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Statutory Rules 1986 No. /

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Family Law (Child Abduction Convention) Regulations

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SCHEDULE 1

CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

SCHEDULE 2

CONVENTION COUNTRIES

SCHEDULE 3

FORMS



Statutory Rules 1986 No. 1

85

Family Law (Child Abduction Convention) Regulations

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the *Family Law Act 1975*.

Dated 22 APRIL 1986.

N. M. STEPHEN

Governor-General

By His Excellency's Command,

LIONEL BOWEN
Attorney-General

Citation

1. These Regulations may be cited as the Family Law (Child Abduction Convention) Regulations.

Interpretation

2. (1) In these Regulations, unless the contrary intention appears—

“applicant” means a person who has made an application referred to in regulation 11, 13 or 24, as the case requires;

“Commonwealth Central Authority” means the Commonwealth Central Authority appointed under regulation 3;

“Central Authority” has the meaning it has in the Convention;

“child” means a person who has not attained the age of 16 years;

- “Convention” or “Convention on the Civil Aspects of International Child Abduction” means the Convention on the Civil Aspects of International Child Abduction referred to in section 111B of the Act, a copy of the English text of which is set out in Schedule 1;
- “convention country” means a country that under regulation 10 is a convention country;
- “filed” has the same meaning as in the Family Law Regulations;
- “removal”, in relation to a child, means the wrongful removal or retention of a child within the meaning of the Convention;
- “responsible Central Authority”, in relation to action to be taken in a State or Territory, means the Commonwealth Central Authority or the State Central Authority of that State or Territory, as the case requires;
- “rights of access” has the same meaning as in the Convention;
- “rights of custody” has the same meaning as in the Convention, and includes rights arising by the operation of law or by reason of a judicial or administrative decision or by an agreement having legal effect under a law in force in a convention country;
- “Rules of Court” has the same meaning as in the Family Law Regulations;
- “State Central Authority” means a person appointed under sub-regulation 8 (1) to be the Central Authority of a State or Territory;
- “the Act” means the *Family Law Act 1975*.

(2) The purpose of these Regulations is to give effect to section 111B of the Act.

Commonwealth Central Authority—appointment

3. The Attorney-General shall appoint an officer of the Australian Public Service to be the Commonwealth Central Authority.

Commonwealth Central Authority—resignation

4. The Commonwealth Central Authority may resign the office of Commonwealth Central Authority by writing signed by that Authority and delivered to the Attorney-General.

Commonwealth Central Authority—duties, powers and functions

5. (1) In addition to the other functions conferred on the Commonwealth Central Authority by these Regulations, the functions of the Commonwealth Central Authority are—

- (a) to do, or co-ordinate the doing of, anything that is necessary to enable the performance of the obligations of Australia, or to obtain for Australia any advantage or benefit, under the Convention; and
- (b) to advise the Attorney-General, either on the initiative of the Commonwealth Central Authority or on a request made to that Authority by the Attorney-General, on all matters that concern, or arise out of performing, those obligations, including any need for additional legislation required for performing those obligations.

(2) The Commonwealth Central Authority has all the duties, may exercise all the powers, and shall perform all the functions, that a Central Authority has under the Convention.

Acting Commonwealth Central Authority

6. (1) The Attorney-General may appoint an officer of the Australian Public Service to act as the Commonwealth Central Authority—

- (a) during a vacancy in the office of the Commonwealth Central Authority, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the person holding that office is, or is about to be, absent from duty or from Australia or is for any reason unable to perform the functions of that office,

but a person appointed to act during a vacancy shall not continue so to act after the expiration of 12 months, commencing on the day on which the vacancy occurred.

(2) Where the office of the Commonwealth Central Authority becomes vacant while a person is acting as the Commonwealth Central Authority, that person may continue so to act until the Attorney-General otherwise directs, the vacancy is filled or a period of 12 months commencing on the day on which the vacancy occurred expires, whichever first happens.

