The Hague Convention on the Civil Aspects of International Child Abduction

GUIDE FOR APPLICANTS: ABDUCTION
What is the Hague Convention on International Child Abduction?

The Hague Convention on the civil aspects of international child abduction is an international agreement which seeks to protect children from the harmful effects of abduction and retention across international boundaries. The Convention provides a procedure to bring about the prompt return of children to their home country, as well as to secure rights of access to children.

The Convention came into effect in Australia in 1987, and has been signed by a large number of countries worldwide. Importantly, the Convention is implemented in Australia through the Family Law Act 1975 and the Family Law (Child Abduction Convention) Regulations 1986.

The key purpose of the Convention is not to determine issues of right or wrong between parents, but to secure the return of abducted children to their home country so that issues of residence and contact can be resolved by the courts of the child’s home country.

Does it matter what country my child is in?

Yes it does.

Your child must have been abducted to, or held in a Hague Convention member country for you to be able to submit an application under the Convention for their return to Australia. A list of countries which are members of the Hague Convention can be found on the Attorney-General’s Department website www.ag.gov.au/childabduction.

If your child is located in Egypt or Lebanon, the Australian Government has separate agreements with the Governments of these two countries to assist in the return of children. Information regarding these agreements can be found on the Attorney-General’s Department website www.ag.gov.au/childabduction.

If your child is in a country which is not a member of the Hague Convention, you will need to seek private legal representation in that country. The Department of Foreign Affairs and Trade (DFAT) Consular Office can provide you with a list of family lawyers overseas. For information, please call the DFAT Consular Office on 1300 555 135.

If you do not know where your child is located, but think your child may be in a Hague Convention country, you should still consider submitting an application. The Australian Central Authority for the Hague Convention may be able to undertake steps to locate your child once your application is received.
How do I make an application under the Hague Convention for the return of my child?

If you believe your child has been wrongfully removed from Australia, or wrongfully retained overseas, in a Hague Convention country without your consent, you can apply for the return of your child under the Hague Convention using a Form 1 application which is available at www.ag.gov.au/childabduction.

In addition to the Form 1, you should also provide:

- A supporting Affidavit, setting out the relevant facts (see below), and
- A certified copy of all relevant documents (birth certificates, passports, previous court orders, etc).

Key requirements for an application under the Hague Convention

Importantly, there are a number of requirements your application must satisfy in order to meet the terms of the Convention. The Commonwealth Central Authority will carefully assess your application to ensure that the application meets these requirements. These include:

- Your child must be under 16 years old;
- You must have "rights of custody" in relation to the child;
- You must have been exercising rights of custody at the time your child was wrongfully removed from, or retained outside, Australia;
- Your child must have been habitually resident in Australia immediately before your child was wrongfully removed from, or retained outside, Australia;
- Your child must have been taken to, or retained in, a country which is a party to the Hague Convention; and
- Your child must have been taken from Australia or kept in another Convention country without your consent, or without a court order.

If you meet all of the above criteria, you should submit an application under the Hague Convention to the Australian Central Authority.

You will be advised in writing of the outcome of your application. Should your application be accepted it will be forwarded to the relevant Central Authority in the country in which you believe your child is located.

If the whereabouts of your child are unknown the Australian Central Authority can apply for an international alert for your child to be issued through Interpol.
Should your application be refused you will be advised in writing of the reasons for this refusal.

Preparing your application

The following documentation is required before your application can be sent to the country in which your child is located. All documents must be completed to a reasonable standard before an application can be accepted by the Australian Central Authority.

Should you have any difficulties in preparing these documents, assistance is available. Information about what assistance is available to you can be found on the website www.ag.gov.au/childabduction.

You can also seek assistance from a private lawyer, community legal centre, or legal aid commission. Resource to help you locate a lawyer or legal service are available on the Support and Assistance page at www.ag.gov.au/childabduction.

Application (Form 1)

This is the standard application form that must be filled out for the return of your child. The application form requires basic information about your child, yourself, the person who currently has the child, and other information regarding the removal or holding of your child overseas.

The application form can be found on the Attorney-General’s website at www.ag.gov.au/childabduction.

