

The Senate

Legal and Constitutional Affairs
References Committee

International parental child abduction
to and from Australia

October 2011

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Ms Margaret Cahill	Research Officer
Ms Katie Bird	Administrative Officer
Ms Hannah Dibley	Administrative Officer
Ms Hanako Jones	Administrative Officer

Suite S1.61	Telephone: (02) 6277 3560
Parliament House	Fax: (02) 6277 5794
CANBERRA ACT 2600	Email: legcon.sen@aph.gov.au

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ABBREVIATIONS

AFP	Australian Federal Police
CCA	Commonwealth Central Authority
CDPP	Commonwealth Director of Public Prosecutions
CSA	Child Support Agency
Department	Attorney-General's Department
DFAT	Department of Foreign Affairs and Trade
Family Court	Family Court of Australia
Family Law Act	<i>Family Law Act 1975</i> (Cth)
Hague Conference	Hague Conference on Private International Law
Hague Convention or Convention	<i>Convention on the Civil Aspects of International Child Abduction</i> [1987] ATS 2 (entered into force generally on 1 December 1983)
Hague Convention abductions	International parental child abduction committed to and from countries which are signatories to the Hague Convention
ISS Australia	International Social Service Australia
non-Convention abductions	International parental child abductions committed to or from countries which are not signatories to the Hague Convention
Overseas Custody Scheme	Overseas Custody (Child Removal) Scheme
Passports Act	<i>Australian Passports Act 2005</i> (Cth)
Permanent Bureau	Permanent Bureau of the Hague Conference on Private International Law
Regulations	<i>Family Law (Child Abduction Convention) Regulations 1986</i> (Cth)
SCAs	State and territory Central Authorities

Special Commission

Special Commission on the Practical Operation of
the 1980 and 1996 Hague Conventions, Hague
Conference on Private International Law

RECOMMENDATIONS

Recommendation 1

6.11 The committee recommends that the Australian Government should develop a specific prosecution policy for the offences in sections 65Y and 65Z of the *Family Law Act 1975*; and update the policy as necessary to include guidance on any future amendments to the Family Law Act (including the proposed extension of the offences to wrongful retention and participation in family dispute resolution).

Recommendation 2

6.23 The committee recommends that the Australian Government should maintain a 'watching brief' on the implementation and impacts of the proposed amendments to the offences in sections 65Y and 65Z of the *Family Law Act 1975*, and the extension of the offences to parties who are participating in family dispute resolution. In the event that the proposed amendments do not achieve their intended objective, the committee recommends that the Australian Government should reassess the need for the introduction of stronger measures, including the possibility of a stand-alone criminal offence for international parental child abduction.

Recommendation 3

6.26 The committee recommends that the Australian Government should give consideration to strategies to improve public awareness of the offences in sections 65Y and 65Z of the *Family Law Act 1975*, including:

- a standard notice in all orders made under Part VII of the Family Law Act about the existence and effect of the offence provisions;
- information about the offences being included in existing Australian Government guidance materials (for example, the Travel Smart booklet published by the Department of Foreign Affairs, and Trade, and in the passport application and renewal process);
- conspicuous signage at international departure points (such as airports and sea ports) about the offence provisions; and
- information materials about the offences being made available at community legal centres, legal aid offices, family relationship centres, international departure points and government shop-fronts.

Recommendation 4

6.27 The committee recommends that the Australian Government should investigate the feasibility of incorporating international parental child abduction screening and risk-assessment processes into key stages of a family's post-separation engagement with the family law system.

Recommendation 5

6.38 In consultation with State Central Authorities, the committee recommends that the Attorney-General's Department should adopt a coordinated strategy for communications between Australian Central Authorities and applicants in Hague Convention proceedings. The strategy should include provision for the following measures:

- flexible, case-specific communication arrangements, such as enabling applicants to contact the Commonwealth Central Authority directly, rather than the relevant State Central Authority; and
- routine progress updates (such as periodic teleconferences between applicants and case officers in the relevant Australian Central Authority).

Recommendation 6

6.43 The committee recommends that the Australian Government should develop a specific and comprehensive online information portal about international parental child abduction to and from Australia.

Recommendation 7

6.44 The committee recommends that the Australian Government should, in consultation with relevant stakeholders in the legal profession, re-instate and update international parental child abduction resources for legal practitioners, particularly in respect of Hague Convention matters.

Recommendation 8

6.50 The committee recommends that the Australian Government should, in consultation with relevant stakeholders such as International Social Service Australia, investigate strategies to improve the availability and coordinated delivery of support services in international parental child abduction cases, including post-return services.

Recommendation 9

6.55 The committee recommends that the Australian Government should continue to:

- encourage non-contracting states to accede to the Hague Convention;
- support new and existing contracting states to implement the Hague Convention effectively; and
- pursue bilateral agreements, where appropriate, with countries which have not acceded to the Hague Convention, and which are unlikely to do so in the foreseeable future.

Recommendation 10

6.61 The committee recommends that the Australian Government should investigate strategies for the periodic collection and analysis by an appropriate government agency, or agencies, of comprehensive statistical data on international parental child abduction to and from Australia.

Recommendation 11

6.63 The committee recommends that the Australian Government should review the continuing appropriateness of the exceptional circumstances requirement in subsection 68L(3) of the *Family Law Act 1975*, in respect of the appointment of the Independent Children's Lawyer in Hague Convention proceedings before the Family Court of Australia.

CHAPTER 1

Introduction

Referral of the inquiry

1.1 On 11 May 2011, the Senate referred the following matter to the Legal and Constitutional Affairs References Committee (committee) for inquiry and report by 31 October 2011:

The incidence of international child abduction to and from Australia, including:

- (a) the costs, terms and conditions of legal and departmental assistance for parents whose child has been abducted overseas;
- (b) the effectiveness of the Hague Convention in returning children who were wrongly removed or retained, to their country of habitual residence;
- (c) the roles of various Commonwealth departments involved in returning children who were wrongly removed or retained, to their country of habitual residence;
- (d) policies, practices and strategies that could be introduced to streamline the return of abducted children; and
- (e) any other related matters.¹

Scope of the inquiry

1.2 The committee's terms of reference are not confined expressly to international parental child abduction—that is, abductions committed by parents or persons with parental responsibility in respect of a child or children.

1.3 While acknowledging the seriousness of non-parental child abductions,² the committee has focused its inquiry on international parental child abduction for the following reasons:

- it appears to be implied in the terms of reference, which adopt the language of the *Hague Convention on the Civil Aspects of International Child Abduction* (Hague Convention or Convention);³ and

1 *Journals of the Senate*, 11 May 2011, p. 896.

2 See, for example, Queensland Law Society, *Submission 25*, p. 4, which referred to abductions committed in the course of other criminal offences against children. See also, ChilOut—Children Out of Immigration Detention, *Submission 26*, which referred to an individual case concerning the deportation from Australia of an asylum seeker child.

3 [1987] ATS 2 (entered into force generally on 1 December 1983).

- the vast majority of evidence received by the committee during the inquiry has focused on international parental child abduction.

Definition of 'international parental child abduction'

1.4 For the purposes of its inquiry, the committee has interpreted international parental child abduction to mean abductions committed by:

- persons exercising parental responsibility in relation to an abducted child or children;⁴ and
- parents who have no parental responsibility in relation to an abducted child or children—for example, pursuant to orders made under the *Family Law Act 1975* (Cth) (Family Law Act)⁵ or under the family laws of an overseas jurisdiction.

1.5 In the context of international parental child abduction, the term 'abduction' refers to the wrongful removal or retention of a child from his or her country of habitual residence, which is committed:

- by a parent or a person exercising parental responsibility in relation to the child; and
- in breach of the rights of:
 - another person with parental responsibility in respect of the child; and
 - the child, in respect of maintaining direct contact with both parents on a regular basis.⁶

Context of the inquiry

1.6 International parental child abduction is a significant legal and social issue for those families which it affects. The overall increase in the breakdown of marital relationships, together with the increasing frequency of intercultural marriages and the accessibility of international travel, have been identified as factors contributing to increasing rates of international parental child abduction.⁷ The high rate of

4 The term 'parental responsibility' is defined in s 61B of the *Family Law Act 1975* (Cth) (Family Law Act), to mean 'all the duties, powers, responsibilities and authority which, by law, parents have in relation to children'.

5 See Part VII of the Family Law Act, especially Divisions 5 (parenting orders) and 6 (parenting orders other than child maintenance orders).

6 This interpretation encompasses the definition of wrongful removal or retention of a child in Article 3 of the *Hague Convention on the Civil Aspects of International Child Abduction* (as implemented in Australia in the *Family Law (Child Abduction Convention) Regulations 1986* (Cth), reg 16(1A)), and the definition of 'parental child abduction' adopted by the Family Law Council in *Parental Child Abduction: a Report to the Attorney-General* (January 1998), [1.01].

7 See, for example, International Social Service Australia, *Living in Limbo: the Experience of International Parental Child Abduction—the call for a National Support Service* (February 2005), p. 3.

intercountry marriages in Australia suggests that 'where children eventuate, following relationship conflict, separation or divorce, one partner may consider returning to his or her homeland, or make the return to Australia'.⁸

1.7 Statistical data about international parental child abduction to and from Australia indicates that, in 2008:

- there was a 74% increase in the number of applications for the return of children under the Hague Convention since 2003;
- the largest number of applications concerned abductions to or from New Zealand, the United States and the United Kingdom;
- there was an overall judicially ordered return rate of 51% (higher than the global average of 46%); and
- the main reason for refusals by Australian courts to order the return of children allegedly abducted to Australia was that the Convention was not applicable (primarily because habitual residence or rights of custody were not established).⁹

1.8 Although official data is not collected on the motivating factors for international parental child abduction to and from Australia,¹⁰ the following factors have been identified anecdotally:

- a wish to control the cultural upbringing of the child—often due to differences in approaches to child-rearing, discipline, religious or cultural beliefs;
- a fear of loss of relationship with the child, following parental separation;
- frustration or a sense of unfairness in relation to parenting arrangements, including those ordered by the courts;
- the 'proprietary' nature of some parents' relationships with their children;
- a desire to prevent the other parent from having access to the child; and
- a desire to escape family violence or child abuse.¹¹

8 International Social Service Australia, *Living in Limbo: the Experience of International Parental Child Abduction—the call for a National Support Service* (February 2005), p. 5.

9 Nigel Lowe (for the Hague Conference on Private International Law), *A Statistical Analysis of Applications Made in 2008 Under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, Part III: National Reports, pp 4, 5 and 11.

10 Mr Paul Hansen, Attorney-General's Department, *Committee Hansard*, 26 August 2011, p. 46.

11 International Social Service Australia, *Living in Limbo: the Experience of International Parental Child Abduction—the call for a National Support Service* (February 2005), pp 7-8. See also Women Everywhere Advocating Violence Elimination, *Submission 9*, p. 6; Justice for Children, *Submission 17*, pp 1-2; Women's Legal Services Australia, *Submission 33*, p. 7.

Conduct of the inquiry

1.9 The committee advertised the inquiry on its website and in *The Australian* on 25 May, 8 June, 22 June, 6 July and 20 July 2011, inviting submissions by 29 July 2011. Submissions continued to be accepted after the official closing date. The committee also wrote to 120 persons and organisations, including federal, state and territory government agencies, courts, legal professional bodies, community legal and social support services, academics, and numerous interest, support and advocacy groups representing families, parents and children.

1.10 The committee received 42 submissions from individuals and organisations, along with other additional information. All submissions and additional information are listed at Appendix 1. Public submissions are available on the committee's website at http://www.aph.gov.au/senate/committee/legcon_ctte/index.htm.

1.11 The committee held public hearings in Canberra on 26 August and 22 September 2011. The committee heard from a range of witnesses, including Australian Government agencies, the Chief Justice of the Family Court of Australia, members of the legal profession, social service providers, and individuals affected by international parental child abduction. A list of the witnesses who appeared at the hearings is at Appendix 2. The *Hansard* transcripts are available at <http://www.aph.gov.au/hansard>.

1.12 During the course of the inquiry, the Australian Government announced its intention to introduce legislative amendments to strengthen the legal response to international parental child abduction. The proposed amendments, which the committee understands are intended to be introduced into the Parliament in mid-2012, include:

- extending the coverage of certain criminal offences in the Family Law Act, which are relevant to international parental child abduction;
- reforms to child support and maintenance obligations in the event of international parental child abduction; and
- enhancing the information-gathering powers of certain Commonwealth agencies to assist in the location of abducted children.¹²

Structure of the report

1.13 The committee's report is structured in the following way:

- chapter 2 outlines the domestic and international regulatory, governance and operational frameworks relevant to international parental child abduction under civil laws;

12 The Hon Robert McClelland MP, Attorney-General, and the Hon Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Stronger Laws to Deal With International Child Abduction', Joint Media Release, 19 September 2011.

- chapter 3 sets out the current criminal offences which apply to international parental child abduction, and discusses the arguments in support of, and opposing, the enactment of a stand-alone criminal offence for international parental child abduction;
- chapters 4 and 5 address select issues arising in the course of the committee's inquiry, in relation to both Hague Convention and non-Convention abductions. These are:
 - the roles of key Australian Government agencies involved in responding to and preventing incidents of international parental child abduction—in particular, the Commonwealth Central Authority within the Attorney-General's Department, and supporting agencies including the Australian Federal Police, the Department of Foreign Affairs and Trade, and agencies within the Human Services portfolio; and
 - the role of complementary support and alternative dispute resolution services, and Australia's role in international engagement with respect to international parental child abduction; and
- chapter 6 sets out the committee view and recommendations.

Acknowledgement

1.14 The committee thanks those individuals and organisations who made submissions and gave evidence at the public hearings. In particular, the committee acknowledges the individuals who shared their personal experiences of international parental child abduction.

Note on references

1.15 Submission references in this report are to individual submissions as received by the committee, not to a bound volume. References to the committee *Hansard* dated 26 August 2011 are to the official *Hansard*, and references to the committee *Hansard* dated 22 September 2011 are to the proof *Hansard*.

CHAPTER 2

Regulatory and operational frameworks

2.1 International parental child abduction sits within complex regulatory, governance and operational frameworks that span international and domestic legal systems. These frameworks—which operate primarily under the civil law—can be divided into two broad categories, depending on whether abductions are committed:

- to and from countries which are signatories to the Hague Convention (Hague Convention abductions); or
- to or from countries which are not signatories to the Hague Convention (non-Convention abductions).

2.2 The Hague Convention is a multilateral international legal instrument which establishes a framework for responding to international parental child abduction. Application of the Convention is limited to abductions where both the country from which the child is taken, and the country to which the child is removed, have ratified or acceded to the Convention. Non-Convention abductions are governed by two sources of law—general principles of private international law and, where available, bilateral agreements. Both types of abduction are discussed in this chapter.

Hague Convention abductions

2.3 The Hague Convention was concluded on 25 October 1980, and entered into force generally on 1 December 1983. Australia ratified the Convention on 29 October 1986, and the Convention entered into force for Australia on 1 January 1987. To date, 86 countries are contracting states to the Convention.¹

Objects of the Hague Convention

2.4 The Hague Convention is an expression of international concern to protect children from the harmful effects of wrongful removal from one country to another. Its objects are to:

- secure the prompt return of children wrongfully removed to, or retained in, any signatory state (described in the Convention as a 'contracting state'); and
- ensure that the rights of custody and access under the law of one contracting state are respected in other contracting states.²

1 Hague Conference on Private International Law, *Status table: Members of the Organisation* (28 July 2011) http://www.hcch.net/index_en.php?act=conventions.status&cid=24 (accessed 17 August 2011).

2 Article 1.

Relationship to the 'paramountcy principle'

2.5 The Hague Convention does not directly apply the 'paramountcy principle' in international child law—namely, that the best interests of the child must be the overriding consideration in decision-making affecting his or her rights, liberties or interests.³ Rather, the Convention takes a utilitarian approach to advancing the best interests of the child.⁴ It is based on the following presumptions:

- as a general principle, international parental child abduction is contrary to the best interests of the child;
- prompt return will promote the child's best interests by vindicating the right of the child to have contact with both parents, supporting continuity in the child's life, and ensuring that custody and access issues are determined by a court in the most appropriate jurisdiction to do so; and
- the principle of prompt return advances the best interests of children generally, because it serves as a deterrent to international parental child abduction. In restoring the status quo which existed before the abduction, prompt return is said to deprive the abducting parent of any benefit that he or she might otherwise have gained.⁵

2.6 The United Nations Committee on the Rights of the Child has recognised that the Convention implements, in part, various articles of the *Convention on the Rights of the Child*—for example, those concerning the prevention of various forms of child abduction or trafficking, and the rights of children to maintain personal relations and direct contact with both parents.⁶

Application of the Hague Convention

2.7 The Hague Convention does not automatically apply between all contracting states. Where a new contracting state accedes to the Convention, Article 38 imposes the following requirement:

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession.

3 *Convention on the Rights of the Child*, [1991] ATS 4 (entered into force generally on 2 September 1990), Article 3.

4 See, for example, *Director-General of Family & Community Services v Davis* (1990) 14 Fam LR 381, 383-384, (Nygh J).

5 Elisa Pérez-Vera, *Explanatory Report on the 1980 Hague Child Abduction Convention* (1982), [16], [23]-[25].

6 United Nations Committee on the Rights of the Child, *Concluding Observations*, South Africa, 22 February 2000, CRC/C/15/Add.122, [40]. See further *Convention on the Rights of the Child*, [1991] ATS 4, Articles 9.3, 10.2, 11, 35.

2.8 Consequently, the Australian Government must declare its acceptance of another country's accession before the Convention is effective as between the acceding country and Australia. The Convention leaves the acceptance of accessions to the discretion of individual contracting states.

2.9 Decisions whether or not to accept an accession are informed by an assessment of the acceding country's capacity to implement the Convention.⁷ Official records indicate that the Australian Government is yet to accept the accessions of eight contracting states.⁸

2.10 Certain matters must be established under Articles 3-5 to enliven the jurisdiction of the Convention. There must be a wrongful removal of a child from a contracting state in which he or she is habitually resident, or a wrongful retention of a child in a contracting state which is outside his or her place of habitual residence.

2.11 A 'child' is defined as a person who is under 16 years of age.⁹ 'Wrongful removal' means the removal of the child in breach of rights of custody or access which were being exercised at the time of removal, or would have been exercised had the child not been removed. Similarly, 'wrongful retention' means the retention of a child in breach of rights of custody or access which were being exercised at the time of retention, or would have been exercised had the child not been retained.¹⁰

Operational framework for return of wrongfully removed or retained children

2.12 To implement its objectives, the Hague Convention establishes a cooperative framework between contracting states, to enable the return of abducted children to their country of habitual residence. This means that family law proceedings concerning the child's custody and residence may be commenced in the latter jurisdiction.

2.13 The Convention provides for a system of:

- judicially or administratively determined return orders, made by a court or tribunal of competent jurisdiction in the country to which the child was

7 Mr Paul Hansen, Attorney-General's Department, *Committee Hansard*, 26 August 2011, p. 50.

8 These states are Ukraine, Albania, Seychelles, Morocco, Gabon, Singapore, Andorra and the Russian Federation: see Hague Conference on Private International Law, *Status Table: Acceptance of Accessions* (10 August 2011) http://www.hcch.net/index_en.php?act=conventions.publications&dtid=36&cid=24 (accessed 17 August 2011).