(3) An appointment of a person to act as the Commonwealth Central Authority ceases to have effect if that person resigns the appointment by writing signed by that person and delivered to the Attorney-General.

(4) While a person is acting as the Commonwealth Central Authority, that person has all the duties, may exercise all the powers, and shall perform all the functions, of that Authority.

(5) An appointment of a person under sub-regulation (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(6) The validity of anything done by or in relation to a person purporting to act pursuant to an appointment under sub-regulation (1) shall not be called in question on the ground that the occasion for the appointment of that person had not arisen, that there is a defect or irregularity in or in connection with the appointment of that person, that the appointment had ceased to have effect or that the occasion for that person to act had not arisen or had ceased.

Immunity of Commonwealth Central Authority, &c., in respect of orders to pay costs

7. A person who holds office as the Commonwealth Central Authority, who is appointed to act as that Authority or who, being a State Central Authority, exercises the powers and performs the functions of that office shall not be made subject to any order to pay costs in relation to his or her exercising the powers, or performing the functions, of the Commonwealth Central Authority.

State Central Authority—appointment

8. (1) The Attorney-General may appoint a person to be the Central Authority of a State or Territory for the purposes of these Regulations.

(2) The power to appoint a person under sub-regulation (1) includes a power to appoint any person from time to time holding, occupying or performing the duties of a specified office or position of the Commonwealth or of a State or Territory.

(3) An appointment of a person under sub-regulation (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

State Central Authority—duties, powers and functions

9. Subject to sub-regulation 8 (3), a State Central Authority has all the duties, may exercise all the powers, and may perform all the functions, of the Commonwealth Central Authority.

Convention countries

10. Subject to Article 40 of the Convention, each of the following countries is a convention country:

- (a) a country specified in Schedule 2;
- (b) any other country in respect of which the Convention has entered into force for Australia.

Application for return of child abducted from Australia

11. (1) Where a person claims under a law in force in Australia to have rights of custody of a child removed from Australia to a convention country, the person may apply in writing to the Commonwealth Central Authority or to a State Central Authority to have that claim transmitted to the Central Authority in that convention country.

(2) An application under sub-regulation (1) shall be in accordance with Form 1 in Schedule 3.

(3) Where an application under sub-regulation (1) is made to a State Central Authority and that Authority is satisfied that the application is in accordance with the requirements of the Convention, the State Central Authority shall forward the application to the Commonwealth Central Authority.

(4) Where the Commonwealth Central Authority is satisfied that an application made to it under sub-regulation (1) or an application forwarded to that Authority under sub-regulation (3) is in accordance with the requirements of the Convention, the Commonwealth Central Authority shall take on behalf of the applicant any action required to be taken by a Central Authority under the Convention.

Language of applications under regulation 11

12. An application under regulation 11 in respect of a child shall be accompanied by a translation into the official language or one of the official languages of the convention country to which the child has been removed, or if that convention country has made a reservation under Article 42 of the Convention objecting to the use of English, a translation into French.

Application for return of child abducted to Australia

13. Where the Commonwealth Central Authority receives an application in respect of a child removed from a convention country to Australia and is satisfied that the application is an application to which the Convention applies and is in accordance with the requirements of that Convention, the Commonwealth Central Authority shall take action under the Convention to secure the return of the child to the applicant.

Applications to court

14. Nothing in these Regulations prevents a person, institution or other body from applying directly to a court of competent jurisdiction, whether or not under the Convention, in respect of the breach of rights of custody of, or breach of rights of access to, a child removed to Australia.

Orders

15. (1) The responsible Central Authority may, in relation to a child removed to Australia, apply to a court having jurisdiction under the Act for—

- (a) an order for the issue of a warrant for the apprehension or detention of the child;
- (b) an order directing that the child not be removed from a place specified in the order;
- (c) an order requiring such arrangements to be made as are necessary for the purpose of placing the child with an appropriate person, institution or other body in order to secure the welfare of the child pending the determination of an application under regulation 13; or
- (d) an order for the return of the child to the applicant.