A completed example of this Application Form 1 can be found at Attachment A to this guide.

Authorisation for the Australian Central Authority to act on your behalf

The final page of the Application Form 1 requires your signature to authorise the Australian Central Authority to act on your behalf and to do all things reasonable and necessary in connection with this application.

Without this signature the Australian Central Authority cannot progress your application.

Supporting Affidavit of Fact

This document must be as detailed and accurate as possible. This is a chance for you to tell your side of the story regarding your child, your partner, and the circumstances around the removal or retention of your child overseas. Ensure that your affidavit of fact clearly sets out and states:

- There are existing Australian court orders in relation to the child(ren) but these do not remove your parental responsibility in relation to the child(ren) (and attach a copy of any and all orders); or
- There are no existing Australian court orders in relation to the child/ren.

A completed example Affidavit of Fact can be found at Attachment B to this guide to demonstrate what information is required. Where possible provide specific information rather than general
assertions or conclusions. An affidavit can only be witnessed by a Justice of the Peace, a Legal Practitioner, or a notary public for the State or Territory in which you reside.

**Birth Certificate**

A certified copy birth certificate is usually required to prove that you have ‘rights of custody’ to the child as their parent.

**Photographs of the child and abducting person**

Photographs are required so that the authorities in the country which your child is in can locate the child and abducting parent and serve them with court documents.

**Other documents where appropriate**

If documents can be obtained which corroborate the statements made in your affidavit they should be annexed to your affidavit. Documents that might provide such corroborative evidence include:

- Marriage/ divorce certificate
- Previous or current court orders in relation to the child
- Copy of parenting plan
- Correspondence between yourself and the abducting person
- rental agreements
- travel documents
- bank statements
- employment records

All copies of documents should be certified. A list of persons authorised to witness of certify documents can be found at Attachment C to this guide.

**Important information**

Below is an explanation of some critical matters that may affect your application. Please consider these carefully when completing your application.

**How long will it take to have my child returned?**

There is no definite answer to this question.

Each application is required to be reviewed on its own merits, and each foreign country has its own processes, procedures and timeframes. The length of time will depend on factors such as whether a voluntary return occurs, whether the application proceeds to court, and whether the decision is appealed.
Jurisdictional Convention

A successful application under the Convention does not necessarily return children directly to left behind parents in Australia. The Hague Convention aims to return a child to their home country so that the courts in that country can determine issues of residence and care for the child. The proper jurisdiction in which to determine future matters for a child is that which the courts determine to be the child’s place of ‘habitual residence’.

Acquiescence

It is recommended that you DO NOT engage in any court proceedings in the country where your child has been taken or held in, apart from those undertaken under the Hague Convention. By doing so, the court may consider that you have given permission (‘acquiesced’ or ‘submitted to the jurisdiction’) for your child to remain in that country.

If you complete a Hague Convention application, and it is filed in the court of the country where your child is now, the court will stop any domestic proceedings in that country until after your Hague Convention application is finalised.

You must also ensure that in any correspondence with the taking person, you do not agree to the child remaining overseas.

Costs

This depends on which country your child is located in.

Some countries will cover the costs of the Hague application (eg: the United Kingdom or New Zealand), whereas others will not (eg: the USA). International Social Service Australia (ISS) or the Australian Central Authority will be able to advise you on costs for individual countries during the application process.

For those countries which do not cover the costs of a Hague Convention application, the Attorney-General’s Department funds a financial assistance scheme called the ‘Overseas Child Abduction Scheme’. Information on this scheme can be found on the Attorney-General’s website at www.ag.gov.au/childabduction.

There are no costs for the Australian Central Authority to undertake work on your application.

Further Information

For further information about the Hague Convention and how to make an application, please contact the Australian Central Authority on 1800 100 480 or via email australiancentralauthority@ag.gov.au.

Further information is also available on the Attorney-General’s Department website www.ag.gov.au/childabduction.