9 Article 4.

10 Article 3. Article 5 defines the term 'rights of custody and access' to mean rights, whether joint or otherwise, under the law of the country in which the child was habitually resident prior to the removal or the retention. 'Habitual residence' is not defined in the Convention and its meaning is uncertain (a question of fact in individual cases).

abducted, requiring the return of the child to his or her country of habitual residence;¹¹ and

- administrative cooperation between the country of the child's habitual residence and the country to which he or she was abducted.¹²

2.14 The Convention makes clear that a return order is not a custody determination, or any other form of decision on the merits of a custody issue. It is simply an order requiring the return of the child to the jurisdiction that is most appropriate to determine the merits of the case—generally that of the child's habitual residence.¹³

Central Authorities

2.15 Contracting states are required to designate an agency, referred to as a Central Authority, to perform the above obligations concerning administrative cooperation.¹⁴ The Convention prescribes an application process by which individuals with an international parental child abduction claim may seek assistance from the Central Authority in their jurisdiction to secure the child's return.¹⁵

2.16 The Convention provides further for a scheme of mutual assistance between contracting states. It requires contracting states to which children have been abducted to provide assistance to individual applicants and respondents who are nationals of, or habitually resident in, another contracting state. Such persons (who are generally the 'left-behind' parent and the abducting parent) are entitled to legal aid and assistance in the contracting state to which the child has been abducted, as if they were nationals of that state.¹⁶

Costs of returning abducted children

2.17 In addition, the Convention makes provision in respect of costs incurred by Central Authorities in managing applications. Article 26 states that each Central Authority will bear its own costs, and will not impose charges in relation to applications submitted to them for assistance in seeking the return of a child under the

11 Articles 12-20.

12 Articles 6-10 provide for administrative cooperation in locating the child, achieving, if possible, a voluntary return of the child to his or her country of habitual residence; initiating proceedings for the return of the child; providing or arranging for the provision of legal assistance; making administrative arrangements for the safe return of the child; and information-sharing between contracting states.

13 Article 19.

14 Article 6.

15 Article 8. In Australia, the Commonwealth Central Authority is the Attorney-General's Department, which is supported by state and territory Central Authorities. Australian Central Authorities are discussed further below.

16 Article 25.

Convention. The Convention provides, however, that contracting states may make certain reservations as to costs.¹⁷

2.18 Where a contracting state has made such a reservation, the individual applicant—generally the left-behind parent—may be required to meet these expenses personally, or apply for assistance where available, under legal aid or other support schemes in the abducting country or in their country of habitual residence.

Obligations of expediency

2.19 The Convention imposes various obligations of expediency on Central Authorities and administrative or judicial bodies responsible for determining applications for return orders.¹⁸ The Convention also provides guidance on the judicial (or administrative) decision-making processes for determining whether a wrongful removal or retention has occurred.¹⁹

Exceptions to the principle of prompt return

2.20 The Convention contains limited exceptions to the principle of prompt return.²⁰ The judicial or administrative body in the abducting jurisdiction may refuse an application for a return order where a respondent establishes the existence of one of the following exceptions:²¹

- the child has been in the new country for over 12 months and is settled in his or her new environment;²²
- the requesting-parent was not exercising his or her rights of custody at the time of removal or retention;²³
- the requesting-parent consented or subsequently acquiesced to the removal or retention;²⁴

17 For example, requiring the payment of expenses incurred in returning the child, and making a declaration that the Central Authority is not bound to meet the costs of legal representatives in Convention proceedings: Articles 26, 42.

18 Articles 9, 11, 12.

19 Articles 14-19.

20 See, especially, Articles 12, 13 and 20.

21 It should be noted that the establishment of an exception does not require the refusal of an application and that, while a court may not be bound to order a child's return, it should nonetheless afford weight to the principle of prompt return: see, for example, *In the Marriage of Gazi* (1992) 111 FLR 425, approving *In re A (Minors) (Abduction: Custody Rights) (No 2)* (1992) 3 WLR 538.

22 Article 12.

23 Article 13(a).

24 Article 13(a).

- there is a grave risk that any return would expose the child to physical or psychological harm, or otherwise place the child in an intolerable situation;²⁵
- the child objects to the return and has attained an age and degree of maturity at which it is appropriate for the court to take into account these views;²⁶ and
- the return of the child would not be permitted by fundamental principles of the requested country, which relate to the protection of human rights and basic freedoms.²⁷

2.21 There is variation between interpretations of these exceptions by individual contracting states. This is due, in part, to the different ways in which the Convention is implemented by individual contracting states, which reflect differences in their legal systems and adjudicative approaches. In addition, some contracting states have negotiated protocols between themselves on the interpretation of the Convention in order to improve consistency of approach.²⁸

International administration and oversight of the Hague Convention

2.22 The Permanent Bureau of the Hague Conference on Private International Law (Hague Conference) coordinates the international administration and oversight of the Convention.²⁹ The Hague Conference administers initiatives such as:

- meetings of a Special Commission of member states in relation to the practical operation of the Convention;
- the development of good practice guides concerning the practices of Central Authorities, and other implementation, prevention and enforcement matters; and
- international judicial liaison, education and awareness initiatives through the International Hague Network of Judges. This network enables judicial officers

25 Article 13(b).

26 Article 13.

27 Article 20.

28 For example, the *Brussels IIA Regulation* (European Council Regulation No 2001/2003, 27 November 2003) operates between member states of the European Union (excluding Denmark). See further, Attorney-General's Department, *Submission 32*, p. 6.

29 The Hague Conference is an international governmental organisation which has been established to work towards the progressive unification of the rules of private international law. As such, it is responsible for the international oversight of the Convention, and other international treaties developed under its auspices: Hague Conference on Private International Law Website, 'More about HCCH', http://www.hcch.net/index_en.php?act=text.display&tid=4 (accessed 19 October 2011). The Permanent Bureau is the secretariat for the Hague Conference: Hague Conference on Private International Law Website, 'Frequently Asked Questions: What is the Permanent Bureau of the Hague Conference', http://www.hcch.net/index_en.php?act=faq.details&fid=30 (accessed 19 October 2011).

or decision-makers under the Convention to liaise about specific proceedings, or, more generally, through educational and networking events.³⁰

Implementation and operation of the Hague Convention in Australia

2.23 The Convention does not prescribe its means of implementation in the domestic laws of contracting states. Article 2 directs contracting states to 'take all appropriate measures' to implement the objectives of the Convention, utilising the 'most expeditious procedures available'.

2.24 In Australia, the Convention is implemented by the *Family Law (Child Abduction Convention) Regulations 1986* (Regulations), which are made under sections 111B and 111D of the Family Law Act. The Regulations do not incorporate the Convention into Australian law by reference, but simply restate its effect.³¹

Australian Central Authorities

2.25 The Regulations provide for the establishment of a Commonwealth Central Authority (CCA), supported by state and territory Central Authorities (SCAs). The CCA is the Attorney-General's Department (Department) and the SCAs are generally located within state and territory human services portfolios or police forces.³²

2.26 Broadly, the Regulations provide that the role of a Central Authority is to do, or coordinate the doing of, anything that is necessary to enable the performance of Australia's obligations under the Convention.³³ If a child has been wrongfully removed to another contracting state, a parent may make an application to the CCA to seek assistance in securing the return of his or her child. Similarly, if a child has been wrongfully removed to, or retained in, Australia from another contracting state, an overseas Central Authority may apply to the CCA to seek assistance in securing the return of the child.³⁴

2.27 There is no obligation on persons seeking the return of an abducted child to proceed through a Central Authority. Under the Regulations, an individual parent may make an application under the Convention directly to a court or tribunal in the jurisdiction to which his or her child has been abducted.³⁵ Parents may wish to engage

30 Relevant educational and networking initiatives include the International Centre for Judicial Studies and Technical Assistance, periodic judicial seminars, and the Judges Newsletter on International Child Protection: Hague Convention on Private International Law Website, Child Abduction Section, http://www.hcch.net/index_en.php?act=text.display&tid=21 (accessed 1 August 2011).

31 The text of the Convention is reproduced as Schedule 1 to the Regulations.

32 For a listing of SCAs, see Attorney-General's Department, *Submission 32*, Attachment B.

33 See Part 1 of the Regulations, especially regs 5, 9.

34 Regulations 11, 13.

35 Regulation 14(1)(b).

private legal representation;³⁶ and some parents may be entitled to legal aid for these purposes, in the event that they meet the means and merits tests for such assistance.³⁷

Outgoing matters (abductions from Australia)

2.28 In New South Wales, Victoria, Queensland, South Australia and Tasmania, SCAs provide assistance in preparing a Hague Convention application to persons whose children have been abducted from Australia to another contracting state. This includes the preparation of application forms and supporting documentation, including affidavits, at no cost to the applicant. Under national cost recovery arrangements, the SCAs bill the Commonwealth for this work on a fee-for-service basis (generally using a time costing fee structure, based on an hourly rate).³⁸

2.29 In Western Australia, the Northern Territory, the Australian Capital Territory, and in any other jurisdiction in which the applicant does not wish to proceed through the relevant SCA, assistance is provided by the CCA at no cost to the applicant.³⁹

Incoming matters (abductions to Australia)

2.30 When the CCA receives a request for the return of a child from an overseas Central Authority, it will make inquiries to determine that the request meets the terms of the Convention. If the CCA is of the opinion that the request is compliant, it will then seek to achieve the return of the child either voluntarily or through an application to the Family Court of Australia (Family Court) for a return order under the Convention.⁴⁰ The Family Court is designated as the relevant Australian court for the determination of matters under the Convention.⁴¹ The Regulations set out the decision-making framework that the court is required to apply, which is consistent with the requirements of the Convention.

2.31 Central Authorities are not legal representatives of the left-behind parent (outside Australia) in Convention proceedings, and their applications are made in the

36 Law Society of NSW, *Submission 21*, p. 1; Attorney-General's Department, *Submission 32*, p. 3.

37 Attorney-General's Department, *Submission 32*, p. 3.

38 Attorney-General's Department, *Submission 32*, p. 3; Department of Family and Community Services NSW, *Submission 8*, p. 2; Department of Communities, QLD, *Submission 24*, p. 1. New South Wales indicated that the hourly rate charged to the Commonwealth is \$250.

39 Attorney-General's Department, *Submission 32*, p. 3.

40 Regulation 13.

41 Regulation 2 defines a court by reference to s 39 of the Family Law Act—that is, the Family Court, Federal Magistrates' Court, the Family Court of Western Australia and any state or territory court exercising federal jurisdiction. However, the Family Court has a protocol for the transfer to it of Convention applications filed elsewhere. The Chief Justice of the Family Court indicated to the committee that the intention of the protocol is to ensure that Convention proceedings are determined by a superior court of specialist jurisdiction, as the decisions of such courts are regarded as more persuasive by foreign courts: *Submission 35*, p. 5.

name of the Australian Government. Accordingly, Central Authorities are bound by the Commonwealth model litigant obligations in the *Legal Services Directions 2005* (Cth).⁴²

2.32 As Australia has not made a reservation as to costs under Article 26 of the Convention, the Australian Government meets the costs associated with returning children who are abducted to Australia from other contracting states.⁴³

Operational support

2.33 Australian Central Authorities are the lead agencies involved in responding to incidents of international parental child abduction in Hague Convention matters. They receive operational support from several Commonwealth and state and territory agencies, including:

- the Australian Federal Police (AFP), which provides operational support in preventing apprehended incidents of international parental child abduction from Australia, and in the location and recovery of abducted children;
- the Department of Foreign Affairs and Trade (DFAT), which provides consular assistance to Australian children who are abducted overseas, and administers the *Australian Passports Act 2005* (Cth) (Passports Act); and
- various Commonwealth and state and territory human services agencies, including the Child Support Agency, Centrelink and state and territory child protection authorities.⁴⁴

Financial assistance to persons affected by international parental child abduction

2.34 The Attorney-General's Department administers the Overseas Custody (Child Removal) Scheme (Overseas Custody Scheme). The Overseas Custody Scheme provides financial assistance to Australian parents whose children are ordinarily resident in Australia and are wrongfully removed from, or retained outside, Australia. Financial assistance is available under the scheme to enable these parents to commence legal proceedings in the overseas country to which their child has been abducted.⁴⁵

42 Department of Family and Community Services NSW, *Submission 8*, pp 1-2; Law Society of NSW, *Submission 21*, p. 1.

43 Attorney-General's Department, *Submission 32*, p. 3. However, regulation 30 provides that a Central Authority may, in certain circumstances, seek to recover specified costs against the abducting-parent.

44 The human services agencies provide support to abducted children and their families upon the child's return to his or her jurisdiction of habitual residence. Where the Family Court grants a Commonwealth Information Order under the Family Law Act, Commonwealth agencies may also be required to provide certain information to the court that is relevant to the location of an abducted child: Family Law Act, s 67N.

45 Attorney-General's Department, *Submission 32*, p. 4.

2.35 The Overseas Custody Scheme covers both Convention and non-Convention abductions. It means and merits tested, and is limited to specified expenses, such as the costs of engaging an overseas lawyer if legal aid is unavailable in the overseas country, and certain travel costs.⁴⁶ The scheme does not cover costs associated with overseas access or visitation, or legal costs incurred in Australia. Financial assistance under the scheme is usually limited to future expenses.⁴⁷

Non-Convention abductions

2.36 Non-Convention abductions are generally regarded as more problematic than Convention cases. The Hon Michael Kirby AC CMG has described international parental child abduction to or from non-Convention countries as 'a legal wasteland' with 'absolutely no effective legal or political sanction'.⁴⁸

Private international law

Outgoing matters (abductions from Australia to non-Convention countries)

2.37 If an Australian child is abducted to a non-Convention country with which Australia has no bilateral agreement on the issue of international parental child abduction, the matter is governed by general principles of private international law and—depending on determination of forum issues—the domestic family laws of the non-Convention country. The left-behind parent seeking the return of his or her child must initiate proceedings in the overseas jurisdiction to which the child was abducted. Central Authorities have no mandate to intervene in these proceedings.⁴⁹

Incoming matters (abductions to Australia from non-Convention countries)

2.38 Where a child who is habitually resident in a non-Convention country is abducted to Australia, the left-behind parent must initiate proceedings in the Family Court of Australia.⁵⁰ Where a left-behind parent has a parenting order made by an overseas court, he or she may apply to register it in Australia under the Family Law Act and the Regulations. Once registered, the order has the same effect as if it was made under the Family Law Act, therefore making it enforceable in Australia.⁵¹

46 Attorney-General's Department, *Submission 32*, p. 4.

47 Attorney-General's Department, *Submission 32*, pp 4-5.

48 The Hon Michael Kirby AC CMG, 'Children Caught in Conflict—the Child Abduction Convention and Australia' (2010) 24(1) *International Journal of Law, Policy and the Family* 95, p. 99. See further, Mr Michael Nicholls QC, *Submission 6*, pp 2-3.

49 Thomson Reuters, *The Laws of Australia*, International Child Abduction, [17.8.10], [17.8.30] (September 2008).

50 Thomson Reuters, *The Laws of Australia*, International Child Abduction, [17.8.10] (September 2008); Attorney-General's Department, *Submission 32*, p. 4.

51 Family Law Act, s 70G.

2.39 Where the left-behind parent does not have an overseas family law order capable of registration, he or she could seek an order for the return of the child under section 67ZC of the Family Law Act, which enables the court to make orders for the welfare of the child. The court may also make a recovery order under the Family Law Act, requiring the child to be returned to the custody of the non-abducting parent, where he or she has parental responsibility in respect of the child.

Australian Government assistance in non-Convention abductions

2.40 Means and merits tested financial assistance is available to left-behind parents in non-Convention matters under the Overseas Custody Scheme.⁵² In respect of outgoing abductions, consular assistance is also available via DFAT's Consular Emergency Centre. Such assistance includes providing information about the country to which the child has been abducted, as well as lists of lawyers and support service providers in the relevant country.⁵³

Bilateral agreements

2.41 Australia has entered into bilateral agreements with two non-contracting states to the Hague Convention: Egypt and Lebanon. These agreements were entered into force in 2002 and 2010 respectively, and are administered by the Attorney-General's Department.⁵⁴

2.42 The agreements do not provide for specific legal processes to address international parental child abduction, nor do they confer substantive legal rights upon affected persons. Instead they establish Joint Consultative Commissions which provide a forum for dialogue and mutual assistance in the event of international parental child abduction to or from either country. They also make provision for support services to be provided by the country to which the child has been abducted.

Interactions between international parental child abduction and domestic family laws

2.43 There are some specific areas of interaction between international parental child abduction (in relation to Convention and non-Convention abductions) and Australian family laws.

52 Attorney-General's Department, *Submission 32*, p. 4.

53 Department of Foreign Affairs and Trade, *Submission 34*, p. 1.

54 *Agreement between the Government of Australia and the Government of the Arab Republic of Egypt Regarding Cooperation on the Welfare of Children* [2002] ATS 3 (entered into force on 1 February 2002); *Agreement Regarding Cooperation on Protecting the Welfare of Children with Lebanon* [2010] ATS 14 (entered into force on 1 May 2010). See further, Attorney-General's Department, *Submission 32*, pp 4, 9.

Outgoing matters

2.44 Various remedies may be available under the Family Law Act to prevent apprehended incidents of international parental child abduction from Australia, or respond to completed abductions from Australia, including:

- relocation orders—the court may make orders permitting a parent to relocate overseas and make provision for the child's residence arrangements;⁵⁵
- parenting orders—where the court has made parenting orders under the Family Law Act, or where proceedings for such orders are on foot, it is a criminal offence for a parent to remove the child from Australia (offences carry a maximum penalty of three years imprisonment);⁵⁶
- recovery orders—a court can authorise or direct an appropriate authority to take action to find, recover and deliver a child to a person with parental responsibility for him or her (these orders can also prohibit a parent who has previously abducted or attempted to abduct the child from repeating this conduct);⁵⁷
- location orders—a person can be required to provide information to the court about a child's location;⁵⁸
- Commonwealth Information Orders—an Australian Government agency may be required to provide information to the court about the child's location that is contained in government records;⁵⁹ and
- publication orders—the court may make orders permitting the media and others to publish details and photographs of the missing child and the person he or she is believed to be with.⁶⁰

Incoming matters

2.45 As noted above, where a child who is habitually resident overseas is abducted to Australia, the left-behind parent may seek registration in the Family Court of family law orders made by a court in the jurisdiction of habitual residence.⁶¹ He or she may

55 There are no specific provisions in the Family Law Act on relocation orders. Rather, such orders are made pursuant to the general parenting order principles set out in Part VII of the Family Law Act. See further, Family Law Council, *Relocation: a Report to the Attorney-General* (May 2006).

56 Family Law Act, ss 65Y, 65Z.

57 Family Law Act, s 67Q.

58 Family Law Act, s 67M.

59 Family Law Act, s 67N.

60 Family Law Act, s 121.

61 Family Law Act, s 70H.

also seek orders under the Family Law Act relevant to the location and recovery of the child within Australia.

2.46 In addition, the Regulations provide that the Family Court may order the return of the child to the jurisdiction of habitual residence conditional on 'mirror orders', which are identical orders made by an overseas court in the jurisdiction to which the child has been abducted. The result is that the orders of the Family Court are able to be enforced in Australia as well as in the overseas jurisdiction.⁶²

62 Regulation 15. See further, the Hon Diana Bryant, Chief Justice, Family Court of Australia, *Submission 35*, pp 6, 16.