(2) A court may, in respect of an application made under sub-regulation (1), make an order of the kind referred to in that sub-regulation and such other order as the court thinks fit.

(3) Where under sub-regulation (2) a court makes an order in relation to the removal of a child from a place specified in the order, the court may impose such conditions on the removal of the child from that place as the court thinks fit.

(4) An application under sub-regulation (1) shall be in accordance with Form 2 in Schedule 3.

Orders for the return of children

16. (1) Subject to sub-regulation (3), a court shall order the return of a child pursuant to an application made under sub-regulation 15 (1) if the day on which that application was filed is a date less than one year after the date of the removal of the child to Australia.

(2) Subject to sub-regulation (3), a court shall order the return of a child pursuant to an application for an order of the kind referred to in paragraph 15 (1) (d) if the date on which that application was filed is a date that is at least one year after the date of the removal of the child, unless it is satisfied that the child is settled in its new environment.

(3) A court may refuse to make an order under sub-regulation (1) or (2) if it is satisfied that—

- (a) the person, institution or other body having the care of the child in the convention country from which the child was removed was not exercising rights of custody at the time of the removal of the child and those rights would not have been exercised if the child had not been removed, or had consented to or acquiesced in the child's removal;
- (b) there is a grave risk that the child's return to the applicant would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation;
- (c) the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of the child's views; or
- (d) the return of the child would not be permitted by the fundamental principles of Australia relating to the protection of human rights and fundamental freedoms.

(4) For the purposes of sub-regulation (3), the court may take into account such information relating to the social background of the child as may be provided by the Central Authority of the convention country from which the child was removed.

(5) A court may stay or dismiss an application for an order of the kind referred to in paragraph 15 (1) (d) in relation to a child if it is satisfied that the child is no longer in Australia.

Requests for orders: wrongful removal

17. (1) A court having jurisdiction under the Act may, if requested by a responsible Central Authority, by order declare that the removal of a child from Australia to a convention country was wrongful within the meaning of Article 3 of the Convention.

(2) A court hearing an application for an order of the kind referred to in paragraph 15 (1) (d) in relation to the removal of a child from a convention country to Australia may request the applicant to obtain an order of a court, or a decision of a competent authority, of that country, declaring that the removal was wrongful within the meaning of Article 3 of the Convention.

Effect of other custody orders in Australia or overseas

18. On the hearing of an application under sub-regulation 15 (1) in relation to a child, a court shall not refuse to make an order under sub-regulation 15 (2) for the return of the child to the applicant by reason only that in relation to that child there is in force or enforceable in Australia an order in relation to the custody of the child, but may take into account the reasons for the making of that order.

Hearings

19. (1) Where an application is made under regulation 15, the day fixed by a court for the hearing of the application shall be a day not later than 7 days after the date of the filing of the application.

(2) A responsible Central Authority shall, in accordance with the Rules of Court, cause a copy of the application referred to in sub-regulation (1) to be served on the person or persons who removed the child in respect of which the application is made and on the person, institution or other body in whose possession the child is.

Arrangements for return of child

20. (1) Where an order is made under regulation 16, the responsible Central Authority shall cause such arrangements as are necessary to be made in accordance with the order for the return of the child to the applicant.

(2) If, within 7 days after the making of an order under regulation 16, the responsible Central Authority has not been notified that the order has been stayed in accordance with sub-rule 1 (10) of Order 32 of the Rules of Court, the child shall be returned to the applicant.

Security for costs, &c.

21. A responsible Central Authority or a court, as the case may be, shall not require any security or bond for the payment of costs or expenses of or incidental to proceedings instituted or anything done for the purposes of the performance by Australia of its obligations under the Convention.

Costs of applicants

22. Where a court makes an order under regulation 15, 17 or 24 it may, on the application of the responsible Central Authority, make an order directing that the necessary expenses incurred by or on behalf of the applicant, including travelling expenses, costs incurred in respect of locating a child, costs of legal representation of the applicant and expenses incurred in respect of the return of the child, be paid by the person who removed the child to Australia or who prevented the exercise of rights of access.