Free assistance to complete your application can be obtained from International Social Service Australia (ISS). You can contact ISS on 1300 657 843 or through their website www.iss.org.au.
APPLICATION FOR THE RETURN OF A CHILD

APPLICATION IN ACCORDANCE WITH THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION FOR THE RETURN OF A CHILD WRONGFULLY REMOVED OR RETAINED FROM AUSTRALIA

REQUESTING CENTRAL AUTHORITY OR APPLICANT:

Australia

REQUESTED AUTHORITY:

New Zealand

Concerns the following child: Tom Harry Citizen
who will attain the age of 16 on 1 January 2020

NOTE: The following particulars should be completed insofar as possible.

I. IDENTIFY OF THE CHILD AND ITS PARENTS

1. Child

name and first names: CITIZEN, Tom Harry

date and place of birth: 1 January 2004, Canberra, ACT, Australia

habitual residence before removal or retention: Australia

passport or identity card no., if any: M1234567

description and photo, if possible (see annexes):

7 years old, brown hair, blue eyes
See photo attached

2. Parents


2.1  Mother:

name and first names  CITIZEN, Jane Emily
date and place of birth  2 February 1970, Canberra, ACT
nationality  Australian
occupation  Accountant
habitual residence  Australia
passport or identity card no., if any  M2345678

2.2  Father:

name and first names  CITIZEN, John Paul
date and place of birth  3 March 1971, Canberra, ACT
nationality  Australian
occupation  Carpenter
habitual residence  Australia
passport or identity card no., if any  M3456789

2.3  Date and place of marriage  4 April 1999, Canberra, ACT Australia
II. REQUESTING INDIVIDUAL OR INSTITUTION
(who actually exercised custody before the removal or retention)

3.
	name and first names

CITIZEN, John Paul

Nationality of individual applicant
Australian

Occupation of individual applicant
Carpenter

Address
1 Somewhere Street, Canberra, ACT, 2600, Australia

Passport or identity card no., if any
M3456789

Relation to the child
Father

Name and address of legal adviser, if any
................................................................................
................................................................................

III. PLACE WHERE THE CHILD IS THOUGHT TO BE

4.1 Information concerning the person alleged to have removed or retained the child

Name and first names
CITIZEN, Jane

Date and place of birth, if known
2 February 1970, Canberra, ACT

Nationality, if known
Australian

Occupation
Accountant

Last known address
1 Somewhere Street, Canberra, ACT, 2600,

Passport or identity card no., if any
M2345678

Description and photo, if possible (see annexes)
41 years old, brown hair, green eyes, 5’7
See photo attached
4.2 Address of the child
1 Auckland Street, Auckland, New Zealand

4.3 Other persons who might be able to supply additional information relating to the whereabouts of the child
Sarah Smith (Jane Citizen’s sister) – 1 Auckland Street, Auckland, New Zealand

IV. TIME, PLACE, DATE AND CIRCUMSTANCES OF THE WRONGFUL REMOVAL OR RETENTION

On the evening of Friday 1 July 2011 I arrived at the house of my ex-wife, Jane Citizen, to collect my son, Thomas Harry Citizen, as per our parenting orders. When I arrived at the house I discovered that no one was home. I called Jane’s telephone but she did not answer.

When I had not heard back from her the following morning, Saturday 2 July 2011, I went to Jane’s mother’s house to ask if she knew where Jane was. Jane’s mother, Susan, informed me that Jane had left with Thomas to go to New Zealand.

Later that night I received a phone call from Jane who told me she was living with her sister in Auckland, and would not be returning to Australia with Thomas. Jane never told me that she had planned to go to New Zealand with Thomas.

V. FACTUAL OR LEGAL GROUNDS JUSTIFYING THE REQUEST

- The child is under 16 years of age.
- The applicant is the father of the child.
- At the time of the wrongful removal the child was habitually resident in Australia.
- The father has rights of custody to the child in accordance with family court orders made on 5 May 2009.
- The father was exercising his rights of custody before the child’s removal.
- The actions of the mother in taking the child to New Zealand are in breach of the parenting orders.
- The father has never consented to the child being taken to New Zealand.
- New Zealand is a Hague Convention country.
VI. CIVIL PROCEEDINGS IN PROGRESS

None

VII. VII—CHILD IS TO BE RETURNED TO:

a Name and first names

CITIZEN, John Paul

Date and place of birth

3 March 1971, Canberra, ACT

Address

1 Somewhere Street, Canberra, ACT, 2600, Australia

Telephone number

0412 345 678

b Proposed arrangements for return of the child

The father is prepared to travel to New Zealand to collect the child

VIII. OTHER REMARKS

Insert other remarks

IX—LIST OF DOCUMENTS ATTACHED*

(Examples of relevant documents include: certified copy of relevant decision or agreement concerning rights of custody or rights of access; certificate or affidavit as to the applicable law; information relating to the social background of the child; authorization empowering the Central Authority to act on behalf of applicant.)