CHAPTER 3

Criminal law responses to international parental child abduction

3.1 The regulatory frameworks outlined in chapter 2 operate under the civil law. Although international parental child abduction is currently recognised to some extent in Australian criminal laws, there is no specific, stand-alone offence relating to international parental child abduction. During the course of the inquiry, the committee received evidence which was both supportive of, and opposed to, enactment of a targeted international parental child abduction criminal offence.

Recognition under current criminal laws

3.2 There are limited circumstances in which the wrongful removal of a child (or children) from Australia is recognised as a criminal offence. The primary means of recognition occurs under sections 65Y and 65Z of the Family Law Act, where the removal is committed in breach of parenting orders, or in the course of proceedings for such orders.

3.3 In some circumstances, incidents of international parental child abduction may fall within the scope of certain state and territory criminal offences in the nature of kidnapping or abduction.¹ The committee notes, however, that many state and territory offences appear to be directed to the forcible, fraudulent or otherwise non-consensual removal of a child from a jurisdiction by persons other than his or her parent.²

Family Law Act—sections 65Y and 65Z

3.4 Sections 65Y and 65Z of the Family Law Act (Family Law Act offences) provide, respectively, for the offences of removal of a child (or children) from

1 For example, the AFP advised the committee that it was able to obtain a telecommunications interception warrant in one international parental child abduction matter, relying on the offence of child stealing in s 363 of the *Criminal Code 1899* (Qld): *Submission 31*, pp 7-8.

2 See further, Family Law Council, *Parental Child Abduction: A Report to the Attorney-General* (January 1998), p. 23. This is consistent with the child abduction-related provisions of the Commonwealth Model Criminal Code, see *Consolidated Model Criminal Code* (1st ed, 28 May 2009), especially clauses 5.1.33 (kidnapping) and 5.1.34 (child abduction). The model offence of child abduction states that a person does not commit an offence under the provision where he or she is the parent of the child (subclause 5.1.34(3)). The model offence of kidnapping may apply to some international parental child abduction matters, in that its parental defence provisions are limited to persons who have *lawful* custody of the child, and who are not acting in contravention of a court order (subclause 5.1.33(3)). See further, Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General, *Report on Chapter 5: Non Fatal Offences Against the Person* (September 1998), p. 89.

Australia while parenting orders in relation to a child are in force, or while proceedings for the making of a parenting order are pending. The offences have a maximum penalty of three years imprisonment. The wrongdoing to which the Family Law Act offences are directed is contempt of court, rather than removal *per se*, as they do not apply to non-consensual removals by one parent where no parenting orders have been sought or granted by the court.³

3.5 The committee received evidence about the limited scope of the Family Law Act offences. In its submission, the AFP noted that the Family Law Act offences may not capture the overseas departure of an unaccompanied, unassisted child—for example, where he or she leaves Australia on his or her own, possibly at the instigation of one parent who is located overseas. The AFP further stated that, in its view, the offences would not capture the departure of a child who is assisted by persons other than parents—for example, his or her relatives or siblings. In these circumstances, the AFP may not have clear legal authority to prevent a child from leaving the jurisdiction.⁴

3.6 The Family Law Council also examined the scope of the Family Law Act offences in advice it provided to the Australian Government in March 2011. It observed that the provisions in sections 65Y and 65Z do not apply to wrongful retentions—that is, 'where a parent takes a child overseas with the other parent's consent (or in accordance with a court order), but subsequently retains the child overseas beyond the agreed or authorised period'.⁵ The Family Law Council considered that there are no principled reasons for such limited coverage, and recommended the extension of the Family Law Act offences to wrongful retentions.⁶

3.7 The Family Law Council also recommended the extension of the wrongful removal offences in sections 65Y and 65Z to circumstances where an invitation to participate in family dispute resolution has been issued. As participation in family dispute resolution is generally a prerequisite to commencing parenting proceedings,⁷ parties ought to be aware of their obligations under the Family Law Act at that time.⁸

3.8 The Family Law Council also commented on the absence of safeguards in the Family Law Act offences, and recommended:

- the enactment of specific defences for persons who are fleeing from violence, who are protecting their child from danger of imminent harm, or who have a

3 Family Law Council, *Submission 13*, Attachment 1, p. 3.

4 *Submission 31*, p. 9.

5 *Submission 13*, Attachment 1, p. 3.

6 *Submission 13*, Attachment 1, p. 7, recommendation 1.

7 Family Law Act, s 60I.

8 *Submission 13*, Attachment 1, pp 6-7, recommendation 2.

reasonable excuse for failing to return the child to Australia (such as flight cancellations or ill-health);⁹ and

- the enactment of prosecutorial safeguards, including a requirement that the Attorney-General give consent before a prosecution for international parental child abduction is commenced (which would then enable the Attorney-General to give a non-prosecution guarantee to overseas courts in appropriate cases) and a specific prosecution policy for Family Law Act offences.¹⁰

Proposed amendments to the Family Law Act offences

3.9 The Australian Government has accepted some of the Family Law Council's recommendations concerning the Family Law Act offences.¹¹ On 19 September 2011, the Attorney-General and the Minister for Families, Housing, Community Services and Indigenous Affairs announced the government's intention to introduce reforms, including:

- proposed new Family Law Act offences in respect of wrongful retentions, which mirror the existing provisions in sections 65Y and 65Z dealing with wrongful removals;
- extension of the existing wrongful removal offences to cover the removal of a child overseas where an invitation to participate in family dispute resolution has been issued;
- proposed new defences under the Family Law Act, including fleeing from violence and protecting children from imminent harm, which are additional to the general defences available under the Commonwealth Criminal Code; and
- proposed discretion for the Commonwealth Director of Public Prosecutions (CDPP) (and not the Attorney-General as recommended by the Family Law Council) to give non-prosecution undertakings in appropriate cases—for

9 *Submission 13*, Attachment 1, pp. 10-13, recommendation 5. Two submitters to the committee's inquiry also supported specific family violence-related defences: Women Everywhere Advocating Violence Elimination, *Submission 9*, pp 6-7; National Council of Single Mothers and Their Children, *Submission 10*, p. 9, recommendation 1.

10 *Submission 13*, Attachment 1, pp 11-13, recommendation 6.

11 In particular, Ms Louise Glanville, Attorney-General's Department, advised the committee that, of the Family Law Council's six recommendations in its March 2011 advice, recommendations 1, 2, 3 and 5 have been accepted in full, and recommendations 4 and 6 in part: *Committee Hansard*, 22 September 2011, p. 7.

example, in cases where exposure to criminal liability may trigger an Article 13(b) exception in Hague Convention proceedings.¹²

3.10 The Ministers indicated that draft legislation will be completed by late 2011, for introduction into the Parliament in the first half of 2012.¹³ Officers from the Attorney-General's Department (Department) advised the committee that the government has commenced the policy development process, and will consult with stakeholders on the detail of the proposed legislation.¹⁴

3.11 Departmental officers specifically advised that the government will consult stakeholders about the proposed extension of the Family Law Act offences to situations where parties have been invited to participate in family dispute resolution, in light of opposition expressed by Women's Legal Services Australia in its submission to the committee's inquiry.¹⁵ Women's Legal Services Australia argued that extending the Family Law Act offences in these situations could be open to abuse, or may be of limited use, since it may be difficult to prove to the requisite standard that a party has received an invitation to participate in family dispute resolution.¹⁶

Possible stand-alone criminal offence

3.12 The committee also received evidence regarding the enactment of a stand-alone international parental child abduction offence (which would not depend on the existence of family law orders or applications for such orders). Some submitters noted that international parental child abduction is a criminal offence in other countries, citing the United Kingdom and the United States as examples.¹⁷

12 The Hon Robert McClelland MP, Attorney-General, and the Hon Jenny Macklin MP, Minister for Families, Housing Community Services and Indigenous Affairs, 'Stronger Laws to Deal With International Child Abduction', Media Release, 19 September 2011. See further, Ms Louise Glanville, Attorney-General's Department, *Committee Hansard*, 22 September 2011, p. 1. Article 13(b) of the Convention provides that the judicial or administrative authority of a requested state is not bound to return a child where there is a 'grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation'.

13 The Hon Robert McClelland MP, Attorney-General, and the Hon Jenny Macklin MP, Minister for Families, Housing Community Services and Indigenous Affairs, 'Stronger Laws to Deal With International Child Abduction', Media Release, 19 September 2011.

14 Ms Louise Glanville, Attorney-General's Department, *Committee Hansard*, 22 September 2011, pp 4, 7.

15 Ms Louise Glanville, Attorney-General's Department, *Committee Hansard*, 22 September 2011, p. 4

16 Women's Legal Services Australia, *Submission 33*, p. 10, recommendation 9.

17 In the United Kingdom, the *Child Abduction Act 1984* provides for an offence of wrongful removal of a child from the United Kingdom; and, in the United States, the *Parental Kidnapping Act* provides for the offence of wrongful removal and retention: see Mr Michael Nicholls QC, *Submission 6*, p. 5. See also, Family Law Council, *Submission 13*, Attachment 1, p. 18; Mr Ken Thompson, *Submission 22*, pp 11, 16.

3.13 There was a divergence of views among submitters and witnesses about the desirability of a stand-alone criminal offence. Proponents of a new offence were generally those with personal experiences of international parental child abduction—particularly parents whose children have been abducted overseas, or other persons related to such children.¹⁸

3.14 Most submitters and witnesses who opposed a new offence were representatives of the legal profession, social support service providers and women's advocacy groups.¹⁹ As noted above, officers from the Attorney-General's Department advised the committee in September 2011 that the Australian Government has decided to extend the Family Law Act offences to wrongful retentions, rather than enact a specific stand-alone offence.²⁰

Arguments in support of a stand-alone offence

3.15 In its advice to the Australian Government in March 2011, the Family Law Council set out the arguments in support of a discrete criminal offence for international parental child abduction. In particular, the Family Law Council noted that criminalisation would ensure that international parental child abduction matters are afforded priority in the allocation of policing resources, and would ensure that additional investigation and enforcement mechanisms are made available to assist in locating a child. Such mechanisms could include the use of telephone interceptions and listening devices; the ability to request the assistance of Interpol and overseas police forces to locate abducted children; and the availability of extradition and mutual assistance procedures to return abducting-parents to Australia.²¹

3.16 In evidence at the committee's first public hearing, Mr Ken Thompson argued that the primary objective of criminalisation should not be to impose punitive measures on the abducting-parent; however, it would enable agencies 'to provide the advice, support, assistance and investigation to the [left-behind] parents that needs to

18 See, for example, Ms Robin Bowles, *Submission 3*, p. 2; Dads on the Air, *Submission 4*, p. 3; Mr Lauchlan Leishman, *Submission 7*, p. 4; Mr Daniel Wass, *Submission 15*, p. 3; Mr Ken Thompson, *Submission 22*, pp 10-16; Mr Ken Thompson and Mr Lauchlan Leishman, *Committee Hansard*, 26 August 2011, pp 1-2, 6. See also, Ms Carolyn Smith, *Submission 23*, pp 1-2.

19 See, for example, Mr Michael Nicholls QC, *Submission 6*, p. 5; International Social Service Australia, *Submission 11*, p. 7; Family Law Council, *Submission 13*, Attachment 1, pp 5-6, recommendation 3; Law Society of NSW, *Submission 21*, p. 4; Women's Legal Service Australia, *Submission 33*, p. 9, recommendation 8; Law Council of Australia, *Submission 39*, Attachment 1, pp 1-2. See further, Mr Geoff Sinclair, Law Council of Australia, *Committee Hansard*, 26 August 2011, p. 24; Mr Michael Nicholls QC, *Committee Hansard*, 26 August 2011, pp 24-25; Hon Diana Bryant, Chief Justice, Family Court of Australia, *Committee Hansard*, 26 August 2011, p. 32.

20 Ms Louise Glanville, Attorney-General's Department, *Committee Hansard*, 22 September 2011, p. 2.

21 Family Law Council, *Submission 13*, Attachment 1, pp 18-20.

be carried out'.²² Mr Thompson's view was that the risk of inappropriately penalising an abducting parent could be managed through measures such as the careful framing of any offence provision, the availability of defences, investing the court with sentencing discretion, and enacting certain procedural protections (such as a prosecutorial consent requirement and non-prosecution guarantees).²³

3.17 Several submitters drew an analogy with the circumstances of abduction of a child by a person other than his or her parent or guardian, which is an offence under Australian criminal laws. As such, they argued that criminal law responses to child abduction should not discriminate on the basis of a parental relationship between the abductor and the child, or on the existence or otherwise of family law orders. Rather, criminal offences should focus uniformly on the wrongful nature of the removal or retention, in the context of the rights of the child and other persons with parental responsibility.²⁴

Arguments against a stand-alone offence

3.18 Other evidence did not support a stand-alone criminal offence for the following reasons:

- such an offence would deter abducting parents from voluntarily returning children or participating in negotiations, and cause them to further evade law enforcement authorities for fear of prosecution;²⁵
- the prospect of the taking-parent being subject to criminal proceedings on their return would undermine the effectiveness of the Convention because the existence of a criminal offence may trigger an Article 13(b) exception;²⁶
- even if an Article 13(b) exception cannot be established, there is the potential that the child's best interests would be damaged if a parent is convicted of an offence which may result in his or her imprisonment (thus denying the child

22 *Committee Hansard*, 26 August 2011, p. 6. See further, Mr Lauchlan Leishman, *Committee Hansard*, 26 August 2011, p. 2.

23 *Committee Hansard*, 26 August 2011, p. 6; *Submission 22*, pp 13-14.

24 Mr Lauchlan Leishman, *Committee Hansard*, 26 August 2011, pp 1-2; Mr Ken Thompson, *Submission 22*, p. 15; Ms Carolyn Smith, *Submission 23*, p. 2.

25 Mr Michael Nicholls QC, *Submission 6*, p. 5; Department of Family and Community Services NSW, *Submission 8*, p. 7; International Social Service Australia, *Submission 11*, p. 7; Family Law Council, *Submission 13*, Attachment 1, p. 6; Law Society of NSW, *Submission 21*, p. 4; Women's Legal Service Australia, *Submission 33*, p. 9; Law Council of Australia, *Submission 39*, Attachment 1, pp 1-2. See further, Mr Geoff Sinclair, Law Council of Australia, *Committee Hansard*, 26 August 2011, p. 24; Mr Michael Nicholls QC, *Committee Hansard*, 26 August 2011, pp 24-25.

26 See Mr Michael Nicholls QC, *Submission 6*, p. 5; Mr Michael Nicholls QC, *Committee Hansard*, 26 August 2011, p. 24; the Hon Diana Bryant, Chief Justice, Family Court of Australia, *Committee Hansard*, 26 August 2011, p. 32.

the opportunity to have a meaningful relationship with, and be cared for by, that parent);²⁷

- the threat of criminal prosecution would have a negative impact on disadvantaged parents such as those who have committed international parental child abduction to escape family violence or child abuse committed by the other parent.²⁸

3.19 In particular, the committee notes that the Chief Justice of the Family Court, the Hon Diana Bryant, does not support a stand-alone criminal offence:

I have to say that I am not in favour of it, for this reason. What you would say in favour of it is that it is my understanding that it does assist the police and Interpol to look for children overseas, but one would have hoped there might be some other way of doing that. Surely the AFP here can have arrangements in relation to abduction of children short of necessarily having to have criminal offences created. The second reason for doing it, I suppose, is a community perception, particularly from the left-behind parent, that there should be some punishment, but the problem is that in the cases that we see regularly where the children are sought to be returned to a country where there are laws whereby criminality is created by removing a child—typically that is some of the states in the United States, where it is regarded as kidnapping—you often end up having to try to get some kind of undertaking from the other parent not to prosecute so the child can be returned, and that is not always possible if the prosecution is by a district attorney or something. One of the defences that might then arise would be if the father, for example, is not able on the face of it to care for the children and the mother is going to be jailed upon return and there is no-one to look after the child. Then the 'intolerable situation' defence would arise. So this problem arises all the time, and it is not uncommon to be seeking for other jurisdictions to forgo prosecution so that the children can be returned. So it is a real issue.²⁹

3.20 The Family Law Council also recommended against the introduction of a new stand-alone criminal offence in its advice to the Attorney-General in March 2011.³⁰

27 Mr Michael Nicholls QC, *Submission 6*, p. 5; Department of Family and Community Services NSW, *Submission 8*, p. 7; International Social Service Australia, *Submission 11*, p. 7; Family Law Council, *Submission 13*, Attachment 1, pp 5-6; Law Society of NSW, *Submission 21*, p. 4. See further, Ms Helen Freris, International Social Service Australia, *Committee Hansard*, 26 August 2011, p. 11.

28 Mr Michael Nicholls QC, *Submission 6*, pp 5-6; Department of Family and Community Services, NSW, *Submission 8*, p. 7; Family Law Council, *Submission 13*, Attachment 1, p. 6; Law Society of NSW, *Submission 21*, p. 4.

29 *Committee Hansard*, 26 August 2011, p. 32. See also Mr Michael Nicholls QC, *Committee Hansard*, 26 August 2011, pp 24-25.

30 *Submission 13*, Attachment 1, p. 7, recommendation 3.

Alternative reforms to a stand-alone criminal offence

3.21 Some submitters to the inquiry proposed alternative reforms to a stand-alone offence for international parental child abduction. They argued that these alternatives could improve the return rate of Australian children who are abducted overseas, deter future abductions and improve procedural safeguards in the existing Family Law Act offences. Suggestions included:

- greater public education and awareness-raising initiatives about the existence and operation of the Family Law Act offences, which may serve as a deterrent to international parental child abduction;³¹ and
- more significant government and third-sector investment in international parental child abduction prevention, with a view to decreasing its incidence and removing the perceived need for additional criminal sanctions.³²

3.22 In this context, officers from the Department advised the committee that the government has partially accepted other recommendations of the Family Law Council in its March 2011 advice, including the recommendation for further legislative and non-legislative measures to assist in international parental child abduction cases (such as information-gathering powers, mediation and publicity about the Hague Convention).³³ The committee was advised that the detail of these reforms is under development, and will be the subject of consultations in the future.³⁴

31 Family Law Council, *Submission 13*, Attachment 1, pp 8-9, recommendation 4; Law Council of Australia, *Submission 39*, p. 3. See further, Ms Alexandra Wearne, Legal Aid New South Wales, *Committee Hansard*, 26 August 2011, p. 19.

32 International Social Service Australia, *Submission 11*, p. 6.

33 Ms Louise Glanville, Attorney-General's Department, *Committee Hansard*, 22 September 2011, p. 7 (referring to the partial acceptance of recommendation 4 of the Family Law Council's advice).

34 Ms Louise Glanville, Attorney-General's Department, *Committee Hansard*, 22 September 2011, p. 4.

CHAPTER 4

Role of key government agencies

4.1 Certain Australian Government agencies play a role in providing services to support efforts to return children abducted to or from Australia. This chapter considers:

- the AFP's investigation and law enforcement powers with respect to international parental child abduction;
- DFAT's provision of consular assistance to Australian persons involved in international parental child abduction matters;
- the role of the Australian Passport Office in the issuing and cancellation of passports to Australian children;
- the practices and procedures of the Commonwealth Central Authority (CCA) in implementing the process under the Hague Convention to secure the return of abducted children;
- the provision of financial and legal assistance by the Attorney-General's Department to persons involved in international parental child abduction matters;
- the CCA's information-gathering powers and its collection of data relating to international parental child abduction; and
- child support arrangements and the Child Support Agency's role in the event of international parental child abduction from Australia.