Evidentiary provisions

23. (1) In proceedings under these Regulations in a court, an application under regulation 13, 14 or 24 and any document or documents attached to or

forwarded in support of that application are admissible as evidence of the facts stated in the application or document.

(2) In proceedings under these Regulations in a court, a statement contained in a document—

- (a) purporting to set out or summarize evidence given in proceedings in a court in a convention country, or before a competent authority of that country, in relation to the custody of a child and to have been signed by the person before whom the evidence was given;
- (b) purporting to set out or summarize evidence taken in a convention country for the purposes of proceedings under these Regulations (whether in response to a request made by the court or otherwise) and to have been signed by the person before whom the evidence was taken; or
- (c) purporting to have been received as evidence in proceedings in a court in a convention country or before a competent authority of that country in relation to the custody of a child and to have been signed by a judge or other officer of the court or that authority,

is admissible as evidence of any fact stated in the document to the same extent as oral evidence of that fact, without proof of the signature of the person purporting to have signed it or of the official position of that person.

(3) In proceedings under these Regulations in a court, the court may take judicial notice of a law in force in a convention country.

(4) In proceedings under these Regulations in a court, a document purporting to be an order, or a copy of an order, of a court in a convention country, or a decision of a competent authority of that country, in relation to the custody of a child, and to have been signed by a judge or other officer of the court or that authority is admissible as evidence of that order or decision, as the case may be, without proof of the signature of the person purporting to have signed it or of the official position of that person.

Access—general

24. (1) Where a person claims to have rights of access in relation to a child in a convention country, the person may apply in writing to the Commonwealth Central Authority or a State Central Authority to have the claim in respect of rights of access to that child transmitted to the Central Authority in that country.

(2) Where an application under sub-regulation (1) is made to a State Central Authority, and that Authority is satisfied that the application is in accordance with the requirements of the Convention, the State Central Authority shall forward the application to the Commonwealth Central Authority.

(3) An application under sub-regulation (1) shall be in accordance with Form 3 in Schedule 3.

- (4) Where the Commonwealth Central Authority is satisfied that—
 - (a) an application referred to in sub-regulation (1) or (2); or
 - (b) an application forwarded to the Commonwealth Central Authority by the Central Authority of a convention country in relation to rights of access to a child in Australia,

is an application to which the Convention applies and is in accordance with the requirements of the Convention, the Commonwealth Central Authority shall take such steps as are necessary for the purpose of enabling the performance of the obligations of Australia under Article 21 of the Convention.

(5) A responsible Central Authority may apply to a court having jurisdiction under the Act for an order in relation to rights of access to a child in Australia.

(6) A court may, in respect of an application made under sub-regulation (5), make such orders in relation to rights of access to a child as the court thinks fit.

(7) An application under sub-regulation (5) shall be in accordance with Form 4 in Schedule 3.

Power of court to make order for return of child

25. Nothing in these Regulations shall be taken to prevent a court of competent jurisdiction, at any time, from making an order for the return of a child to an applicant otherwise than under these Regulations.



SCHEDULE 1

Regulation 2

CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

The States signatory to the present Convention,

Firmly convinced that the interests of children are of paramount importance in matters relating to their custody,

Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access,

Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions—

CHAPTER I—SCOPE OF THE CONVENTION

Article 1

The objects of the present Convention are—

a to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and

b to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

Article 2

Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

Article 3

The removal or the retention of a child is to be considered wrongful where—

a it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

b at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph *a* above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

Article 4

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.

Article 5

For the purposes of this Convention—

a 'rights of custody' shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;

b 'rights of access' shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

SCHEDULE 1—continued

CHAPTER II—CENTRAL AUTHORITIES

Article 6

A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

Federal States, States with more than one system of law or States having autonomous territorial organizations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State.

