

Family Dispute Resolution (Hague Matters)

What is a Hague Convention case?

The Hague Convention on the Civil Aspects of International Child Abduction is an international treaty under which arrangements are made for the return of children who have been wrongfully removed from or retained outside their country of habitual residence.

The Convention sets up a central authority in each signature country to deal with applications for the return of children taken to or from each country. The Australian Government Attorney-General's Department is the central authority for Australia.

Guiding principles and objectives

The Hague Convention operates on the guiding principles that:

- the child's welfare is best protected by a rapid response to a parent having removed a child from their country of habitual residence, and
- child abduction in general must be prevented.

The Convention aims to:

- secure the prompt return of a child wrongfully removed to or retained in a country which is party to the Convention ('contracting state') to the country ('state') of habitual residence
- ensure that rights of custody and/or access of the state of origin are respected, with judgement on the custody to be rendered in that country, on the assumption that the court in the country of habitual residence is best able to make decision for the child, and
- ensure the relevant court in the country of habitual residence is best able to make decisions for the children.

The Convention operates under the following specific conditions:

- it applies only between contracting states, and so only has force where both countries are signatories to the Convention

- it applies only to matters where the subject child is under the age of 16. Proceedings under the Convention cease on the day a child turns 16, and
- the child must have habitually resided in a contracting state directly before rights of custody or access were breached.

A judicial officer hearing a Hague matter may indicate early in the process that dispute resolution may be of assistance to parties, not just in relation to the matter of return but in relation to parenting matters generally. The judicial officer would encourage the parties to agree on a dispute resolution process. If the parties agree to participate in a dispute resolution process, discussion then occurs about the most suitable service provider. Due to the timeliness of any Hague intervention, there are occasions where it is more suitable for a family consultant (who has undertaken specific training in dispute resolution) located within Child Dispute Services, to undertake the work. Other services in the community are well placed to provide such services but may not be well placed to provide the service in a timeframe that aligns with judicial timeframes and expectations.

If the matter is suitable for referral to Child Dispute Services, a notation is made in orders that the parties agree to the process.

Child dispute conference

A child dispute conference in a Hague matter is a family dispute resolution event conducted by a family consultant to identify the issues in a parental dispute about the children. The process of dispute resolution provides an opportunity for parents to give full consideration to their children's needs as well as to each other's position and needs.

Children are not directly involved in the conference as it is an opportunity for parents to cooperate and to make their own agreements in a way that both parties find acceptable and practicable. It is up to the discretion of the family consultant as to whether or not the children participate, and how interviews with the children and/or parents are structured.

Child dispute conferences are also held in general family law matters, but unlike Hague matters where the parents have to agree to hold the conference, in general family law matters, conferences are ordered by the Court.

Confidentiality

The conference is confidential unless there are concerns of harm or threat to others or any damage to property. In this instance the family consultant will inform the parents that they are mandated to report any concerns to the relevant authorities.

The dispute resolution process

It is the parents' joint decision to participate in dispute resolution in a Hague matter. Each parent will have the opportunity to speak individually with the family consultant. Thereafter, and subject to safety considerations, a joint session will be conducted with both parents in the same room to discuss the issues. Any discussions that take place with the family consultant may be shared with the other party.

During the interview, information will be obtained from each parent separately, and then the parents will work together on the history of their dispute and the current issues that require resolution. Parents will identify what is seen as the priority and together will identify possible future options. Parents will be facilitated to negotiate a resolution that attempts to meet each of their – and their children's – needs.

It is considered preferable that both parties are present in the same location for the conference to occur, but the Court allows the use of a secure video link if that is appropriate to the circumstances.

The role of the family consultant

The family consultant's role is impartial and non-judgmental. This means that they do not take sides, but seek to help each party equally. Interpreters will be provided as necessary. The goal is to help parents gain clarity about the issues that need to be settled, to deal with them according to the priority they have for parents and their children, and to consider all the options that are available to them.

The family consultant can explain ways in which a settlement can be made but cannot advise as to the course of action parents should take. Parents will be referred to their lawyer for this.

The family consultant will direct parents to seek relevant legal advice before reaching a solution.

In the event that parents reach an agreement, they will be provided with a written summary of the agreements. This is intended to assist parents when obtaining legal advice in order to make the agreement legally binding. A legally binding agreement is one that has been presented to and authorised by the Court.

A brief memorandum will be provided by the family consultant to the Court indicating the parents' attendance and whether any agreements were reached.

The role of legal representatives

The involvement of legal representatives in the conference is at the discretion of the family consultant. The legal representatives will be available to consult with their clients on matters arising from the conference, and this is most likely at the conclusion of the conference. If legal representatives are not actively involved in the conference, they will be advised of the outcome.

The legal representative's role is to advise and assist their client, but they do not have a direct role in the mediation. Their task is to present any agreement to the Court. If an independent children's lawyer is appointed, the family consultant will liaise with them from the outset.

Personal safety

If you have any concerns about your safety while attending court, please call **1300 352 000** before the day of the conference. Options for your safety at the court will be discussed and arrangements put in place to support you.