AFP's role

4.2 The AFP is the primary Australian law enforcement and investigative agency involved in international parental child abduction matters. Its role relates principally to the enforcement of court orders relevant to international parental child abduction, and includes:

- prevention of the overseas abduction of Australian children who are the subject of court orders which prohibit their removal from Australia; and
- interception of persons who are abducting children to Australia, where such children are the subject of overseas family law orders that prevent removal from their jurisdiction of habitual residence, or where such children are the subject of international policing alerts.¹

4.3 Several submitters commented on the nature and exercise of the AFP's investigation and enforcement powers, with some supporting targeted reforms.

1 Australian Federal Police, *Submission 31*, p. 2.

AFP's Watch List

4.4 The AFP maintains a Watch List at all Australian international airports and sea ports. The list is designed to identify and intercept children who are the subject of a court order preventing their removal from Australia. An alert is triggered when a person whose name is included on the Watch List presents his or her passport at an airport or sea port. When an alert is triggered, the AFP is required to determine whether or not the child may travel.²

4.5 Children who are the subject of a court order prohibiting their removal from Australia are not included automatically on the Watch List. The AFP's policy is that a child can be placed on the list only if there is a court order directing the AFP to include his or her name on the list, or if an application for such an order is pending.³

4.6 Contributors to the inquiry were generally supportive of the Watch List as a preventative measure in respect of outgoing abductions. Several submitters, however—including the AFP—identified various operational issues:

- the triggering of out-of-date alerts (for example, those upwards of 5-10 years old) because court orders for the inclusion of a child's name on the list are not time-limited;⁴
- ambiguity in the provisions of some court orders for inclusion on the Watch List—for example, imprecise descriptions of particular circumstances in which a child is able to be removed from Australia, and inconsistencies between various clauses contained in court orders;⁵
- the fact that, at the time of abduction, many left-behind parents are unaware of preventative remedies available to them, including the existence of the Watch List;⁶
- difficulties encountered by parents who suspect that their child is at risk of international parental child abduction in ensuring their child is listed on the Watch List in a timely fashion;⁷ and
- the malicious or vexatious use of Watch Lists by some parents who may seek to prevent the other from taking the child overseas for permitted purposes (for example, on holidays while the child is living with that parent).⁸

2 Australian Federal Police, *Submission 31*, pp 2-3.

3 Australian Federal Police, *Submission 31*, p. 2.

4 Australian Federal Police, *Submission 31*, pp 5-6.

5 Australian Federal Police, *Submission 31*, p. 4.

6 Department of Family and Community Services, *Submission 8*, p. 6; Mr Ken Thompson, *Submission 22*, p. 19.

7 Mr Ken Thompson, *Submission 22*, pp 19-20; Mr Daniel Wass, *Submission 15*, p. 1.

8 Australian Federal Police, *Submission 31*, pp 9-10.

4.7 The AFP advocated various proposals to address these issues, in particular, the use of standardised wording and sunset clauses in Watch List orders.⁹ Another submitter supported the automatic inclusion of children on the Watch List, or in other databases (such as those operated by the Department of Immigration and Citizenship), when parenting orders are made or when proceedings for such orders are on foot.¹⁰

4.8 The committee was informed that the Family Court, the Federal Magistrates Court and the AFP are already examining options to improve the operation of the Watch List, and that the AFP has published a preferred form of wording for Watch List orders on its website.¹¹ The AFP also indicated that it has held discussions with the Family Court and the Family Court of Western Australia. In addition, the committee understands that the Family Court and the Federal Magistrates Court established a working group in August 2011 to consider procedural reform options, in consultation with the AFP. The Chief Justice of the Family Court, the Hon Diana Bryant, indicated that time-limited orders and automatic listings are under consideration by that working group, as well as other matters concerning the clarity and standardisation of orders.¹²

Execution of recovery orders and warrants

4.9 The AFP executes recovery orders and warrants made under the Family Law Act and the Regulations by Australian family courts, in respect of children who have been wrongfully removed from Australia or retained by one parent within Australia.¹³ Under the Family Law Act, family courts are empowered to grant recovery orders where a child has been removed in breach of a parenting order or otherwise in breach of another person's parental responsibility rights (for example, where there is no parenting order in place).¹⁴

4.10 In the context of international parental child abduction, recovery orders may be relevant in:

- outgoing matters, where a child has been wrongfully removed or retained within Australia by an abducting-parent who then intends to remove the child overseas; and
- incoming matters, where Hague Convention proceedings have been commenced for the return of the child to his or her country of habitual

9 Australian Federal Police, *Submission 31*, pp 4-7.

10 Mr Ken Thompson, *Committee Hansard*, 26 August 2011, p. 7.

11 Australian Federal Police, *Submission 31*, pp 4-5. See also the AFP website: <http://www.afp.gov.au/policing/family-law/family-law-kit.aspx> (accessed 27 October 2011).

12 *Committee Hansard*, 26 August 2011, p. 34. See further, Chief Justice of the Family Court of Australia, response to questions on notice, received 12 September 2011, pp 2-3.

13 Family Law Act, s 67Q.

14 Family Law Act, s 67Q; Regulation 31.

residence, and the CCA applies to the Family Court for a warrant to find and recover the child, to ensure that he or she is not removed from Australia while the Convention proceedings are in progress.¹⁵

4.11 Recovery orders and warrants under the Regulations may authorise or direct the AFP (or other specified law enforcement agencies) to enter premises, and stop vehicles, vessels or aircraft, in order to search for a child, recover him or her, and place him or her in the care of persons specified in the order.

4.12 The AFP submitted that its ability to execute recovery orders is often limited because the orders contain insufficient detail about the specific actions it is required to take. In such cases, it is necessary to clarify the intended action with the court, which may delay execution.¹⁶ The AFP noted that, prior to 2005, the Family Law Rules contained a standard form of wording for recovery orders, and that subsequent removal of this wording has reduced the clarity of recovery orders.¹⁷

4.13 The AFP also identified limitations in its investigation and enforcement powers more broadly, such as an inability to exercise telecommunications interception powers to locate an abducted child, and an inability to exercise coercive information-gathering powers in relation to private individuals and organisations.¹⁸ This is so even with respect to offences under the Family Law Act concerning the removal of a child in breach of parenting orders.¹⁹ These powers would be of significant utility in the law enforcement response to international parental child abduction, in particular to ascertain a child's overseas location—for example, by intercepting phone conversations between the abducting parent and relatives in Australia, or by examining financial transaction records.²⁰

International policing assistance

4.14 The AFP participates in international policing arrangements coordinated through Interpol. The National Central Bureau within the AFP is the Australian contact point for Interpol matters. The AFP is able to respond to requests for international policing assistance where children are abducted to Australia. Similarly, it is able to seek international policing assistance where an Australian child has been wrongfully removed or retained overseas.²¹

15 Regulations 14, 31.

16 *Submission 31*, p. 5.

17 *Submission 31*, p. 5.

18 *Submission 31*, p. 8.

19 *Submission 31*, pp 7-8. See further, Assistant Commissioner Ramzi Jabbour, Australian Federal Police, *Committee Hansard*, 26 August 2011, p. 48.

20 *Submission 31*, pp 7-8.

21 Australian Federal Police, *Submission 31*, p. 3.

4.15 The AFP issues Interpol notices in respect of children abducted from Australia, both on its own initiative and at the request of the CCA.²² Interpol notices are graded into seven colour-coded categories according to the policing response required.²³ The AFP advised that it issues Yellow Notices in respect of children who have been abducted overseas.²⁴ These notices seek assistance in the location of missing persons, often minors, or in helping to identify persons who are unable to identify themselves. Yellow Notices effectively request information about a person's location and cannot support an exercise of coercive power.²⁵ The AFP can issue notices at the request of the CCA, and such notices can be issued to multiple or individual countries.

4.16 The AFP informed the committee that it gives consideration to issuing Red Notices—which require the arrest or provisional arrest of a person pending his or her extradition—where international parental child abduction has enlivened the offence provisions in sections 65Y and 65Z of the Family Law Act (that is, where the child is removed overseas in breach of a parenting order, or where proceedings for such an order are on foot).²⁶ Two submitters to the inquiry indicated that the AFP has also issued Blue Notices in respect of abducted children, which request the collection of information about a person's identity or their activities, often in relation to a crime.²⁷

4.17 While broadly supportive of Interpol as a mechanism for locating and recovering abducted children, submitters identified some operational issues. For example, it was argued that the Interpol alert system is presently of limited use in outgoing international parental child abduction cases because these matters are not usually criminal offences unless the removal is committed in contravention of sections 65Y and 65Z of the Family Law Act. Consequently, it is generally not possible to detain abducting parents and compel their return to Australia via a Red Notice.²⁸

22 Australian Federal Police, *Submission 31*, p. 3.

23 Interpol, *Notices*, <http://www.interpol.int/INTERPOL-expertise/Notices> (accessed 27 October 2011).

24 *Submission 31*, p. 3.

25 Interpol, *Notices*, <http://www.interpol.int/INTERPOL-expertise/Notices> (accessed 27 October 2011).

26 *Submission 31*, p. 3.

27 Mr Lauchlan Leishman, *Submission 7*, p. 3; Mr Ken Thompson, *Submission 22*, p. 2.

28 See, for example, Ms Robin Bowles, *Submission 3*, p. 2; Dads on the Air, *Submission 4*, p. 3; Mr Lauchlan Leishman, *Submission 7*, pp 2-3; Mr Ken Thompson, *Submission 22*, p. 2; Ms Carolyn Smith, *Submission 23*, p. 2.

Consular assistance by DFAT

4.18 As noted in chapter 2, DFAT's role in supporting Hague Convention and non-Convention matters includes the provision of consular assistance to Australian children and their families. DFAT advised the committee that, in many international parental child abduction matters, it is 'dealing with potentially three consular clients because both parents have their claims'.²⁹ Consular assistance provided to each party focuses on the welfare aspects of the case, and can include providing lists of local lawyers and other support service providers to either or both parents; taking steps to ensure the welfare of abducted children; and assisting in making arrangements for the child's return to Australia.³⁰

4.19 Consular assistance does not extend to intervention in custody or other legal proceedings, and is subject to privacy and confidentiality restrictions. This means that certain information cannot be communicated to the left-behind parents and families of abducted children. DFAT noted that the ability of consular staff to monitor the wellbeing of abducted children often depends on the agreement of the abducting-parent.³¹ Some consular services—generally notarial services such as the witnessing of documents—are charged on a fee-for-service basis. DFAT emphasised, however, that welfare checks and guidance do not attract a fee, and that the fees charged for notarial services are substantially smaller than commercial rates.³²

4.20 Submitters to the inquiry were generally supportive of the consular services provided in international parental child abduction matters. However, one submitter suggested that all consular services provided in these matters should be exempt from fees, in order to reduce the cost burden on parties (particularly left-behind parents who have been unable to obtain financial assistance under the Overseas Custody Scheme).³³

Australian Passport Office's role

4.21 DFAT administers the Passports Act and the *Australian Passports Determination 2005*, which govern the issuing of Australian passports to children, and their cancellation in certain circumstances, and contain provisions relevant to the prevention of, and response to, international parental child abduction. Such provisions include:

29 Ms Paula Ganly, Department of Foreign Affairs and Trade, *Committee Hansard*, 26 August 2011, p. 44.

30 Department of Foreign Affairs and Trade, *Submission 34*, p. 1.

31 *Submission 34*, p. 1.

32 Ms Paula Ganly, Department of Foreign Affairs and Trade, *Committee Hansard*, 26 August 2011, p. 50. See further, Department of Foreign Affairs and Trade, *Consular Handbook*, Chapter 43.8 and Annex 43C (Consular Fees), Additional Information, tabled by the Department of Foreign Affairs and Trade, 26 August 2011.

33 Mr Ken Thompson, *Submission 22*, pp 3, 5.

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- prescribing full parental consent or a court order (of the Family Court or an overseas court of a Convention country) as a prerequisite to the issuing of Australian travel documents to a child;
 - where full parental consent is not possible for reasons falling within the exceptional circumstances set out in the Passports Act, enabling the Minister's delegate to issue a passport to the child on the application of one parent;
 - enabling parents who are concerned that their children are at risk of abduction to raise a 'child alert' with DFAT; and
 - in very limited circumstances, cancelling the passport of a child—generally on the order of an Australian court, or if DFAT becomes aware of information which, if known at the time of the application, would have resulted in refusal to issue the passport at that time.³⁴

4.22 DFAT emphasised that, in regulating the issuing of passports, it must balance the interests of preventing and responding to international parental child abduction with concerns about the welfare of the child. In some cases, a passport is necessary to ensure the child's welfare overseas—for example, it may be necessary for the child to hold an Australian passport to remain resident in the overseas country, or receive essential services.³⁵ In addition to its regulatory functions, DFAT also issues public guidance materials relevant to travelling with children.³⁶

4.23 Submitters identified various operational issues in relation to the issuing and cancellation of passports in international parental child abduction matters, including the following:

- ambiguity in the terms of court orders placing restrictions upon the overseas travel of children (including conditions upon the issuing of passports), which creates difficulties for DFAT in attempting to interpret orders when processing passport applications;³⁷
- limitations on the power to administratively cancel passports, in particular that DFAT cannot unilaterally cancel a child's current passport on notification of actual or apprehended international parental child abduction unless it is provided with:
 - a court order requiring cancellation; or

34 Department of Foreign Affairs and Trade, *Submission 34*, pp 2-3.

35 *Submission 34*, p. 3.

36 See, for example, Australian Passport Office, *Children and Parental Consent*, Additional Information, provided to the committee by Australian Passport Office, Department of Foreign Affairs and Trade, 29 August 2011.

37 Department of Foreign Affairs and Trade, *Submission 34*, p. 2.

- information that, if known at the time the passport was issued, would have resulted in a refusal of the application;³⁸ and
- onerous evidentiary requirements for the issuing of a temporary passport to children who are abducted overseas, to enable their return to Australia where, for example, their passports have expired subsequent to their abduction.³⁹

4.24 Submitters proposed a range of measures to address their concerns. In particular, DFAT supported the use of standardised court orders for the cancellation of passports.⁴⁰ It also noted that there is scope for flexibility in managing individual applications for the issuing of temporary passports to abducted children.⁴¹ Chief Justice Bryant advised the committee that the court working group established to consider Watch List orders, in consultation with the AFP, will also examine these matters.⁴²

4.25 Mr Ken Thompson indicated his support for an expanded administrative power of cancellation, whereby the Australian Passport Office is required to cancel a child's passport upon proof of international parental child abduction.⁴³ DFAT did not support this measure because its view is that courts are better equipped to make determinations about the rights and interests of a child whose passport is being cancelled.⁴⁴

4.26 Other potential preventative measures included DFAT's proposal for the routine judicial consideration of any restrictions to be placed upon a child's passport in parenting proceedings before the Family Court (for example, in applications for parenting orders post-separation).⁴⁵ Some witnesses, however, did not support such pre-emptive action. For example, Mr Norman Reaburn from National Legal Aid commented that it is appropriate that family courts do not 'assume that in the future parties will not behave in accordance with the decision that has been reached' in respect of custody and access arrangements.⁴⁶ Chief Justice Bryant commented that

38 Mr Lauchlan Leishman, *Submission 7*, p. 4; Mr Ken Thompson, *Submission 22*, pp 3, 5. See also, Department of Foreign Affairs and Trade, *Submission 34*, p. 2.

39 Department of Foreign Affairs and Trade, *Submission 34*, p. 3.

40 *Submission 34*, p. 2.

41 *Submission 34*, p. 3.

42 Response to questions on notice, received 12 September 2011, p. 2.

43 *Submission 22*, p. 5. Mr Thompson argued that this approach would alleviate the burden on left-behind parents who may not be aware that they must seek a court order, and would enable a more timely response to incidents of international parental child abduction.

44 Mr Dominic Trinidad, Department of Foreign Affairs and Trade, *Committee Hansard*, 26 August 2011, p. 45.

45 *Submission 34*, p. 2.

46 *Committee Hansard*, 26 August 2011, p. 20. See also Ms Alexandra Wearne, Legal Aid New South Wales, *Committee Hansard*, 26 September 2011, p. 20.

such an approach may not be appropriate because 'the orders pronounced by the court are dependent on the facts of a given parenting matter and the issues in dispute between the parties'.⁴⁷

Commonwealth Central Authority's communication and information-dissemination practices

4.27 While many submitters indicated that, overall, Australian Central Authorities are upholding Australia's obligations under the Hague Convention,⁴⁸ some concerns were raised during the course of the inquiry. Submitters and witnesses identified two specific issues relating to communication and information-dissemination by Central Authorities.

Liaison with applicants in Hague Convention matters

4.28 In outgoing matters under the Hague Convention, on acceptance of a compliant application (generally from a left-behind parent or family member of the abducted child), the relevant State Central Authority (SCA) and the CCA commence the process to secure the child's return to Australia. The CCA will transmit the application to the Central Authority in the country to which the child has been taken, and seek its assistance in locating the child and facilitating his or her return to Australia.⁴⁹

4.29 Some submitters expressed concern about communication and liaison arrangements between themselves, as applicants, and Australian Central Authorities. They argued that there is an overly bureaucratic chain of communication between overseas Central Authorities, the CCA, SCAs, and applicants, which causes delays in relaying information to applicants about the progress of their cases.⁵⁰ A particular problem appears to be the communication of information about a child's location.⁵¹

4.30 Mr Lauchlan Leishman described his experience as an applicant dealing with the CCA and an SCA as akin to being 'kept in the corner in the dark'.⁵² He stated:

I deal with someone in Brisbane [at the Queensland SCA], who deals with someone in Canberra [at the CCA], who deals, hopefully, with the person

47 Response to questions on notice, received 12 September 2011, p. 3.

48 See, for example, Mr Michael Nicholls QC, *Submission 6*, p. 2; Reunite International (UK), *Submission 12*, p. 2; Northern Territory Government, *Submission 29*, p. 1; Law Council of Australia, *Submission 39*, p. 1.

49 Attorney-General's Department, *Submission 32*, p. 2; Ms Louise Glanville, Attorney-General's Department, *Committee Hansard*, 26 August 2011, p. 41.

50 Mr Lauchlan Leishman, *Submission 7*, p. 2. See also, Mr Craig Cannock, *Submission 2*, p. 2; Mr Ken Thompson, *Committee Hansard*, 26 August 2011, pp 8-9.

51 Mr Ken Thompson, *Committee Hansard*, 26 August 2011, p. 9.

52 *Committee Hansard*, 26 August 2011, p. 4.

where my child has been taken overseas [at the overseas Central Authority]. To me that is illogical. I should be able to talk directly to the person who is dealing with the person overseas.⁵³

4.31 Mr Leishman indicated that he has recently negotiated individual arrangements with the CCA and the Queensland SCA to enable him to liaise directly with the CCA.⁵⁴ ISS Australia supported regular communication between Australian Central Authorities and applicant parents on matters such as 'the progress of their cases, dates and outcomes of any hearings that might take place, and reasons for any delays if they occur'.⁵⁵

4.32 In addition, other submitters, including the Attorney-General's Department (Department), acknowledged the potential for duplication between the work of the CCA and the SCA in some instances.⁵⁶ The committee was informed that some progress has been made towards a formal Memorandum of Understanding between the CCA and SCAs, which would document the division of responsibilities between them.⁵⁷

Information-dissemination and public outreach

4.33 The committee notes that the Department publishes information about international parental child abduction on its website. This includes:

- contact details for the CCA, SCAs and non-government social support service providers;
- application forms for CCA assistance in Convention matters and for financial assistance under the Overseas Custody Scheme;
- lists of frequently asked questions, which provide procedural information about preventing and responding to international parental child abduction; and
- periodic publications of statistical information in respect of Hague Convention abductions to and from Australia.⁵⁸

53 *Committee Hansard*, 26 August 2011, p. 3.