Article 7

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures—

- a* to discover the whereabouts of a child who has been wrongfully removed or retained;
- b* to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;
- c* to secure the voluntary return of the child or to bring about an amicable resolution of the issues;
- d* to exchange, where desirable, information relating to the social background of the child;
- e* to provide information of a general character as to the law of their State in connection with the application of the Convention;
- f* to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access;
- g* where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;
- h* to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;
- i* to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

CHAPTER III—RETURN OF CHILDREN

Article 8

Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.

The application shall contain—

- a* information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;
- b* where available, the date of birth of the child;
- c* the grounds on which the applicant's claim for return of the child is based;
- d* all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by—

- e* an authenticated copy of any relevant decision or agreement;

SCHEDULE 1—continued

f a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;
g any other relevant document.

Article 9

If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.

Article 10

The Central Authority of the State where the child is shall take or cause to be taken appropriate measures in order to obtain the voluntary return of the child.

Article 11

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

Article 12

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that—

a the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

b 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.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the

SCHEDULE 1—continued

child provided by the Central Authority or other competent authority of the child's habitual residence.

Article 14

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognized or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

Article 15

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

Article 16

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

Article 17

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

Article 18

The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

Article 19

A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

Article 20

The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

CHAPTER IV—RIGHTS OF ACCESS

Article 21

An application to make arrangements for organizing or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any

SCHEDULE 1—continued

conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.

The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organizing or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

CHAPTER V—GENERAL PROVISIONS

Article 22

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

Article 23

No legalization or similar formality may be required in the context of this Convention.

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.

However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.

Article 25

Nationals of the Contracting States and persons who are habitually resident within those States shall be entitled in matters concerned with the application of this Convention to legal aid and advice in any other Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.

Article 26

Each Central Authority shall bear its own costs in applying this Convention.

Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.

However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.

Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

Article 27

When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the

SCHEDULE 1—continued

Central Authority through which the application was submitted, as the case may be, of its reasons.

Article 28

A Central Authority may require that the application be accompanied by a written authorization empowering it to act on behalf of the applicant, or to designate a representative so to act.

Article 29

This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

Article 30

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

Article 31

In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units—

a any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;

b any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

Article 32

In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 33

A State within which different territorial units have their own rules of law in respect of custody of children shall not be bound to apply this Convention where a State with a unified system of law would not be bound to do so.

Article 34

This Convention shall take priority in matters within its scope over the *Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors*, as between Parties to both Conventions. Otherwise the present Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organizing access rights.

Article 35

This Convention shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States.

Where a declaration has been made under Article 39 or 40, the reference in the preceding paragraph to a Contracting State shall be taken to refer to the territorial unit or units in relation to which this Convention applies.

SCHEDULE 1—continued*Article 36*

Nothing in this Convention shall prevent two or more Contracting States, in order to limit the restrictions to which the return of the child may be subject, from agreeing among themselves to derogate from any provisions of this Convention which may imply such a restriction.

CHAPTER VI—FINAL CLAUSES*Article 37*

The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Fourteenth Session. It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 38

Any other State may accede to the Convention.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The Convention shall enter into force for a State acceding to it on the first day of the third calendar month after the deposit of its instrument of accession.

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. Such a declaration will also have to be made by any Member State ratifying, accepting or approving the Convention after an accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Kingdom of the Netherlands: this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

Article 39

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect at the time the Convention enters into force for that State.

Such declaration, as well as any subsequent extension, shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 40

If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

Any such declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and shall state expressly the territorial units to which the Convention applies.

Article 41

Where a Contracting State has a system of government under which executive, judicial and legislative powers are distributed between central and other authorities within that State, its signature or ratification, acceptance or approval of, or accession to this Convention, or its making of any declaration in terms of Article 40 shall carry no implication as to the internal distribution of powers within that State.

SCHEDULE 1—continued

Article 42

Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 39 or 40, make one or both of the reservations provided for in Article 24 and Article 26, third paragraph. No other reservations shall be permitted.

Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 43

The Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance, approval or accession referred to in Articles 37 and 38.

