary agreement or a Court Order.

## When might a Hague Convention country refuse to return my child?

Some of the reasons why the court may decide not to return the child are:

- The child's habitual country ('home') of residence is in dispute.
- The applicant consented to the removal or retention, or subsequently acquiesced to the removal or retention.
- There is a grave risk that the child's return would expose the

child to physical or psychological harm, or otherwise place the child in an intolerable situation.

- The child has been in the new country for more than twelve months and is settled there.

- The child objects to being returned to its home country, and is old enough and mature enough for its views to be considered.
- The child would breach their fundamental freedoms and human rights.

## What can I do if my child has been taken to a non-Hague Convention country?

Australia has bilateral agreements on international parental child abduction with [Egypt](#) and [Lebanon](#). The ACA is also responsible for assessing applications related to these agreements.

For all other non-Hague Convention countries limited consular support is available through the [Department of Foreign Affairs and Trade](#). The type of help provided will depend on the relevant country's legal framework, but it may include providing a list of local lawyers, and helping you to communicate with local authorities and child welfare agencies.

The 24-hour consular service telephone number is 1300 555 135.

## Are child custody orders made overseas enforceable in Australia?

Australia has arrangements with some countries and jurisdictions to register overseas court orders so they are enforceable in Australia. The list of relevant jurisdictions can be found in Schedule 1A of the Family Law Regulations 1984 on the [ComLaw](#) website.

If you have a court order in one of these countries you need to send a request to the [International Family Law Section](#), along with three certified copies of the child order and a certificate signed by an officer of the court in the country in which



the order was made stating that the order is, at the date of certificate, enforceable in that country or jurisdiction.

Court orders made in other Hague Convention countries may also be registered in Australia. The request must be submitted to the Australian Central Authority, and include a certified copy of the court orders, and a certified English translation if in another language. For assistance you should contact the central authority in the country where the court order was made.

If you have a court order from a non-Hague Convention country or are otherwise unable to have your foreign court order registered in Australia you may need to obtain a new child court order in Australia, either by obtaining “consent” orders signed by both parties, or by filing an application in the family law courts for a parenting order.

## My children and I now live in Australia and my ex-partner has charged me with abduction. What should I do?

If you have been served with court documents naming you as a person who has abducted a child you should seek legal assistance immediately. [International Social Service \(ISS\)](#) Australia offers a range of services including legal aid, mediation and negotiation services. The [information for responding parents](#) page of the Attorney General’s website offers further information, including a summary of grounds for non-return.

*If you have been served with court documents naming you as a person who has abducted a child you should seek legal assistance immediately.*

## Is it possible to get financial assistance to pay for costs of getting my child returned from overseas?

Both the [Australian Central Authority \(ACA\)](#) and the [International Social Service \(ISS\)](#) offer services free of charge. However, the cost to manage your case in the country to which you are applying may not be covered by the central authority of that country. In this case, you may be able to apply for legal aid in that country, or assistance from the Attorney General’s department’s [Overseas Child Abduction Scheme](#).



## I have been ordered to return to Australia with my children but cannot afford the airfares. What can I do?

If you are unable to pay for airfares, the Attorney General’s department may ask the person seeking the return to pay the airfares. If this is not possible, you may be able to apply for Australian government financial assistance under the [Overseas Child Abduction Scheme](#).

## PREVENTING TRAVEL

### What can I do to prevent my child from being taken to another country by my ex-partner?

If you fear that your children may be abducted it may be possible to have their names placed on the Australian

Federal Police [Family Law Watchlist](#), which alerts police to the movement of children and enables the absolute or conditional prohibition of travel.

We recommend that you seek legal advice as a court order may be required to have your child's name(s) added to the Family Watchlist.

## Do I have to get permission from my ex-partner to take my child overseas?

Yes, unless you have a court order or parenting plan that specifically states otherwise. We recommend that in addition to finding out what permission is required when leaving Australia with children, that you find out what permission is required when entering another country with children.

## Can I prevent my child from being issued with a passport if I fear they will be abducted?

The Australian Department of Foreign Affairs and Trade requires [consent of both parents](#) before issuing a passport, except where allowed by an Australian court order or in special circumstances.

If your children do not already have passports and you are concerned that your ex-partner is going to apply for them without your consent, you can request a [Child Alert](#) with the Department of Foreign Affairs & Trade.

## OVERSEAS ACCESS

### How do I secure access to my children if they are living in another country?

The Hague Convention has a process to allow parents to seek access



orders in the child's home country allowing them to have access. Access arrangements could include visits, email, phone or video calls.

The [Australian Central Authority](#) may be able to assist you in gaining access to a child in a Hague Convention country, or in Egypt or Lebanon, where Australia has separate bilateral arrangements.

If your child is in another country you should consider getting private legal advice in the child's home country. You may be able to get consular support from the [Department of Foreign Affairs and Trade](#), or legal advice from [International Social Service \(ISS\)](#).

## CHILD SUPPORT

### Can I apply for child support if my ex lives overseas?

Services Australia may be able to help you set up child support when you or the other parent live in another country. If you live in Australia and the other parent is overseas, [contact Services Australia](#) to discuss applying for child support.

You may be able to apply for a child support assessment or register a maintenance liability made outside Australia.

Australia has an agreement with a number of [reciprocating countries](#) that ensure that child support arrangements made in Australia will be recognised locally.

### Can I apply for child support if I live overseas and my ex lives in Australia?

If you live in a [reciprocating jurisdiction](#) and the other parent lives in Australia you can apply to get child support through the maintenance authority in your country, using the [International application for an Australian child support assessment form](#).

If you live in a non-reciprocating jurisdiction you need to send the [completed form](#) and any other relevant information to Services Australia. You can fax or post the form using the details on the back of the form, or email to [childsupportoverseas@servicesaustralia.gov.au](mailto:childsupportoverseas@servicesaustralia.gov.au).