54 *Committee Hansard*, 26 August 2011, p. 3.

55 Ms Helen Freris, International Social Service Australia, *Committee Hansard*, 26 August 2011, p. 10. See also, Mr Ken Thompson, *Committee Hansard*, 26 August 2011, p. 8, who suggested that periodic teleconferences between case officers at the CCA, the relevant SCA and the applicant could improve the flow of information to applicants.

56 Attorney-General's Department, *Submission 32*, p. 9. See further, Department of Communities, QLD, *Submission 24*, p. 1.

57 Department of Communities, QLD, *Submission 24*, p. 1.

58 Attorney-General's Department, *International Child Abduction*, http://www.ag.gov.au/www/agd/agd.nsf/Page/Families2_Internationalchildabduction (accessed 27 October 2011).

4.34 The Department also operates a telephone advice hotline and a central CCA email address. Supporting agencies, including the AFP and DFAT, also publish guidance materials on matters within their responsibilities.⁵⁹ Other non-government agencies have also produced various resources on international parental child abduction.⁶⁰

4.35 Several submitters, including legal practitioners and social service providers, argued that there is scope to improve existing information-dissemination and public education practices.⁶¹ Some expressed concern that public awareness and understanding of international parental child abduction, and its legal and social consequences, remain limited. In particular, some submitters argued that public awareness is a crucial prevention strategy because an understanding of the Hague Convention may dissuade some abducting parents from removing their children, and enable left-behind parents to instigate prompt preventative or remedial action.⁶²

4.36 Submitters suggested a range of improvements to existing information-dissemination and public outreach measures, including the following initiatives:

- the development of a comprehensive international parental child abduction web portal, maintained by the Australian Government, which provides members of the public and professional service providers with a specific and comprehensive access point for resources about prevention and response, including referrals to relevant non-government support service providers;⁶³
- updating existing guidance materials produced by the CCA for legal practitioners engaged in Convention proceedings;⁶⁴
- resuming the former series of CCA publications on individual Convention countries, which detailed the number of incoming abductions and average return rates, the average length of time for the determination of applications,

59 For example, the AFP has produced an information kit about the Airport Watch List; and DFAT produces information booklets on children's passports, and incorporates relevant information in its *Smartertraveller* series of publications, as well as in guidance materials produced by the Australian Passport Office.

60 See, for example, International Social Service Australia, *Family Safety and Child Abduction Planning and Prevention Resource Kit*.

61 See, for example, Mr Michael Nicholls QC, *Submission 6*, p. 4; Department of Family and Community Services NSW, *Submission 8*, p. 6; International Social Service Australia, *Submission 11*, pp 5-6; Reunite International (UK), *Submission 12*, p. 3; Law Society of NSW, *Submission 21*, p. 3; Mr Ken Thompson, *Submission 22*, pp 22-24; Law Council of Australia, *Submission 39*, p. 3.

62 Ms Alexandra Wearne, Legal Aid New South Wales, *Committee Hansard*, 26 August 2011, p. 19; Reunite International (UK), *Submission 12*, pp 2-3; Mr Ken Thompson, *Submission 22*, pp 19-20.

63 Mr Lauchlan Leishman, *Committee Hansard*, 26 August 2011, p. 1.

64 Northern Territory Government, *Submission 29*, p. 1.

and the financial and legal assistance available to applicants and respondents in the relevant country;⁶⁵ and

- leveraging existing public engagement opportunities and events, such as International Missing Children's Day, to raise awareness and to engage the broader community in the implementation and continuous improvement of prevention and early response strategies.⁶⁶

Financial and legal assistance schemes administered by the Attorney-General's Department

4.37 The committee received evidence relating to the provision of financial and legal assistance to applicants and respondents in Convention and non-Convention proceedings.

Financial assistance—outgoing matters

4.38 Several submitters commented that financial assistance granted under the Overseas Custody Scheme does not provide adequate support to left-behind parents. Concerns were expressed about the application of the means test, and the limited purposes for which financial assistance is available.⁶⁷

4.39 Applications under the scheme appear to be assessed according to a standardised means test, which is applied to all financial assistance schemes administered by the Attorney-General.⁶⁸ Two submitters argued that the assessment of an applicant's assets under this test may not reflect the circumstances of international parental child abduction cases, namely that:

- an applicant may need to liquidate his or her assets quickly if financial assistance is not provided, as time is of the essence (consequently, the applicant may realise only a small fraction of the market value of the assets);⁶⁹ and
- it is likely that an applicant would, in any event, be using these assets to finance his or her case.⁷⁰

4.40 The Queensland Law Society (QLS) criticised the application of the means test in non-Convention matters, in circumstances where an applicant is required to

65 Law Council of Australia, *Submission 39*, p. 3.

66 Mr Ken Thompson, *Submission 22*, pp 22-24.

67 Mr Ken Thompson, *Submission 22*, p. 2; Queensland Law Society, *Submission 25*, p. 2; Northern Territory Government, *Submission 29*, p. 1.

68 Attorney-General's Department, Application Form—Assistance by the Commonwealth for Legal and Related Expenses for Schemes Administered by the Attorney-General, p. 1.

69 Mr Lauchlan Leishman, *Committee Hansard*, 26 August 2011, p. 8.

70 Mr Ken Thompson, *Committee Hansard*, 26 August 2011, p. 8.

obtain a legal opinion from a lawyer in the jurisdiction to which the child has been taken, as to the merits of his or her case.⁷¹ Although the Department indicated that it may provide a small grant of financial assistance specifically for this purpose,⁷² the QLS expressed concern that such assistance may also be means tested. It argued that this could have the effect of 'delaying or deterring applications for which time is of the essence'. The QLS submitted further that there should be no means test applied at the initial stage of obtaining overseas legal advice, and a merits test applied at this stage should '[take] into account the gravity of the situation, including any child safety issues'.⁷³

4.41 Submitters also expressed concern that the Overseas Custody Scheme does not apply in respect of domestic legal expenses in outgoing matters: for example, the costs associated with obtaining relevant orders under the Family Law Act,⁷⁴ orders for the cancellation of a child's passport; and subpoenaing various records which may disclose information about the child's location, such as documents held by financial institutions, telecommunications providers and airlines.⁷⁵ According to one witness, domestic legal costs in the range of \$50,000-\$100,000 are not unusual for such orders.⁷⁶

4.42 The committee also heard that, in some Convention matters, these orders may be necessary to establish the overseas location of a child so that an application can be accepted by an overseas Central Authority, and to enable a law enforcement response.⁷⁷ In non-Convention matters, these orders may be the primary means of locating a child. As noted earlier in this report, although left-behind parents may apply for legal aid in respect of domestic legal action taken in international parental child abduction matters, such assistance is means-tested.⁷⁸

Legal assistance—outgoing and incoming matters

4.43 Some submitters emphasised the importance of ensuring that all parties to return proceedings are able to obtain legal representation, including applicants (or interveners) and respondents. Reunite International (UK)—a United Kingdom-based non-profit organisation which provides social support services in international

71 *Submission 25*, p. 2.

72 *Submission 32*, p. 4.

73 *Submission 25*, p. 2.

74 For example, parenting, location, recovery and Airport Watch List orders, and arrest warrants in respect of breaches of ss 65Y and 65Z.

75 Mr Ken Thompson, *Submission 22*, p. 3. See further, Queensland Law Society, *Submission 25*, p. 2.

76 Mr Ken Thompson, *Submission 22*, p. 3.

77 Mr Ken Thompson, *Committee Hansard*, 26 August 2011, p. 9; Mr Paul Hansen, Attorney-General's Department, *Committee Hansard*, 26 August 2011, p. 42.

78 National Legal Aid, *Submission 37*, p. 2.

parental child abduction matters—submitted that, in its experience of abductions from Australia to the United Kingdom, inadequate or no representation for respondents (abducting-parents) is creating an imbalance between parties to return proceedings.⁷⁹ Women's Legal Services Australia expressed similar concerns with respect to respondents involved in proceedings in the Family Court which relate to incoming abductions, and in the mediation of such cases.⁸⁰

4.44 Other submitters identified problems encountered by applicants or interveners in outgoing matters (that is, left-behind parents whose children are abducted overseas). Mr Craig Cannock, a father whose children were abducted to Canada, provided information about the significant difficulties and delays he encountered in securing overseas legal aid to commence return proceedings in Canada.⁸¹

4.45 Reunite International (UK) identified a further potential cost barrier encountered by Australian left-behind parents who are involved in return order proceedings in the United Kingdom, advising that such parties often instruct Australian legal representatives, who then brief overseas legal teams. This practice can unnecessarily duplicate expenses when there are no language or cultural barriers to the parent instructing directly his or her overseas legal representatives.⁸²

4.46 In addition, the Chief Justice of the Family Court, the Hon Diana Bryant, commented on the limited circumstances in which the court may appoint an Independent Children's Lawyer to represent the interests of an abducted child in Convention proceedings. In particular, Chief Justice Bryant argued that the statutory criteria in the Family Law Act for the appointment of an Independent Children's Lawyer may now be too restrictive.⁸³

Information-gathering by the Commonwealth Central Authority

4.47 An officer from the Department advised the committee that the overseas location of an abducted child is often known to the applicant parent, or is readily ascertainable because abducting-parents frequently return to their country of nationality, or to a country in which they have family, friends or other support

79 *Submission 12*, p. 1.

80 Ms Angela Lynch, Women's Legal Services Australia, *Committee Hansard*, 26 August 2011, p. 22.

81 *Submission 2*, pp 2-3.

82 *Submission 12*, p. 1.

83 *Submission 35*, p. 42. The Family Law Act provides that the court may make an order for the representation of a child's best interests in incoming Convention matters only if it considers that there are 'exceptional circumstances' that justify doing so: see Family Law Act, s 68L(3). Chief Justice Bryant argued that a finding of exceptional circumstances may no longer be an appropriate pre-condition to the engagement of an Independent Children's Lawyer, due to the increasing complexity of Convention proceedings: see *Committee Hansard*, 26 August 2011, pp 30-31.

networks.⁸⁴ However, the committee received anecdotal evidence suggesting that complexities can arise where the overseas location of a child is uncertain.

4.48 Some witnesses indicated that overseas Central Authorities may not accept applications where the location of a child is uncertain, because these Central Authorities are unable to establish their jurisdiction in the matter.⁸⁵ Further difficulties may arise where the abducting-parent moves between several countries, especially where entry barriers are relatively minimal, as is the case between member states of the European Union.⁸⁶

4.49 Officers from the Department informed the committee that, in its capacity as the CCA in Hague Convention matters, it engages various strategies to locate children in such cases. For example, it can make requests to multiple overseas Central Authorities to seek their assistance in locating the child.⁸⁷ The Department may also request the AFP, as the Australian Interpol National Central Bureau, to issue diffusion notices seeking the policing assistance of multiple countries.⁸⁸ Overseas Central Authorities are then able to make inquiries of other agencies in their jurisdictions to obtain information about the child's location.⁸⁹

4.50 A departmental officer also informed the committee that the Department has recourse to various domestic information-sharing mechanisms to locate abducted children. These include arrangements with the Department of Immigration and Citizenship to cross-check records of a child's travel movements, a Memorandum of Understanding with Centrelink for the provision of information relevant to a child's location, and the ability to apply to the Family Court for Commonwealth Information Orders under the Family Law Act to seek similar information from other Commonwealth agencies.⁹⁰

4.51 The Family Law Council also identified an area of uncertainty in respect of the CCA's information-gathering powers. In its advice to the Attorney-General of March 2011, the Family Law Council stated that it was unclear on the face of the Family Law Act whether the CCA has standing to seek location orders, which would

84 Mr Paul Hansen, Attorney-General's Department, *Committee Hansard*, 26 August 2011, p. 42.

85 Mr Ken Thompson, *Committee Hansard*, 26 August 2011, p. 4. See also, Mr Paul Hansen, Attorney-General's Department, *Committee Hansard*, 26 August 2011, p. 42.

86 Mr Ken Thompson, *Committee Hansard*, 26 August 2011, p. 4. See also, Ms Robin Bowles, *Submission 3*, p. 2.

87 Ms Jennifer Furze and Mr Paul Hansen, Attorney-General's Department, *Committee Hansard*, 26 August 2011, p. 42.

88 Mr Paul Hansen, Attorney-General's Department, *Committee Hansard*, 26 August 2011, p. 43. See also, Assistant Commissioner Ramzi Jabbour, Australian Federal Police, *Committee Hansard*, 26 August 2011, p. 43.

89 Mr Paul Hansen, Attorney-General's Department, *Committee Hansard*, 26 August 2011, p. 42.

90 Mr Paul Hansen, Attorney-General's Department, *Committee Hansard*, 26 August 2011, p. 42.

require private individuals or organisations to furnish the Family Court with information concerning the location of the child.⁹¹

4.52 The proposed reforms announced by the Australian Government on 19 September 2011 include amendments to expand the information-gathering powers of the CCA in locating abducted children.⁹² Officers from the Department informed the committee that these amendments will enable the CCA to apply to the court to seek additional information from individuals and entities which may disclose the location of the child—for example, travel records and the financial transaction records of the abducting parent. The committee was also advised that the proposed amendments are intended to enhance the CCA's ability to identify and contact the appropriate overseas central authorities in order to secure a child's return to Australia.⁹³

Commonwealth Central Authority's capture of data

4.53 Some submitters expressed concern that the CCA's collection of data with respect to international parental child abduction is incomplete. In particular, the CCA does not keep records of abductions to and from non-Convention countries or Convention abductions in which CCA assistance is not sought; nor does the CCA keep statistical information on the motivations of abducting parents in either category of case, or information on the number of abductions committed in breach of family law orders.⁹⁴ Some submitters argued that greater domestic data capture and analysis could aid the continuous improvement of Australian policies and practices, by providing a clear profile of the nature and magnitude of the problem.⁹⁵

4.54 The Department advised that it does not routinely capture this data because its role as the CCA is limited to processing applications for assistance in Convention matters. As such, it is not concerned with the substantive merits or motivating factors present in individual cases, and it does not have visibility of matters which are not the subject of an application made to it. A departmental officer noted that the Permanent Bureau periodically collates data from member states, and commissions its

91 *Submission 13*, Attachment 1, p. 8.

92 The Hon Robert McClelland MP, Attorney-General, and the Hon Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Stronger Laws to Deal With International Child Abduction', Media Release, 19 September 2011.

93 Ms Louise Glanville and Mr Paul Hansen, Attorney-General's Department, *Committee Hansard*, 22 September 2011, pp 5-6.

94 International Social Service Australia, *Submission 11*, p. 6; Mr Ken Thompson, *Submission 22*, pp 17-18; Queensland Law Society, *Submission 25*, p. 3; Attorney-General's Department, response to question on notice, received 16 September 2011.

95 International Social Service Australia, *Submission 11*, p. 6; Mr Ken Thompson, *Submission 22*, pp 17-18.

analysis to identify international and country-based trends.⁹⁶ The Department advised that it does not keep statistics on the number of abductions committed in breach of family law orders because such information is often only incidental to an application to the CCA.⁹⁷

Child support arrangements in the event of international parental child abduction

4.55 Submitters to the inquiry raised concerns about child support and maintenance arrangements in the event of international parental child abduction.⁹⁸ Some left-behind parents submitted that they have experienced difficulties in obtaining an adjustment of their liability following the overseas abduction of their children, notwithstanding that the overseas location of the abducting parent may be unknown.⁹⁹ International Social Service (ISS) Australia asserted that the continued liability of a left-behind parent to make child support or maintenance payments where the location of a child is unknown is an 'enormous injustice' which can fuel resentment on the part of the left-behind parent.¹⁰⁰

4.56 Some left-behind parents submitted that the Child Support Agency (CSA) had not informed them of their right to seek a variation on their child support liability, or had provided incomplete or incorrect advice when notified that international parental child abduction had occurred and advice was sought about future child support obligations.¹⁰¹ Mr Ken Thompson proposed the extension of the CSA's statutory powers to administratively vary a left-behind parent's liability, so that he or she is not required to seek a court order to suspend or vary child support payments in the event of international parental child abduction.¹⁰²

4.57 In relation to whether information held by the CSA might be used to help locate a child who has been abducted overseas to an unknown location, the Department advised the committee that the CSA is not included in the information-sharing protocol between the CCA and other Australian Government agencies (which includes Centrelink). The Department noted, however, that the CCA or individual

96 Mr Paul Hansen, Attorney-General's Department, *Committee Hansard*, 26 August 2011, pp 46-47. See also Nigel Lowe (for the Hague Conference on Private International Law), *A Statistical Analysis of Applications Made in 2008 Under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, Part I: Global Report and Part III: National Reports (2011).

97 Attorney-General's Department, response to question on notice, received 16 September 2011.

98 See, for example, Mr Daniel Wass, *Submission 15*, pp 1-2.

99 Mr Matthew Wyman, *Submission 1*, p. 4; Mr Ken Thompson, *Submission 22*, pp 18-19.

100 Ms Helen Freris, International Social Service Australia, *Committee Hansard*, 26 August 2011, p. 13.

101 Mr Matthew Wyman, *Submission 1*, p. 4; Mr Ken Thompson, *Submission 22*, p. 19.

102 Mr Ken Thompson, *Submission 22*, p. 19.

parents are able to apply to the Family Court for a Commonwealth Information Order under the Family Law Act, which would require the CSA to disclose to the court certain information concerning the child's overseas location.¹⁰³

4.58 ISS Australia also queried whether limited information from child support records could be provided to left-behind parents to enable them to commence proceedings for the return of their child, without disclosing the specific location of the abducting-parent.¹⁰⁴

Family Law Council advice and proposed legislative amendments

4.59 Departmental officers informed the committee that, in August 2011, the Attorney-General and the Minister for Families, Housing, Community Services and Indigenous Affairs sought advice from the Family Law Council on whether Australian family law courts should be able to suspend the requirement for left-behind parents to pay child support or maintenance in the event of international parental child abduction; and what circumstances should apply to subsequently reinstate the obligation to pay child support.¹⁰⁵

4.60 The Family Law Council provided its advice to the government on 5 August 2011, recommending legislative amendments to enable the Family Court to suspend child support or maintenance obligations, where it has found that a child has been wrongfully removed from, or retained outside, Australia. The Family Law Council considered that this power should apply equally to Convention and non-Convention matters, and recommended that a removal or retention should not be deemed wrongful in circumstances broadly analogous to the matters falling within the exceptions in the Hague Convention (set out in Article 13). The Family Law Council also stated that, in determining whether the removal or retention is wrongful, the court should also have regard to whether:

- the taking-parent was fleeing from violence;
- the child objects to returning to Australia; and
- any other factors it considers relevant.¹⁰⁶

4.61 The Family Law Council also recommended that the obligation to pay child support or maintenance should be reinstated in the following circumstances:

103 Mr Paul Hansen, Attorney-General's Department, *Committee Hansard*, 26 August 2011, p. 46.

104 Ms Helen Freris, International Social Service Australia, *Committee Hansard*, 26 August 2011, p. 13.

105 Ms Louise Glanville, Attorney-General's Department, *Committee Hansard*, 22 September 2011, p. 1. See further, Family Law Council, *Letter of Advice to the Attorney-General and the Minister for Families, Housing, Community Services and Indigenous Affairs*, 5 August 2011, p. 1, Additional Information, tabled by the Attorney-General's Department, 22 September 2011 (Letter of Advice).