Thereafter the Convention shall enter into force—

1 for each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance, approval or accession;

2 for any territory or territorial unit to which the Convention has been extended in conformity with Article 39 or 40, on the first day of the third calendar month after the notification referred to in that Article.

Article 44

The Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 43 even for States which subsequently have ratified, accepted, approved it or acceded to it. If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands at least six months before the expiry of the five year period. It may be limited to certain of the territories or territorial units to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 45

The Ministry of Foreign Affairs of the Kingdom of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 38, of the following—

1 the signatures and ratifications, acceptances and approvals referred to in Article 37;

2 the accessions referred to in Article 38;

3 the date on which the Convention enters into force in accordance with Article 43;

4 the extensions referred to in Article 39;

5 the declarations referred to in Articles 38 and 40;

6 the reservations referred to in Article 24 and Article 26, third paragraph, and the withdrawals referred to in Article 42;

7 the denunciations referred to in Article 44.

SCHEDULE 2

Regulation 10

CONVENTION COUNTRIES

Item	Country
1	Canada
2	France
3	Portugal
4	Switzerland

SCHEDULE 3

FORMS

FORM 1

Sub-regulation 11 (2)

COMMONWEALTH OF AUSTRALIA

Family Law (Child Abduction Convention) Regulations

APPLICATION IN ACCORDANCE WITH THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION FOR THE RETURN OF A CHILD ABDUCTED FROM AUSTRALIA

REQUESTING CENTRAL AUTHORITY OR APPLICANT:

REQUESTED AUTHORITY:

Concerns the following child:who will attain the age of 16 on19

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

1—IDENTITY OF THE CHILD AND ITS PARENTS

1 Child

name and first names
 date and place of birth
 habitual residence before removal or retention
 passport or identity card No., if any
 description and photo, if possible (see annexes)

2 Parents

2.1 Mother: name and first names
 date and place of birth
 nationality
 occupation
 habitual residence
 passport or identity card No., if any

2.2 Father: name and first names
 date and place of birth
 nationality
 occupation
 habitual residence
 passport or identity card No., if any

2.3 Date and place of marriage

SCHEDULE 3—continued

II—REQUESTING INDIVIDUAL OR INSTITUTION (who actually exercised custody before the removal or retention)

- 3 Name and first names
- nationality or individual applicant
- occupation of individual applicant
- address
- passport or identity card No., if any
- relation to the child
- 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
 - date and place of birth, if known
 - nationality, if known
 - occupation
 - last known address
 - passport or identity card No., if any
 - description and photo, if possible (see annexes)
- 4.2 Address of the child
- 4.3 Other persons who might be able to supply additional information relating to the whereabouts of the child

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

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V—FACTUAL OR LEGAL GROUNDS JUSTIFYING THE REQUEST

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VI—CIVIL PROCEEDINGS IN PROGRESS

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VII—CHILD IS TO BE RETURNED TO:

- a name and first names
- date and place of birth
- address
- telephone number
- b proposed arrangements for return of the child

SCHEDULE 3—continued

VIII—OTHER REMARKS

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IX—LIST OF DOCUMENTS ATTACHED*

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Date
Place

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

.....

* e.g. Certified copy of relevant decision or agreement concerning custody or 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.

FORM 2

Sub-regulation 15 (4)

COMMONWEALTH OF AUSTRALIA
Family Law (Child Abduction Convention) Regulations
APPLICATION INITIATING PROCEEDINGS
(Title as under Family Law Rules)

DATE OF FILING:

*APPLICANT'S/*RESPONSIBLE CENTRAL AUTHORITY'S ADDRESS FOR SERVICE:

To: (Full name of respondent)

TAKE NOTICE that the attached application HAS BEEN SET DOWN FOR HEARING by the Court at _____ on the _____ day of _____ 19 _____, at _____ o'clock.