- Affidavit of applicant in support of application
- Copy of the child’s birth certificate
- Copy of the parenting orders made by Australian Family Court on 5 May 2009
- Copy of marriage and divorce certificates
- Photographs of the mother and child
I authorise the requested Central Authority and its agents to act on my behalf and to do all things reasonable and necessary in connection with this application.

Date    1 October 2011

Place    Canberra, ACT, Australia

Signature and/or stamp of the requesting Central Authority or applicant

Insert signature of applicant
Example of a completed affidavit

AFFIDAVIT OF John Citizen

In the matter of the Hague Convention on the Civil Aspects of International Child Abduction.

I, John Citizen, of 1 Somewhere Street, Canberra, in the Australian Capital Territory, Australia
make oath and say / make affirmation and say:

1. The facts deposed to in my affidavit are based on my own knowledge, information and belief, except where otherwise stated.

2. I was born on 3 March 1971 and am presently 40 years of age. I was born in Canberra, Australia and am an Australian citizen.

3. The respondent mother is Jane Citizen, born on 2 February 1970, who is now 41 years of age. She is an Australian citizen.

4. Jane and I met in Canberra in 1997 and were married on 4 April 1999.

5. Our son, Thomas Harry (“Tom”) was born on 1 January 2004 in Canberra, Australia, during the term of our marriage (annexed hereto and marked with the letter "A” is a copy of his birth certificate). He is an Australian citizen.

6. Apart from the period of June - December 2003 when I was seconded to a position in my company in the United States and short term holidays to New Zealand, Bali and Fiji the three of us have lived in Australia since Tom was born.

7. Jane and I separated in December 2007 and divorced in December 2008. As part of the divorce proceedings, shared parenting arrangements were established, with court orders made in the Family Court in Canberra in May 2009 (annexed here to and marked with the letter "B” is a copy of the court orders).

8. The court orders stated that Tom was to reside with me every second weekend from Friday 6pm until Sunday 6pm. Tom would reside with his mother at all other times.

9. On Friday 1 July 2011 I went to Jane’s house to collect Tom for the weekend. However, when I arrived at Jane’s house no one was home. I waited for Jane to arrive home but she never did. I also tried calling Jane but she did not answer my calls. I also called Jane’s sister but I could not get through to her either.

10. The next day I called Jane’s mother, Susan, to inquire about Jane’s whereabouts as I was quite worried about them. We had a conversation which to the best of my recollection included words to the following effect.

    Susan: Jane has taken Tom to New Zealand to stay with her sister in Auckland.

    This came as a complete shock to me.

11. I have not seen my son since Sunday 19 June 2011 when I dropped him back to Jane’s house. Later that day I had to go out of town to work. I spoke to Tom on two occasions between 19 June 2011 and when I went to collect him on 1 July 2011. At no stage did he or Jane mention that he was going to New Zealand.
12. Tom was settled in at home and attending the Somewhere Street Primary school. My mother and father live in Canberra. So does my brother, his wife and three children. My parents regularly look after Tom and he plays with his cousins at least once a week. Tom has formed friendships with a number of boys in his class and in our street including Jack Brown, John Smith and Frank Blank. Tom has also been attending swimming lessons once a week since February.

13. On 2 July 2011 I received a phone call from Jane. We had a conversation which to the best of my recollection included words to the following effect: Jane: ‘Tom and I are in New Zealand. I do not intend to return to Australia’.

14. That is the only phone call I have received from Jane since that time.

15. Jane sent me an email about six weeks ago saying that I should understand that she only wants what’s best for Tom and that I should agree to let him stay in New Zealand. Annexed hereto and marked with the letter "C" is a copy of this e-mail.