106 Letter of advice, 5 August 2011, pp 3-6 (recommendations 1 and 2).

- upon agreement by the parties;
- by the return of the child to Australia; or
- by declaration of the Family Court upon application by either party, including in circumstances where an application for a relocation order is subsequently made by one party which seeks permission to relocate the child to another country.¹⁰⁷

4.62 Officers from the Department advised the committee that the government has announced its support for these proposals. Details of the proposed amendments are currently under development and the government intends to introduce legislative reforms in the first half of 2012.¹⁰⁸ In addition to the specific matters in the Family Law Council's recommendations, the government has announced that the proposed reforms will include an overarching requirement that the court must be satisfied that the suspension of child support or maintenance obligations would be in the best interests of the child.¹⁰⁹

107 Letter of advice, 5 August 2011, p. 6 (recommendation 3).

108 Ms Louise Glanville, Attorney-General's Department, *Committee Hansard*, 22 September 2011, pp 1, 4.

109 The Hon Robert McClelland MP, Attorney-General, and the Hon Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Stronger Laws to Deal With International Child Abduction', Media Release, 19 September 2011.

CHAPTER 5

Complementary support services, dispute resolution and international engagement

5.1 In this chapter, the committee considers the role of complementary support and dispute resolution services in respect of incoming and outgoing international parental child abduction matters, as well as Australia's role in international engagement on such matters.

Role of non-government support services

5.2 The committee received evidence highlighting the importance of social support services to parents (both the abducting and the left-behind parent) and to children in international parental child abduction matters. While Australian governments do not directly provide social support services in international parental child abduction matters, the Australian Government does provide funding to ISS Australia, a non-government organisation, to deliver these services in relation to both outgoing and incoming abductions.¹ ISS Australia also receives partial funding from the Department of Family and Community Services, New South Wales to deliver additional services in that state.²

ISS Australia

5.3 ISS Australia is an independent member of an international network which has representation in approximately 140 countries worldwide. ISS Australia describes its role as 'specialising in the provision of professional social work services to assist families and children separated across national borders'.³ It is the only professional social work service in Australia focussing specifically on families affected by international parental child abduction.⁴

5.4 In its submission, ISS Australia provided an outline of the services that it provides to families who are affected by international parental child abduction, including:

- provision of information and education to parents, as well as professionals in community support and legal sectors, with respect to the prevention of international parental child abduction;

1 *Submission 11*, p. 1. The Australian Government provided a grant of \$200,746 to ISS Australia in 2010-11: Attorney-General's Department, *Submission 32*, p. 3.

2 Department of Family and Community Services NSW, *Submission 8*, p. 5; Law Society of NSW, *Submission 21*, p. 3.

3 *Submission 11*, p. 1.

4 *Submission 11*, p. 1.

- obtaining and forwarding information (in liaison with Central Authorities) to clients regarding the progress of their Hague Convention applications; and
- assistance in relation to return arrangements—for example, mediation to develop these arrangements, assistance in transporting children to the airport and/or facilitating the hand-over of children from one parent to another, and arranging post-return support for the parent and child on arrival in the child's place of habitual residence (including referrals to refuges and family violence support services).⁵

5.5 ISS Australia provided the committee with the following snapshot of its involvement in international parental child abduction cases:

In the 2010-11 financial year, for example, ISS Australia responded to 130 short-term enquiries related to IPCA, and provided long-term social work services in response to 40 new requests. Of new enquiries during 2010-11, 97 related to Hague Convention signatories, 63 related to non signatory countries and 11 related to countries whose identity was unknown. Approximately 82 of the matters in which ISS Australia became involved concerned mothers and 70 concerned fathers. ISS Australia provided social work services to 11 taking parents and 64 left-behind parents. Enquiries related to the prevention of IPCA approximated 80.⁶

5.6 The committee heard that ISS Australia provides invaluable support in cases of international parental child abduction. For example, Mr Craig Cannock stated:

The International Social Service was very helpful and provided me with actual real assistance, something I didn't get elsewhere. They should be commended for their efforts and the government should be funding them in a more appropriate manner.⁷

5.7 The Department of Family and Community Affairs NSW noted the good working relationship that it, as the New South Wales Central Authority, has with ISS Australia:

The NSW Central Authority also organises emotional support for left behind parents to be provided by trained social work staff at [ISS Australia]...

...[This relationship] ensures that support is provided to parents...The model allows for parents to have ready access to the Central Authority lawyer dealing with the application and the support of ISS. The Central Authority lawyer has regular communication with the ISS officer as a result of the parent signing a letter of authorisation.⁸

5 *Submission 11*, pp 3, 4 and 6.

6 *Submission 11*, p. 1.

7 *Submission 2*, p. 1, emphasis in original. See also Law Society of NSW, *Submission 21*, p. 3.

8 *Submission 8*, p. 2.

5.8 Further, the Department of Family and Community Affairs NSW recommended that all SCAs should establish a working relationship with ISS Australia so that left-behind parents affected by international parental child abduction can be provided with emotional support.⁹

5.9 ISS Australia noted that its capacity to assist in cases of international parental child abduction generally depends on referrals from Central Authorities or parents being aware of its services.¹⁰ Ms Helen Freris from ISS Australia suggested that ideally parents should be referred as a matter of course:

Certainly a lot of our work has involved raising awareness of our existence, including anywhere from central authorities to organisations in what broadly can be termed the post-separation networks, all the family law pathways organisations as well as private lawyers and Legal Aid Commissions. We can do a lot of promotion work but we would very much appreciate and value enormously awareness of us through organisations that can reach a lot of parents—so central authorities, being the main ones—being aware and perhaps referring people as a matter of course. Parents then have the choice as to whether or not they seek us. This would also include family relationship centres, Family Court registrars and even some of the organisations that work with culturally and linguistically diverse populations—migrant resource centres, for example—so that we can work with them before the problem really starts to occur.¹¹

Need for expanded support services

5.10 Although the work by ISS Australia is clearly of significant assistance to families, submitters indicated that there remains scope for non-government organisations to provide further support services to families impacted by, or at risk of, international parental child abduction. In this context, a number of submitters referred the committee to the work of Reunite International (UK).¹²

5.11 Mr Ken Thompson noted the types of services that Reunite International (UK) provides, such as:

- operation of a telephone advice line offering practical and impartial advice, information and support to parents, family members and guardians who have had their child abducted, as well as parents and guardians who may have abducted their child; and
- close liaison with the Ministry of Justice, the Foreign and Commonwealth Office and the Home Office, and provision of specialist training for

9 *Submission 8*, p. 2.

10 *Submission 11*, p. 3.

11 *Committee Hansard*, 26 August 2011, p. 14.

12 See, for example, Mr Michael Nicholls QC, *Submission 6*, pp 4-5; Mr Ken Thompson, *Submission 22*, pp 20-21.

government departments, lawyers, academics, the police, and others who have a professional interest in international parental child abduction.¹³

5.12 In the Australian context, Mr Thompson made the following suggestion:

There are several missing children organisations and charities within Australia that could provide a similar [international parental child abduction] Prevention and government liaison role to that performed by Reunite UK.¹⁴

5.13 Reunite International (UK) indicated that parents in Australia are already accessing its services, highlighting a need for a similar organisation in Australia:

Whilst [Reunite International] is a UK based charity, our advice line service is available for parents of any nationality, based in any country across the world. We are regularly contacted by Australian nationals/ citizens based in Australia and whilst their case may involve an abduction/ retention in England, it can also involve an abduction from Australia to other states such as India, Algeria, Germany. This indicates a need for an Australian [non-government organisation] similar to [Reunite International].¹⁵

5.14 The Hon Diana Bryant, Chief Justice of the Family Court of Australia, stated that there is no real equivalent to Reunite International in Australia: ISS Australia's role, in comparison, is 'more...assistance and overseeing—just a more limited role'.¹⁶

5.15 Mr Michael Nicholls QC suggested that mediation and research are areas in which a non-governmental organisation may be able to provide additional services to families.¹⁷ However, Mr Nicholls cautioned that such an organisation would need to stay 'within its boundaries' and remain at 'arm's length from anybody who is providing legal services or anything for reward'.¹⁸

Coordinated agency arrangements for the return of abducted children

5.16 The Hague Convention requires contracting states to provide the necessary administrative arrangements to secure the safe return of the child to his or her jurisdiction of habitual residence.¹⁹ Some submitters expressed concern that arrangements for the return of children to Australia are not always considered in a thorough or coordinated way. Particular problems were identified in respect of logistical arrangements for the child's return, and arrangements for post-return support

13 *Submission 22*, p. 20.

14 *Submission 22*, p. 21.

15 *Submission 12*, p. 3.

16 *Committee Hansard*, 26 August 2011, p. 36.

17 *Submission 6*, pp 4-5.

18 *Committee Hansard*, 26 August 2011, p. 28.

19 Article 7(h).

services (including social security, counselling, protective measures to ensure the child's safety and welfare, and legal assistance in finalising parenting arrangements).²⁰ The committee received anecdotal evidence suggesting that, in some cases, the circumstances of some children's return to Australia, and the inadequacy of post-return support arrangements, have had serious adverse psychological and emotional effects.²¹

5.17 ISS Australia submitted that greater liaison is necessary between Australian Government agencies, including the CCA, DFAT and Centrelink, to 'ensure thorough research is conducted into likely post-return conditions for children and parents, so that resources can be put in place to ensure some measure of financial and other support until such time as parenting arrangements can be determined by the court'.²²

Role of alternative dispute resolution

5.18 The Hague Convention requires contracting states to encourage the resolution of international parental child abduction cases through voluntary means wherever possible.²³ In the context of Hague Convention applications, however, there are no provisions in the Family Law Act, the Regulations or the Convention which require compulsory mediation or conciliation.²⁴

5.19 Accordingly, there is no formal framework in Australia, or internationally, for the mediation of Hague Convention cases. Despite this being the case, submissions to the inquiry indicated that mediations have been undertaken privately with significant success. In some instances, Central Authorities have referred parties to private dispute resolution service providers, such as ISS Australia.²⁵ The Attorney-General's Department (Department) informed the committee that mediation of Convention

20 International Social Service Australia, *Submission 11*, p. 5; Mr Ken Thompson, *Submission 22*, pp 24-25.

21 International Social Service Australia, *Submission 11*, p. 5.

22 *Submission 11*, p. 5. Mr Ken Thompson supported the publication of guidance materials for persons affected by international parental child abduction in relation to the range of post-return issues that may arise, as well as available support services: *Submission 22*, p. 25.

23 Article 7(c) of the Convention.

24 The Hon Diana Bryant, Chief Justice, Family Court of Australia, *Submission 35*, p. 29. In contrast, the 1996 Child Protection Convention (implemented in Australia as Part XIII AA, Division 4, s 111CA of the Family Law Act and the *Family Law (Child Protection) Regulations 2003*) does specifically mandate mediation.

25 Department of Family and Community Services, NSW, *Submission 8*, p. 8; International Social Service Australia, *Submission 11*, p. 3; Reunite International (UK), *Submission 12*, pp 2, 4; Attorney-General's Department, *Submission 32*, p. 11; The Hon Diana Bryant, Chief Justice, Family Court of Australia, *Submission 35*, pp 29-38, 42.

matters is currently a work priority for the Hague Conference on Private International Law.²⁶

Benefits of mediation

5.20 A number of submitters supported mediation or conciliation initiatives in respect of both Convention and non-Convention abductions.²⁷ For example, Chief Justice Bryant summarised the benefits of mediation in 'appropriate' Convention cases:

Conciliation and mediation enables the parties to fashion an agreed solution that:

- addresses their respective needs and those of the child or children;
- provides the parents with responsibility for decision-making in relation to the child or children;
- lays a foundation for parenting into the future as well as being able to negotiate future parenting arrangements;
- reduces conflict between the parents and encourages a child-focussed approach;
- reduces the costs borne by the parents and the delay associated with litigation, particularly the litigation subsequent to the Hague proceedings;
- reduces the stress experienced by the parents and the child or children; and
- reduces the potential for the child or children to be returned to a Convention country only to be relocated to, say, Australia pursuant to parenting orders made by a foreign court.²⁸

5.21 The Department commented on the role Australia could play in mediation:

Australia is well placed to be a regional centre for mediation of international family law matters, being able to build on the domestic family dispute resolution services currently available to parents such as the Telephone Dispute Resolution Service and Online Family Dispute Resolution Service...

Establishing Australia as a regional centre for international mediation would provide greater assistance to parents in the region seeking the return

26 Attorney-General's Department, *Submission 32*, pp 11-12.

27 See, for example, Department of Family and Community Services NSW, *Submission 8*, p. 8; International Social Service Australia, *Submission 11*, p. 3; Reunite International (UK), *Submission 12*, pp 2, 4; Law Society of NSW, *Submission 21*, p. 4; Mr Ken Thompson, *Submission 22*, p. 16; Attorney-General's Department, *Submission 32*, p. 11; The Hon Diana Bryant, Chief Justice, Family Court of Australia, *Submission 35*, pp 29-38, 42.

28 *Submission 35*, p. 34.

of their children or settled custody and access arrangements in relation to their children.²⁹

5.22 Reunite International (UK) highlighted the success it has had using mediation to resolve abduction cases:

[Reunite International (UK)] has mediated in six cases of abduction from Australia and in all six cases the parents were able to reach agreement, thus avoiding a court enforced decision and future litigation.³⁰

5.23 Chief Justice Bryant acknowledged that there are cases where parties are 'completely polarised' and mediation would not be useful.³¹ However, the Chief Justice indicated that there are certain cases in which mediation would be 'most efficacious':

Most of our cases are between Australia and New Zealand. Sometimes you can look at an application and there is no doubt the child has to be returned to the country of habitual residence. But you can see from the case that it is highly likely that, once the court hears the case properly there, they are going to be allowed to come back—and/or where, for the other parent, it is really about contact and they are not really expecting that the child is going to live with them. They are the kinds of cases where, if you have some mediation, you can end up with a result which would be the final result but you do not have to have children going back and forth. That is why it is useful...[T]here are quite a lot where it is [useful], particularly between Australia and New Zealand, where we are so culturally similar.³²

5.24 The Department of Family and Community Services NSW also supported mediation as an important tool, but outlined some limitations to the process:

Mediation has been used in New Zealand cases in NSW. The mediation which has taken place has been by video link up. Where the respondent parent has not been entitled to Legal Aid assistance, the costs have been a deterrent...

Physical distance and different time zones present difficulties in Hague cases, nevertheless, mediation is an important tool and will become increasingly used in many jurisdictions.³³

Mediation providers

5.25 Ms Alexandra Wearne from Legal Aid New South Wales believed that there may be a role for legal aid commissions in mediation of Hague Convention matters:

29 *Submission 32*, p. 11.

30 *Submission 12*, p. 4.

31 *Committee Hansard*, 26 August 2011, p. 33.

32 *Committee Hansard*, 26 August 2011, p. 33.

33 *Submission 8*, p. 8.

...[At] Legal Aid New South Wales our litigation intervention mediators are all legally trained and it would certainly not be difficult for us to have mediators specifically trained in Hague convention matters as well. So I think the commission can offer a great deal around those issues...³⁴

5.26 Mr Norman Reaburn of National Legal Aid indicated that the model of mediation offered by legal aid commissions offers a further advantage, namely, that it is specifically designed to address any imbalance between the parties.³⁵

5.27 Chief Justice Bryant noted that the time it takes to set up mediation through some services, such as those provided by Family Relationship Centres or the Family Relationship Advice Line, may exceed the strict timeframes applicable to Hague Convention applications.³⁶ The Chief Justice cautioned that she would not support mediation in circumstances which would result in delay or postponement of judicial determinations of Hague Convention applications.³⁷ Similarly, the Department of Family and Community Services NSW argued:

...[W]hen parents agree to use mediation, that process should be set up in a timely way which does not delay the proceeding being heard given that expediency is an important principle.³⁸

5.28 Ms Wearne noted that legal aid commissions have the capacity to organise mediations in a timely fashion, citing the example of a child abduction case which was referred for mediation on 23 September, with the mediation occurring on 1 October in the same year.³⁹

5.29 Chief Justice Bryant noted that the Family Court does not have the capacity to devote additional resources to private mediations or conciliations. However, the Chief Justice proposed the expansion of the Child Dispute Services section of the Family Court as a means of assisting those parties who cannot afford private mediation. Such an expansion would enable appropriately trained family consultants to be made available for the conciliation of Hague Convention applications.⁴⁰

5.30 In conclusion, Chief Justice Bryant summarised some improvements that could be made in the conciliation of Hague Convention cases:

34 *Committee Hansard*, 26 August 2011, p. 21.

35 *Committee Hansard*, 26 August 2011, p. 21.

36 *Submission 35*, pp 36-37.

37 *Submission 35*, p. 33.

38 *Submission 8*, p. 8.

39 *Committee Hansard*, 26 August 2011, p. 21.

40 *Submission 35*, p. 37. In these instances the conciliator would not be legally trained, however, he or she would have extensive experience in parenting matters before the Family Court and could be assisted by a legally trained Independent Children's Lawyer.

The [establishment of] a mediation or conciliation service...whereby appropriately trained and skilled mediators are available to assist in mediating or conciliating Hague cases (in appropriate circumstances) [would be beneficial]. Ideally this service would be appropriately funded to enable mediation or conciliation to be provided [in a manner which is] highly flexible, available on short notice, unattended by many of the usual formalities and capable of being conducted in person as well as electronically.

Allied to the above is the need to establish a mediation fund so that, in appropriate cases, impecunious participants could have the cost of mediation met in whole or in part.⁴¹

Australia's role in international engagement

5.31 The committee received evidence about Australia's role in international engagement on international parental child abduction matters, in both government-to-government and judicial settings.

Government-to-government engagement

5.32 Several submitters argued that Australia could take a more active role in international government-to-government engagement on international parental child abduction matters. These arguments arise from the general premise that cooperation in the development and implementation of an international response and prevention framework is the most effective way of managing international parental child abduction.⁴²

Encouraging accession to the Convention and best practice in implementation

5.33 The principal suggestion advanced by submitters is that Australia should sustain, if not increase, its efforts to encourage other countries to accede to the Convention, especially its regional neighbours.⁴³ As the Attorney-General's Department noted in its evidence to the committee, encouraging accession to the Convention is a standing work priority of the Hague Conference.⁴⁴ Australia's recent

41 *Submission 35*, p. 42.

42 See, for example, Department of Family and Community Services NSW, *Submission 8*, p. 6; International Social Service Australia, *Submission 11*, p. 4; Law Society of NSW, *Submission 21*, p. 2; Mr Ken Thompson, *Submission 22*, p. 5.

43 See, for example, Department of Family and Community Services NSW, *Submission 8*, p. 6; International Social Service Australia, *Submission 11*, p. 4; Law Society of NSW, *Submission 21*, p. 3; Mr Ken Thompson, *Submission 22*, p. 5.