AND FURTHER TAKE NOTICE THAT—

- (a) if you wish to defend this application but to raise no new issues, you may, at the earliest practicable date before the return day set out above, file and serve an affidavit setting out briefly the matters on which you rely;
- (b) if you wish to defend this application and to seek some order other than the order sought in this application, you may, at the earliest practicable date before the return day set out above, file and serve a cross-application and an affidavit in support; and
- (c) if you do not appear at the hearing, the Court may proceed to make the orders sought, or similar orders, in your absence,

SCHEDULE 3—continued

AND THAT the grounds on which you may OBJECT TO THE RETURN OF THE CHILD, pursuant to the Convention on the Civil Aspects of International Child Abduction, are that:

- (d) the person, institution or other body having the care of the child was not exercising rights of custody at the time of the removal of the child and would not have exercised them if the child had not been removed, or had consented to or acquiesced in the removal of the child;
- (e) there is a grave risk that the return of the child to the applicant would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation;
- (f) the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of the views of the child;
- (g) the return of the child would not be permitted by the fundamental principles of Australia relating to the protection of human rights and fundamental freedoms; or
- (h) the date of filing of this application is at least one year after the date of the removal of the child and the child is settled in its new environment.

Dated this day of 19

.....
Registrar.

APPLICATION

(Full name of applicant) _____,
whose occupation is _____,
and who represented the responsible Central Authority, applies for the following orders:—

- (a) _____
 - (b) _____
- (if insufficient space attach statement of orders sought)

Details concerning child

- 1. The child, (full name) _____, was born on the _____ day of _____ 19 _____.
- 2. The habitual residence of the child immediately prior to the removal of the child was _____, a convention country.
- 3. The child has been wrongfully removed from the country referred to in paragraph 2.
- 4. The child is now residing with (full name) _____, (relationship, if any, to child) _____, at _____.

Details concerning child's custodian

- 5. The applicant under the Convention, (full name) _____, of _____, (address) _____, has rights of custody in respect of the child by reason of the following factual and legal circumstances:
(include details of any custody order)

Details concerning child's removal

- 6. The child was removed on the _____ day of _____ 19 _____, in the following circumstances:

Pending proceedings in Australia

- *7. The following are particulars of pending family law or child welfare proceedings concerning the child:
(set out brief particulars of any pending proceedings and the court in which the proceedings are pending)

or

SCHEDULE 3—continued

*7. There are no pending family law or child welfare proceedings concerning the child.

Attachments

8. The request for return of the child under the Convention is attached.

9. The following documents are also attached:

- * (a) certified copy of relevant decision or agreement concerning custody or access;
- * (b) certificate or affidavit as to the applicable law;
- * (c) information relating to the social background of the child;
- * (e) authorization empowering the Central Authority to act on behalf of the applicant;
- * (f) other (specify).

Dated this _____ day of _____ 19 _____

.....
(Signature of applicant)

* Cross out whichever is not applicable.

AFFIDAVIT

I, (full name, address and occupation)
make oath and say/affirm:

1. I am the applicant in, and I have read, this application.
2. The facts stated in this application that are within my personal knowledge are true. All other facts stated in this application are true to the best of my knowledge, information and belief.

SWORN (or AFFIRMED) by the
applicant at
on the _____ day of _____
19 _____

.....
(Signature of applicant)

Before me:

.....
(Signature and title of person
before whom affidavit sworn)

FORM 3

Sub-regulation 24 (3)

COMMONWEALTH OF AUSTRALIA
Family Law (Child Abduction Convention) Regulations

APPLICATION FOR RIGHTS OF ACCESS IN ACCORDANCE WITH THE HAGUE
CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

REQUESTING CENTRAL AUTHORITY
OR APPLICANT:

REQUESTED AUTHORITY:

Concerns the following child:, who will
attain the age of 16 on19.....