16. Since then I have not heard anything from Jane or Tom.

17. I did not give Jane my permission and I did not sign any documents allowing Jane to take our son to New Zealand. I have not said anything to indicate that I agreed to the removal or retention of my son.

18. I oppose any application by Jane for the child to remain in New Zealand and I request that the child be returned to the Commonwealth of Australia.

Sworn / Affirmed by John Citizen

At: ...................................................

On the ........................... day of .......................... 2012

signature of John Citizen

Before me: ....................................................................................

Note: An affidavit can only be witnessed by a Justice of the Peace, a Legal Practitioner, or a notary public for the State or Territory in which you reside.
Attachment C

There are many people from a broad range of professions who can certify your documents, so finding someone shouldn’t be a problem for you. *(Note: An affidavit can only be witnessed by a Justice of the Peace, a Legal Practitioner, or a notary public for the State or Territory in which you reside).*

The following is a list of those people:

1) a person who is currently licensed or registered under a law to practise in one of the following occupations:
   - Chiropractor
   - Dentist
   - Legal practitioner
   - Medical practitioner
   - Nurse
   - Optometrist
   - Patent attorney
   - Pharmacist
   - Physiotherapist
   - Psychologist
   - Trade marks attorney
   - Veterinary surgeon

2) a person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described); or

3) a person who is in the following list:
   - Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public
   - Australian Consular Officer or Australian Diplomatic Officer (within the meaning of the Consular Fees Act 1955)
   - Bailiff
   - Bank officer with 5 or more continuous years of service
   - Building society officer with 5 or more years of continuous service
   - Chief executive officer of a Commonwealth court
   - Clerk of a court
   - Commissioner for Affidavits
   - Commissioner for Declarations
   - Credit union officer with 5 or more years of continuous service
- Employee of the Australian Trade Commission who is:
  
  (a) in a country or place outside Australia; and
  (b) authorised under paragraph 3(d) of the Consular Fees Act 1955; and
  (c) exercising his or her function in that place

- Employee of the Commonwealth who is:
  
  (a) in a country or place outside Australia; and
  (b) authorised under paragraph 3(c) of the Consular Fees Act 1955; and
  (c) exercising his or her function in that place

- Fellow of the National Tax Accountants’ Association

- Finance company officer with 5 or more years of continuous service

- Holder of a statutory office not specified in another item in this list

- Judge of a court

- Justice of the Peace

- Magistrate

- Marriage celebrant registered under Subdivision C of Division 1 of Part IV of the Marriage Act 1961

- Master of a court

- Member of Chartered Secretaries Australia

- Member of Engineers Australia, other than at the grade of student

- Member of the Association of Taxation and Management Accountants

- Member of the Australasian Institute of Mining and Metallurgy

- Member of the Australian Defence Force who is:
  
  (a) an officer; or
  (b) a non-commissioned officer within the meaning of the Defence Force Discipline Act 1982 with 5 or more years of continuous service; or
  (c) a warrant officer within the meaning of that Act

- Member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the National Institute of Accountants
• Member of:
  
  (a) the Parliament of the Commonwealth; or
  (b) the Parliament of a State; or
  (c) a Territory legislature; or
  (d) a local government authority of a State or Territory

• Minister of religion registered under Subdivision A of Division 1 of Part IV of the Marriage Act 1961

• Notary public

• Permanent employee of the Australian Postal Corporation with 5 or more years of continuous service who is employed in an office supplying postal services to the public

• Permanent employee of:
  
  (a) the Commonwealth or a Commonwealth authority; or
  (b) a State or Territory or a State or Territory authority; or
  (c) a local government authority; with 5 or more years of continuous service who is not specified in another item in this list

• Person before whom a statutory declaration may be made under the law of the State or Territory in which the declaration is made

• Police officer

• Registrar, or Deputy Registrar, of a court

• Senior Executive Service employee of:
  
  (a) the Commonwealth or a Commonwealth authority; or
  (b) a State or Territory or a State or Territory authority

• Sheriff

• Sheriff’s officer

• Teacher employed on a full-time basis at a school or tertiary education institution