44 Mr Paul Hansen, Attorney-General's Department, *Committee Hansard*, 26 August 2011, p. 50. See also Special Commission on the Practical Operation of the 1980 and 1996 Hague Conventions, *Conclusions and Recommendations Adopted by the Special Commission* (1-10 June 2011).

dialogue with Japan in respect of that country's ratification of the Convention is an instructive example of international engagement.⁴⁵

5.34 Submitters also suggested that Australia should continue to play an active role in the work of the Hague Conference. This includes supporting the development and adoption of good practice guides on aspects of the Convention; encouraging contracting states to adequately resource their Central Authorities and designated judicial or administrative decision-making authorities; participating in initiatives to improve international interpretative consistency; and supporting professional development opportunities for persons who implement and apply the Convention.⁴⁶

Compliance monitoring

5.35 Some submitters advocated a cautious approach to the negotiation and acceptance of new accessions to the Convention, and argued that Australia should adopt a more rigorous approach to compliance monitoring. For example, Chief Justice Bryant suggested that there may be value in considering a more stringent approach to Australia's acceptance of the accessions of new contracting states, to ensure that they have the capacity to meet their obligations under the Convention. Chief Justice Bryant also supported Australia's participation in the development and implementation of an international alert system for instances of non-compliance with the Convention, whereby breaches committed by one contracting state are reported to the Permanent Bureau and notified to other contracting states.⁴⁷

5.36 Another submitter, Mr Ken Thompson, supported the application of punitive measures—including those in the nature of autonomous sanctions—against Convention countries which frequently fail to discharge their obligations.⁴⁸

Bilateral agreements

5.37 Opinions were divided on the desirability of bilateral agreements as a mechanism for responding to, or preventing, international parental child abduction to

45 See, for example, the Hon Robert McClelland MP, *Dialogue with Japan on International Child Abduction*, Media Release, 23 August 2011. See further, Attorney-General's Department, *Response to Question on Notice 51*, Senate Legal and Constitutional Affairs Legislation Committee, Additional Estimates 2010-2011, 22 February 2011.

46 See for example, Queensland Law Society, *Submission 25*, p.3; Mr Ken Thompson, *Submission 22*, p. 9.

47 *Submission 35*, pp 28-29.

48 Mr Thompson advocated a legislative framework similar to that of the US *International Child Abduction Prevention and Return Bill*, (HR 1940, 112th Congress, introduced 23 May 2011). The Bill, which is before Congress at the time of writing, proposes a framework for the designation of contracting states with a pattern of non-cooperation, and the administration of punitive measures against them (including public condemnation, the cancellation of certain official visits, or the withdrawal, limitation or suspension of certain foreign assistance): see *Submission 22*, p. 16.

and from non-Convention countries. Reunite International (UK) described such agreements as 'pale imitations' of the Convention, in that they provide only a forum for dialogue and mutual assistance and do not mandate comparable legal processes to those available under the Convention.⁴⁹

5.38 Mr Michael Nicholls QC acknowledged that bilateral agreements 'have something of a mixed success rate', but considered that they may assist where a country does not wish to become a party to the Convention. He submitted that Australia's policy should be to pursue bilateral agreements and protocols where it is considered that they would assist.⁵⁰

Diplomatic intervention in non-Convention abductions

5.39 Some submitters—generally the left-behind parents of abducted children—argued that the Australian Government should engage in diplomatic intervention routinely, or at least more frequently, in individual non-Convention matters. They argued that such intervention should include government-to-government communication, and public censure of non-cooperative countries.⁵¹

5.40 Conversely, Mr Nicholls submitted that calls for greater diplomatic involvement in non-Convention abductions may reflect the fact that 'parents have unrealistic expectations of what a government can do'.⁵² He commented further:

Demands for diplomatic intervention usually fail to understand the limitations of a diplomatic *démarche*, or that many countries operate (at least in theory) a doctrine of separation of powers. There is also the understandable reluctance of any executive to become involved in a family case, especially one involving children, where there may well be contested allegations of violence, abuse and neglect. No sensible official, appointed or elected, would want to become involved if they could possibly avoid it.⁵³

International judicial engagement

5.41 Established in March 2001, the International Hague Network of Judges (Hague Network) can assist judicial officers in making decisions in Convention

49 *Submission 12*, p. 4.

50 *Submission 6*, p. 4. The committee notes that these comments accord with the views expressed by the Joint Standing Committee on Treaties in its examination of Australia's bilateral agreement with Lebanon in 2010: Joint Standing Committee on Treaties, Parliament of Australia, *Report 110: Treaties tabled on 18, 25(2) and 26 November 2009 and 2(2) February 2010* (March 2010), pp 8-9. See further, Senate Foreign Affairs, Defence and Trade References Committee, *Helping Australians Abroad: a Review of the Australian Government's Consular Services* (June 1997), [9.25].

51 Mr Matthew Wyman, *Submission 1*, pp 2-5; Mr Craig Cannock, *Submission 2*, p. 3; Mr Phil McIntyre, *Submission 42*, pp 9-11.

52 *Submission 6*, p. 2.

53 *Submission 6*, pp 2-3.

proceedings. It enables a judge or decision-maker in one jurisdiction to contact a liaison judge in another jurisdiction, and obtain advice about procedural issues relevant to the administration of the Convention in their respective jurisdiction.⁵⁴ The Australian liaison judges on the Hague Network are the Chief Justice of the Family Court, the Hon Diana Bryant, and the Hon Justice Victoria Bennett of the Family Court.⁵⁵

5.42 Chief Justice Bryant described the Hague Network as an 'important strategy that enables Convention countries and judicial members of those countries to understand the proceedings that may follow a return order in a particular country'. The Chief Justice advised the committee that Australia has played an active role in the Hague Network, including in encouraging the accession of non-contracting states (such as Singapore, Indonesia and Japan) and in attending periodic meetings of the Special Commission on the Practical Operation of the 1980 and 1996 Hague Conventions.⁵⁶

54 The Hon Diana Bryant, Chief Justice, Family Court of Australia, *Submission 35*, pp 39-40.

55 The Hon Diana Bryant, Chief Justice, Family Court of Australia, *Submission 35*, p. 40.

56 While strongly supporting the role of the Hague Network, the Chief Justice expressed concern, however, that some contracting states are not participating actively: *Submission 35*, p. 41.

CHAPTER 6

Committee view and recommendations

6.1 On balance, the committee agrees with the assessment that Australia is meeting its obligations under the Hague Convention.¹ However, evidence presented to the committee indicates that there are a number of areas in which current practices in both Convention and non-Convention matters could feasibly be improved. In the committee's view, the proposed reforms announced by the Australian Government on 19 September 2011 are a starting point in addressing the concerns raised in this inquiry.

6.2 The committee notes that assistance and support is available to families affected by both Convention and non-Convention abductions. The committee believes that there is scope to increase awareness about the assistance and support available, as well as to provide more information on international parental child abduction, in a more accessible manner, to assist parents who believe that their children may be at risk of abduction.

Proposed legislative amendments

6.3 The committee is encouraged by the Australian Government's proposed legislative amendments to strengthen the legal response to international parental child abduction. Submitters and witnesses to the inquiry raised concerns about several of the issues to which the proposed reforms are directed. Accordingly, the committee welcomes the government's stated commitment to addressing them.

6.4 The committee further notes the advice of the Attorney-General's Department (Department) that the details of the proposed amendments are under development, and that the Department intends to undertake further consultations with relevant stakeholders as part of the legislative development process.²

Proposed amendments to the Family Law Act offences

6.5 The committee endorses the view of the Family Law Council that the wrongful removal offences in sections 65Y and 65Z of the Family Law Act (Family Law Act offences) should be extended to wrongful retentions. Indeed, it appears to the committee that the current limitation of these offences to wrongful removals is a significant gap in their coverage; therefore, the committee supports the government's proposed reforms in this regard.

1 The Hon Diana Bryant, Chief Justice, Family Court of Australia, *Submission 35*, p. 42; Mr Michael Nicholls QC, *Submission 6*, p. 2.

2 Ms Louise Glanville, Attorney-General's Department, *Committee Hansard*, 22 September 2011, p. 4.

6.6 The committee also supports the government's intention to introduce additional safeguards to the Family Law Act offences—including a prosecutorial consent requirement, and specific defences under the Family Law Act,³ which would be additional to those available under the Commonwealth Criminal Code.⁴ The committee believes that this reform will make it easier to resolve some international parental child abduction cases and enable the return of children to Australia.

6.7 However, the committee notes that the government's proposed prosecutorial consent requirement in respect of the Family Law Act offences appears to diverge from the Family Law Council's preferred approach. Whereas the Family Law Council recommended that the Attorney-General should be required to consent to prosecutions,⁵ the government's proposed reforms would require the Commonwealth Director of Public Prosecutions (CDPP) to provide consent.⁶

6.8 The committee observes that the Family Law Council's preference for the Attorney-General's consent appears to have been motivated by a desire to maximise the persuasiveness of non-prosecution guarantees to overseas courts which are determining applications under the Convention for the return of children to Australia. In its March 2011 advice to the Attorney-General, the Family Law Council noted that, if the Attorney-General were responsible for providing prosecutorial consent, he or she would also be in a position to provide a non-prosecution guarantee to the overseas court. This guarantee may then encourage the overseas court to order the return of the child.⁷ In addition, the Family Law Council noted that, in the past, the CDPP has declined to provide non-prosecution undertakings when requested by overseas authorities.⁸

6.9 In light of these issues, the committee considers that the appropriate person to provide prosecutorial consent should be examined in further detail in the development of the proposed legislation, in consultation with the CDPP and other relevant stakeholders.

6.10 As an additional point, the committee advocates the development of a specific prosecution policy in respect of the existing and proposed additional Family Law Act

3 For example, fleeing from violence, protecting the child from danger of imminent harm, reasonable excuse, and consent: Family Law Council, *Submission 13*, Attachment 1, p. 10.

4 For example, duress, sudden or extraordinary emergency, self-defence, lawful authority, and mistake of fact: Family Law Council, *Submission 13*, Attachment 1, p. 10.

5 *Submission 13*, Attachment 1, pp 11-13, recommendation 6.

6 The Hon Robert McClelland MP, Attorney-General, and the Hon Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Stronger Laws to Deal With International Child Abduction', Media Release, 19 September 2011. See also, Ms Louise Glanville, Attorney-General's Department, *Committee Hansard*, 22 September 2011, p. 1.

7 *Submission 13*, Attachment 1, p. 12.

8 *Submission 13*, Attachment 1, p. 11.

offences, in order to guide decision-making about the initiation and conduct of international parental child abduction prosecutions. In the committee's view, such a policy would serve as an additional procedural safeguard in cases where non-prosecution undertakings are not provided, and would also enhance transparency and consistency in prosecutorial decision-making. As a result, overseas courts might be encouraged to order the return of abducted children to Australia.

Recommendation 1

6.11 The committee recommends that the Australian Government should develop a specific prosecution policy for the offences in sections 65Y and 65Z of the *Family Law Act 1975*; and update the policy as necessary to include guidance on any future amendments to the Family Law Act (including the proposed extension of the offences to wrongful retention and participation in family dispute resolution).

Application of Family Law Act offences to family dispute resolution

6.12 The committee generally supports the proposed extension of the wrongful removal offences to where the relevant parties are participating in family dispute resolution. The committee agrees that there is logic in the Family Law Council's opinion that parties who participate, or who are invited to participate, in family dispute resolution should be aware of their obligations under the Family Law Act once parenting proceedings are on foot or are pending. This is so because participation in family dispute resolution is generally a prerequisite to the filing of an application seeking contested parenting orders under the Family Law Act.⁹

6.13 However, the committee notes the concerns raised by Women's Legal Services Australia in its evidence to the inquiry about the potentially limited effectiveness of such an offence. This is because it may be impossible to prove, to the criminal standard, that a party has received an invitation to participate in family dispute resolution (since invitations do not require formal service).¹⁰

6.14 Accordingly, the committee welcomes the Department's assurance that it will consult relevant stakeholders on this matter throughout the legislative development process.¹¹

Proposed amendments to child support and maintenance obligations

6.15 The committee supports, in principle, the government's proposed amendments to the child support and maintenance obligations of left-behind parents, based on the

9 Family Law Act, s 60I. See further, Family Law Council, *Submission 13*, Attachment 1, pp 6-7, recommendation 2.

10 *Submission 33*, p. 10, recommendation 9.

11 Ms Louise Glanville, Attorney-General's Department, *Committee Hansard*, 22 September 2011, p. 4.

Family Law Council's advice dated 5 August 2011. In the committee's view, these proposed amendments may go some way towards addressing the difficulties identified or experienced by some submitters and witnesses to the inquiry.¹²

6.16 The committee particularly acknowledges two aspects of the approach to the proposed reforms. First, the committee agrees that it is appropriate that any decisions to suspend child support or maintenance obligations in the event of international parental child abduction are the subject of judicial rather than administrative determination. Second, the committee endorses the proposed inclusion of an overarching requirement that the court must be satisfied that the suspension of child support or maintenance payments would be in the child's best interests. The committee considers that this requirement would help ensure the child's welfare overseas, while also providing an incentive to taking-parents to return the child to Australia.

6.17 The committee also notes the importance of facilitating access to justice in the implementation of these proposed reforms. In particular, the committee encourages the Attorney-General's Department and agencies within the Commonwealth Human Services portfolio—especially the Child Support Agency—to ensure that left-behind parents and their legal representatives are made aware of their entitlement to seek a suspension of their child support or maintenance liability.

6.18 The committee encourages the Family and Federal Magistrates Courts to consider strategies to ensure that applications are heard and determined as efficiently as possible, having regard to the substantial financial burden placed upon many left-behind parents in attempting to locate and recover their children.

Other proposed measures

6.19 The committee also notes the advice of departmental officers that the government has partially accepted other recommendations of the Family Law Council in its March 2011 advice, including the Family Law Council's recommendation for further complementary legislative and non-legislative measures to assist in international parental child abduction cases (such as information-gathering powers, mediation and publicity about the Hague Convention).¹³

No necessity for a stand-alone criminal offence at the current time

6.20 The committee heard strong and credible arguments both in support of, and in opposition to, the enactment of a stand-alone criminal offence in respect of international parental child abduction. Advice from the Department indicates that the

12 See, for example, Mr Matthew Wyman, *Submission 1*, p. 4; Mr Ken Thompson, *Submission 22*, pp 18-19; Ms Helen Freris, International Social Service Australia, *Committee Hansard*, 26 August 2011, p. 13.

13 Ms Louise Glanville, Attorney-General's Department, *Committee Hansard*, 22 September 2011, p. 7 (referring to the partial acceptance of recommendation 4 of the Family Law Council's advice).

Australian Government has 'implicitly accepted' the recommendation of the Family Law Council against this course.¹⁴

6.21 After careful consideration, the committee also concludes that it would be premature to recommend the introduction of a stand-alone criminal offence in respect of international parental child abduction. It appears to the committee that the fundamental issue underlying the criminalisation debate is identification of the best way of leveraging an effective law enforcement response to international parental child abduction: the key question is whether or not a stand-alone criminal offence is the preferable means of achieving this outcome.

6.22 The committee considers that, at the present time, the preferable approach is to focus on the improvement of existing prevention, deterrence and dispute resolution mechanisms. In the committee's view, however, the Australian Government must closely monitor the implementation and effectiveness of the proposed amendments to sections 65Y and 65Z of the Family Law Act, and the extension of the offences to parties who are participating in family dispute resolution. If the proposed amendments do not have the desired effect of deterring parents from committing international parental child abduction, the committee believes that the need for the introduction of stronger measures should be considered, including the possible enactment of a stand-alone criminal offence.

Recommendation 2

6.23 The committee recommends that the Australian Government should maintain a 'watching brief' on the implementation and impacts of the proposed amendments to the offences in sections 65Y and 65Z of the *Family Law Act 1975*, and the extension of the offences to parties who are participating in family dispute resolution. In the event that the proposed amendments do not achieve their intended objective, the committee recommends that the Australian Government should reassess the need for the introduction of stronger measures, including the possibility of a stand-alone criminal offence for international parental child abduction.

Increasing awareness and prevention of international parental child abduction

6.24 The committee believes that there is significant benefit in enhancing international parental child abduction awareness and prevention initiatives, which may help avert the need for criminal law responses (including a new, stand-alone offence). The committee agrees with the Family Law Council, the Law Council of Australia, and others, who argued that greater public awareness of the Family Law Act offences (including the proposed amendments, if enacted) could deter some parents from

14 Ms Louise Glanville, Attorney-General's Department, *Committee Hansard*, 22 September 2011, p. 2.

committing international parental child abduction.¹⁵ In particular, the committee endorses the specific suggestions made by the Law Council of Australia in that regard.¹⁶

6.25 The committee also supports practical international parental child abduction prevention measures, which may further avert the need for criminal law responses. In this regard, the committee notes the proposals of ISS Australia for international parental child abduction screening and risk-assessment measures at key stages of a party's post-separation engagement with the family law system (for example, at the commencement of family dispute resolution or alternative dispute resolution processes).¹⁷

Recommendation 3

6.26 The committee recommends that the Australian Government should give consideration to strategies to improve public awareness of the offences in sections 65Y and 65Z of the *Family Law Act 1975*, including:

- a standard notice in all orders made under Part VII of the Family Law Act about the existence and effect of the offence provisions;
- information about the offences being included in existing Australian Government guidance materials (for example, the Travel Smart booklet published by the Department of Foreign Affairs, and Trade, and in the passport application and renewal process);
- conspicuous signage at international departure points (such as airports and sea ports) about the offence provisions; and
- information materials about the offences being made available at community legal centres, legal aid offices, family relationship centres, international departure points and government shop-fronts.

Recommendation 4

6.27 The committee recommends that the Australian Government should investigate the feasibility of incorporating international parental child abduction screening and risk-assessment processes into key stages of a family's post-separation engagement with the family law system.

15 Family Law Council, *Submission 13*, Attachment 1, pp 8-9, recommendation 4; Law Council of Australia, *Submission 39*, p. 3. See also, for example, Ms Alexandra Wearne, Legal Aid New South Wales, *Committee Hansard*, 26 August 2011, p. 19.

16 *Submission 39*, p. 3.

17 *Submission 11*, p. 6.

Law enforcement and response powers

6.28 The committee notes evidence to the inquiry about limitations in law enforcement powers regarding international parental child abduction. In particular, the committee acknowledges the following concerns:

- the absence of telecommunication interception and information-gathering powers in international parental child abduction matters;¹⁸ and
- problems in the execution and enforcement of orders granted by Australian family law courts, inclusion of children on the AFP's Watch List, and cancellation of children's passports.¹⁹

6.29 The committee therefore strongly supports the establishment of the working group between the Family Court, the Federal Magistrates Court and the AFP to further examine issues such as these.

Alternative dispute resolution

6.30 The committee endorses calls by stakeholders for the greater use of alternative dispute resolution in international parental child abduction matters. In particular, the committee recognises the significant benefits of cross-border mediation as articulated by the Chief Justice of the Family Court,²⁰ and supports its use in appropriate cases.

6.31 The committee welcomes the advice of the officers from the Department that Australia is well-placed to become a regional centre for the cross-border mediation of international parental child abduction matters, and that a pilot online dispute resolution project is underway in partnership with Family Relationship Services Queensland.²¹ The committee is interested in the outcomes of this trial, and in broader progress towards the establishment in Australia of a regional mediation framework to deal with issues relating to international parental child abduction. The committee also commends those who have provided or contributed to successful mediations concerning abductions to and from Australia—including the Family Court, state and territory legal aid commissions, ISS Australia and Reunite International (UK).

6.32 The committee emphasises the importance of addressing the following matters in the development of a mediation framework:

18 Australian Federal Police, *Submission 31*, pp 7-8.

19 Australian Federal Police, *Submission 31*, pp 4-6; Department of Foreign Affairs and Trade, *Submission 34*, p. 2; Law Council of Australia, *Submission 39*, p. 2.

20 *Submission 35*, p. 34.

21 *Submission 32*, p. 11; Mr Paul Hansen, Attorney-General's Department, *Committee Hansard*, 26 August 2011, p. 47.

- provision of appropriate resourcing for mediation services, including specific training for mediators and other persons (such as legal practitioners) participating in mediations,²² as well as associated funding;²³ and
- identification of an appropriate mediation model—for example, in her submission to the inquiry, the Chief Justice of the Family Court supported counsel-assisted mediation on the proviso that it does not result in any delay to Convention proceedings.²⁴

6.33 The committee encourages the Australian Government to consider these matters in detail, in close consultation with relevant stakeholders (in particular the Family Court and legal aid commissions), as part of its work towards developing a framework for the use of alternative dispute resolution in international parental child abduction matters.

Communication and information-dissemination practices

6.34 The committee shares the view of some submitters and witnesses that there is scope for improvements to the communication and information-dissemination practices of the Commonwealth Central Authority (CCA).

Communication between Central Agencies and applicants

6.35 In the committee's view, there is considerable merit in ensuring that communication arrangements between Central Agencies and applicants are sufficiently flexible so that they can be adapted to meet the circumstances of individual cases, and are conducive to the provision of timely information to applicants about the progress of their cases (to the greatest extent possible, within operational requirements).

6.36 In supporting improvements to communication arrangements with applicants, the committee acknowledges that the primary responsibility of the CCA is to secure the return of abducted children in Convention matters and, as such, the CCA does not have a formal lawyer-client relationship with applicants. In addition, the committee is mindful of the need for confidentiality at certain points in the process—for example, while overseas Central Authorities are engaged in the process of confirming the child's location. The committee also acknowledges that the CCA operates within a finite resource allocation.

22 The Hon Diana Bryant, Chief Justice, Family Court of Australia, *Submission 35*, p. 35; Ms Angela Lynch, Women's Legal Services Australia, *Committee Hansard*, 26 August 2011, p. 22.

23 The Hon Diana Bryant, Chief Justice, Family Court of Australia, *Submission 35*, p. 38; National Legal Aid, *Submission 37*, p. 4.

24 *Submission 35*, pp 33, 36.

6.37 Nonetheless, the committee considers that a strategic investment in relationship management with applicants could help improve public confidence in the operation of the Convention. Timely communication with individual applicants, in a manner that is meaningful to them, could also provide valuable assurance about the progress of their cases.

Recommendation 5

6.38 In consultation with State Central Authorities, the committee recommends that the Attorney-General's Department should adopt a coordinated strategy for communications between Australian Central Authorities and applicants in Hague Convention proceedings. The strategy should include provision for the following measures:

- **flexible, case-specific communication arrangements, such as enabling applicants to contact the Commonwealth Central Authority directly, rather than the relevant State Central Authority; and**
- **routine progress updates (such as periodic teleconferences between applicants and case officers in the relevant Australian Central Authority).**

Dissemination of public information

6.39 The committee further supports targeted improvements to the dissemination of public information about international parental child abduction. The evidence of several submitters to the inquiry indicated that left-behind parents have experienced difficulties in accessing information relevant to the operation of the Convention, and complementary prevention and response measures. In particular, some submitters raised concerns that left-behind parents have been unable to readily access comprehensive, practical information about the steps they need to take in the event of actual or apprehended international parental child abduction, and at the post-return stage.²⁵

6.40 While the committee is aware that Australian Government agencies—including the Attorney-General's Department, the Family Court and the AFP—have published materials related to international parental child abduction on their respective websites, the information may be difficult to locate unless the user knows what he or she is looking for. In this context, the committee points to the evidence of Reunite International (UK) that it is contacted regularly by Australian left-behind parents who seek support in cases involving abductions to countries other than

25 See, for example, Department of Family and Community Services, NSW, *Submission 8*, p. 6; International Social Service Australia, *Submission 11*, pp 5-6; Reunite International (UK), *Submission 12*, p. 3; Law Society of NSW, *Submission 21*, p. 3; Mr Ken Thompson, *Submission 22*, pp 22-24.

the United Kingdom.²⁶ This suggests that such parents have been unable to locate information within Australia about domestically-available support services.

6.41 Although anecdotal, such evidence is concerning given the time-critical nature of international parental child abduction prevention and response measures. The committee is aware that the Australian Government maintains stand-alone, whole-of-government web portals in various other policy areas,²⁷ and considers that there would be significant merit in considering a similar initiative for international parental child abduction. Such a portal could provide members of the public with a readily accessible 'one-stop shop' for information, resources and contacts about international parental child abduction prevention, responses, dispute resolution and post-return matters, in both Convention and non-Convention cases.

6.42 The committee also notes evidence from members of the legal profession that there are gaps in the resources available to legal practitioners engaged in Convention matters. For example, the Law Council of Australia supported the reinstatement of the CCA's previous series of publications about the operation of the Convention between Australia and other contracting states, and the performance history of those states.²⁸ The committee encourages the Department to liaise with representatives from the legal profession to resolve these concerns. One option may be a partnership arrangement between representatives of the legal profession and the CCA for the publication of additional resources, or the revision of existing materials to address identified information gaps.

Recommendation 6

6.43 The committee recommends that the Australian Government should develop a specific and comprehensive online information portal about international parental child abduction to and from Australia.

Recommendation 7

6.44 The committee recommends that the Australian Government should, in consultation with relevant stakeholders in the legal profession, re-instate and update international parental child abduction resources for legal practitioners, particularly in respect of Hague Convention matters.

26 *Submission 12*, p. 3.

27 See, for example, the Australian Government websites for its programs on access to justice (<http://www.accesstojustice.gov.au/>), social inclusion (<http://www.socialinclusion.gov.au/>) and preventing violent extremism in the community (<http://www.resilientcommunities.gov.au/>).

28 *Submission 39*, p. 3.

Complementary support services

6.45 The committee notes the strong stakeholder support expressed for the work of ISS Australia in both Convention and non-Convention matters to and from Australia.²⁹ The committee notes, however, evidence suggesting two key limitations in ISS Australia's capacity to deliver social support services to persons affected by international parental child abduction, namely: the work of ISS Australia depends largely upon referrals from Australian Central Authorities, which means that people affected by international parental child abduction may not necessarily be aware of its services;³⁰ and the role of ISS Australia is more limited than that of overseas non-government organisations involved in supporting persons affected by international parental child abduction.³¹

6.46 In response to the first identified limitation, the committee encourages Australian Central Authorities, other supporting agencies and legal service providers, to provide information about the services available from ISS Australia, and to ensure that this information is prominently displayed and easily accessible.

6.47 In respect of the second limitation, the committee acknowledges the potential benefits in expanding the reach of ISS Australia so that it operates on a similar scale to overseas non-government organisations such as Reunite International (UK). The committee emphasises the importance of ensuring that ISS Australia continues to receive adequate resourcing in the future, given its important role in helping to prevent and respond to international parental child abduction; and encourages the Australian Government to engage in regular dialogue with ISS Australia about its resourcing levels and funding arrangements.

6.48 The committee further notes evidence suggesting that there is scope to improve the coordination and delivery of post-return support services to children and families affected by international parental child abduction.³² In the committee's view, there would be significant merit in the further investigation of this matter by the Australian Government. The publication and dissemination of fact sheets in the nature of 'checklists' for returning and left-behind parents may be a simple and effective means of providing the necessary information. The committee notes that the Department has prepared jurisdiction-specific checklists for returning parents, which

29 See, for example, Mr Craig Cannock, *Submission 2*, p. 1; Department of Family and Community Affairs, NSW, *Submission 8*, p. 2; Law Society of NSW, *Submission 21*, p. 3.

30 International Social Service Australia, *Submission 11*, p. 3.

31 See, for example, Mr Michael Nicholls QC, *Submission 6*, pp 4-5; Mr Ken Thompson, *Submission 22*, pp 20-21; the Hon Diana Bryant, Chief Justice, Family Court of Australia, *Committee Hansard*, 26 August 2011, p. 36.

32 See, for example, International Social Service Australia, *Submission 11*, p. 5; Mr Ken Thompson, *Submission 22*, pp 24-25.

are published on its website.³³ The development of corresponding guidance materials for left-behind parents, and the widespread dissemination of these materials, may provide further coverage.

6.49 The committee also notes the suggestion of Mr Michael Nicholls QC, the former head of the UK Child Abduction Unit, for a program of periodic whole-of-government (or potentially sector-wide) meetings of relevant agencies and organisations to ensure the coordinated delivery of services, and to identify and address common issues.³⁴

Recommendation 8

6.50 The committee recommends that the Australian Government should, in consultation with relevant stakeholders such as International Social Service Australia, investigate strategies to improve the availability and coordinated delivery of support services in international parental child abduction cases, including post-return services.

Australia's role in international engagement

6.51 The committee acknowledges the deep frustration and anxiety experienced by many left-behind parents in attempting to recover their children, particularly in non-Convention matters, and endorses a policy approach that encourages greater accession to the Convention and supports the implementation-related work priorities of the Hague Conference. A recent example of the success of international engagement was the involvement of the Australian Government and the Family Court in securing the commitment of Japan to accede to the Convention.³⁵

6.52 The Chief Justice of the Family Court expressed concern that some contracting states to the Convention—including those states whose accessions Australia has accepted—have failed to uphold their obligations under the Convention.³⁶ The committee encourages the Australian Government to give consideration to the Chief Justice's evidence, both in the context of international engagement with non-compliant countries through the Hague Conference, and the application of national standards for the acceptance of new accessions.

33 Attorney-General's Department website, http://www.ag.gov.au/www/agd/agd.nsf/Page/Families2_FrequentlyAskedQuestionsaboutInternationalChildAbduction (accessed 22 September 2011).

34 *Committee Hansard*, 26 August 2011, p. 28.

35 The committee also notes the involvement of the Australian Government (including the CCA, some SCAs and the Family Court) in discussions with Singapore in 2010, which resulted in Singapore's accession to the Convention in 2011: see, for example, Department of Family and Community Services NSW, *Submission 8*, p. 6.

36 *Submission 35*, pp 28-29.

6.53 The committee recognises that bilateral agreements between countries will not always be an effective substitute for the Hague Convention as a means of responding to international parental child abduction. However, the committee is persuaded that bilateral agreements between Australia and non-Convention countries may be of assistance where the non-Convention country does not wish to become a party to the Convention.

6.54 The committee also notes the effectiveness of the International Hague Network of Judges, and commends the Family Court on its active and constructive participation in this forum.

Recommendation 9

6.55 The committee recommends that the Australian Government should continue to:

- **encourage non-contracting states to accede to the Hague Convention;**
- **support new and existing contracting states to implement the Hague Convention effectively; and**
- **pursue bilateral agreements, where appropriate, with countries which have not acceded to the Hague Convention, and which are unlikely to do so in the foreseeable future.**

Data capture

6.56 The arguments raised by submitters and witnesses to the inquiry in support of increased data capture with respect to international parental child abduction are, in the committee's view, compelling.

6.57 In particular, the committee agrees that the collection of accurate statistics on the occurrences of international parental child abduction from Australia—including the characteristics of taking-parents—is necessary to help quantify the problem, and inform evidence-based policy responses.³⁷ In the committee's view, the absence of quantitative data about the following matters is especially problematic:

- the number of abductions from Australia to non-Convention countries, and the non-Convention countries to which children are taken (for example, based on requests for consular assistance made to DFAT);
- the number of Convention abductions in respect of which CCA assistance was not sought (for example, by making collection arrangements with relevant legal professional bodies, such as law societies);
- in all types of abduction, data on the taking-parent, including gender, nationality, any reasons for the abduction, and the number of children abducted;

37 See further, International Social Service Australia, *Submission 11*, p. 6.

- in all types of abduction, data on the abducted children, including age and gender; and
- in all types of abduction, data on the commission of abductions in breach of parenting orders made by the Family Court.³⁸

6.58 The committee considers that information about these matters would provide a valuable evidence base for the following policy issues:

- identification of non-Convention countries with whom to engage in discussions about accession to the Convention or entry into bilateral agreements;
- development of targeted prevention measures, including risk assessment tools, based on the profile of taking-parents and abducted children;
- quantification of whether or not—and, if so, to what extent—the contemporary profile of Australian taking-parents has deviated from the profile contemplated when the Convention was drafted (and examination of how the Australian experience compares to that of other contracting states); and
- analysis of the effectiveness of the Family Law Act offences in responding to international parental child abduction.³⁹

6.59 The committee acknowledges the Department's evidence that some data is periodically provided to, and is analysed by, the Permanent Bureau.⁴⁰ However, as the data about Australia is provided by the CCA, the Permanent Bureau figures replicate limitations in the availability of CCA data.

6.60 The CCA does not collect additional data because its role is to assess and action applications for assistance in Hague Convention matters.⁴¹ Nevertheless, the committee considers that there is merit in investigating the feasibility of expanded domestic data capture arrangements, including the identification of potential strategies for the collection of such data, and an appropriate agency to perform that role.

38 See also, Family Law Council, *Parental Child Abduction: A Report to the Attorney-General* (January 1998), p. 14.

39 See also, Family Law Council, *Parental Child Abduction: A Report to the Attorney-General* (January 1998), p. 14, recommendation 1.

40 Mr Paul Hansen, Attorney-General's Department, *Committee Hansard*, 26 August 2011, p. 47.

41 Mr Paul Hansen, Attorney-General's Department, *Committee Hansard*, 26 August 2011, pp 46-47.

Recommendation 10

6.61 The committee recommends that the Australian Government should investigate strategies for the periodic collection and analysis by an appropriate government agency, or agencies, of comprehensive statistical data on international parental child abduction to and from Australia.

Appointment of Independent Children's Lawyers

6.62 As a final point, the committee notes that the Chief Justice of the Family Court advanced an argument for reassessing the requirement in the Family Law Act that the court may only appoint an Independent Children's Lawyer in Convention proceedings where it is satisfied that there are exceptional circumstances. The committee notes the evidence of Chief Justice Bryant that Convention applications do not always proceed in the summary nature which was originally contemplated by the Family Law Act.⁴² Accordingly, the committee considers that there would be merit in a review of the continuing appropriateness of this requirement.

Recommendation 11

6.63 The committee recommends that the Australian Government should review the continuing appropriateness of the exceptional circumstances requirement in subsection 68L(3) of the *Family Law Act 1975*, in respect of the appointment of the Independent Children's Lawyer in Hague Convention proceedings before the Family Court of Australia.

**Senator Gary Humphries
Chair**

42 *Submission 35*, p. 42; *Committee Hansard*, 26 August 2011, pp 30-31.

APPENDIX 1

SUBMISSIONS RECEIVED

Submission Number	Submitter
1	Mr Matthew Wyman
2	Mr Craig Cannock
3	Ms Robin Bowles
4	Dads on the Air, Australia
5	Mr Graham Douglas
6	Mr Michael Nicholls QC
7	Mr Lauchlan Leishman
8	Department of Families and Community Services, New South Wales
9	Women Everywhere Advocating Violence Elimination
10	National Council of Single Mothers and their Children
11	International Social Service Australia
12	Reunite International (UK)
13	Family Law Council
14	Confidential
15	Mr Daniel Wass
16	Confidential
17	Justice for Children
18	Confidential
19	Confidential
20	Single Mothers, Youth and Family Law Reform Organisation
21	Law Society of New South Wales
22	Mr Ken Thompson
23	Ms Carolyn Smith
24	Department of Communities, Queensland
25	Queensland Law Society

26	ChilOut – Children Out of Immigration Detention
27	Mr George Obiso
28	Confidential
29	Northern Territory Government
30	Sole Parents' Union
31	Australian Federal Police
32	Attorney-General's Department
33	Women's Legal Services Australia
34	Department of Foreign Affairs and Trade
35	The Hon Diana Bryant, Chief Justice, Family Court of Australia
36	Australian Law Reform Commission
37	National Legal Aid
38	Non-Custodial Parents Party (Equal Parenting)
39	Law Council of Australia
40	Confidential
41	Confidential
42	Mr Phil McIntyre

ADDITIONAL INFORMATION RECEIVED

- Documents tabled by the Department of Foreign Affairs and Trade at public hearing on 26 August 2011
- Additional information provided by the Australian Passport Office, Department of Foreign Affairs and Trade on 29 August 2011
- Answers to Questions on Notice provided by the Chief Justice of the Family Court on 12 September 2011
- Answers to Questions on Notice provided by the Attorney-General's Department on 16 September 2011
- Document tabled by the Attorney General's Department at public hearing on 22 September 2011

APPENDIX 2

WITNESSES WHO APPEARED BEFORE THE COMMITTEE

Canberra, 26 August 2011

BRYANT, Chief Justice Diana, Family Court of Australia

CLARK, Ms Justine, Legal Associate, Family Court of Australia

de KRETZER, Ms Tamara, Principal Solicitor, Women's Legal Service, Brisbane,
Women's Legal Services Australia

EDWARDS, Ms Terese, Chief Executive Officer, National Council for Single
Mothers and Their Children

FRERIS, Ms Helen, National Services Manager, International Social Service Australia

FURZE, Ms Jennifer, Acting Senior Legal Officer, International Family Law Section,
Attorney-General's Department

GANLY, Ms Paula, Assistant Secretary, Consular Policy Branch,
Department of Foreign Affairs and Trade

GLANVILLE, Ms Louise, First Assistant Secretary, Access to Justice Division,
Attorney-General's Department

HANSEN, Mr Paul, Director, International Family Law Section,
Attorney-General's Department

JABBOUR, Assistant Commissioner Ramzi, Australian Federal Police

KOLOBARIC, Mr Mauro, Assistant Secretary, Passport Client Services Branch,
Australian Passport Office, Department of Foreign Affairs and Trade

LEISHMAN, Mr Lauchlan, Private capacity

LYNCH, Ms Angela, Community Legal Education Lawyer, Women's Legal Services
Australia

NICHOLLS, Mr Michael, QC, Private capacity

REABURN, Mr Norman, Director, National Legal Aid

SENGSTOCK, Mrs Elsa, Coordinator, Legislation Program, Australian Federal Police

SINCLAIR, Mr Geoffrey, Chair, Family Law Section, Law Council of Australia

THOMPSON, Mr Ken, Private capacity

TRINDADE, Mr Dominic, Assistant Secretary, Domestic Legal Branch,
Department of Foreign Affairs and Trade

WEARNE, Ms Alexandra, Solicitor Advocate, Legal Aid New South Wales

Canberra, 22 September 2011

FURZE, Ms Jennifer, Acting Senior Legal Officer, International Family Law Section,
Attorney-General's Department

GLANVILLE, Ms Louise, First Assistant Secretary, Access to Justice Division,
Attorney-General's Department

HANSEN, Mr Paul, Director, International Family Law Section, Attorney-General's
Department