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

SCHEDULE 3—continued

I—IDENTITY OF THE CHILD AND ITS PARENTS

- 1 *Child*
 - name and first names
 - date and place of birth
 - habitual residence
 - passport or identity card No., if any
 - description and photo, if possible (see annexes)
- 2 *Parents*
 - 2.1 *Mother:* name and first names
 - date and place of birth
 - nationality
 - occupation
 - habitual residence
 - passport or identity card No., if any
 - 2.2 *Father:* name and first names
 - date and place of birth
 - nationality
 - occupation
 - habitual residence
 - passport or identity card No., if any
 - 2.3 *Date and place of marriage*

II—REQUESTING INDIVIDUAL OR INSTITUTION

- 3 *Name and first names*
- nationality of individual applicant
- occupation of individual applicant
- address
- passport or identity card No., if any
- relation to the child
- 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 prevented the exercise of rights of access or denied the enjoyment of access*
 - name and first names
 - date and place of birth, if known
 - nationality, if known
 - occupation
 - last known address
 - passport or identity card No., if any
 - description and photo, if possible (see annexes)
- 4.2 *Address of the child*
- 4.3 *Other persons who might be able to supply additional information relating to the whereabouts of the child*

IV—CIRCUMSTANCES RELATING TO THE PREVENTION OF EXERCISE OF RIGHTS OF ACCESS

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SCHEDULE 3—continued

V—FACTUAL OR LEGAL GROUNDS JUSTIFYING THE REQUEST

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VI—CIVIL PROCEEDINGS IN PROGRESS

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VII—PROPOSED ARRANGEMENTS TO SECURE EXERCISE OF RIGHTS OF ACCESS

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VIII—OTHER REMARKS

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.....
.....

IX—LIST OF DOCUMENTS ATTACHED*

.....
.....
.....

Date
Place

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

.....

* e.g. Certified copy of relevant decision or agreement concerning custody or 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.

FORM 4

Sub-regulation 24 (7)

COMMONWEALTH OF AUSTRALIA
Family Law (Child Abduction Convention) Regulations
APPLICATION INITIATING PROCEEDINGS
(Title of proceedings as under Family Law Rules)

DATE OF FILING:

*APPLICANT'S/*RESPONSIBLE CENTRAL AUTHORITY'S ADDRESS FOR SERVICE:

To: (Full name of respondent)

85/

SCHEDULE 3—continued

TAKE NOTICE that the attached application HAS BEEN SET DOWN FOR HEARING by the Court at _____ day of _____ 19____, at _____ o'clock. _____ on the

AND FURTHER TAKE NOTICE THAT—

- (a) if you wish to defend this application but to raise no new issues, you may, at the earliest practicable date before the return day set out above, file and serve an affidavit setting out briefly the matters on which you rely;
- (b) if you wish to defend this application and to seek some order other than the order sought in this application, you may, at the earliest practicable date before the return day set out above, file and serve a cross-application and an affidavit in support; and
- (c) if you do not appear at the hearing, the Court may proceed to make the orders sought, or similar orders, in your absence.

Dated this _____ day of _____ 19____

.....
Registrar

APPLICATION

(Full name of applicant) _____, whose occupation is _____ and who represents the responsible Central Authority, applies for the following orders:—

- (a)
 - (b)
- (if insufficient space attach statement of orders sought).

Details concerning child

1. The child, (full name) _____, was born on the _____ day of _____ 19____.
2. The habitual residence of the child immediately prior to any breach of rights of access was _____, a convention country.
3. The child is now residing with (full name) _____, (relationship, if any, to child) _____, at _____.

Details concerning custody of child

4. (Full name) _____, (relationship, if any, to child) _____, of (address) _____, has rights of custody in respect of the child by reason of the following factual and legal circumstances: (include details of any custody order)

Details concerning rights of access

- *5. The applicant under the Convention on the Civil Aspects of International Child Abduction, (full name) _____, (relationship, if any, to child) _____, of (address) _____, has rights of access in respect of the child by reason of the following factual and legal circumstances: (include details of any access order)

or

- *5. The applicant under the Convention, (full name) _____, (relationship, if any, to child) _____, of (address) _____, has no existing rights of access in respect of the child but wishes to pursue a claim to access under Australian law.

SCHEDULE 3—continued

6. The following are the circumstances in which rights of access have been breached or enjoyment of access denied:

Pending proceedings in Australia

*7. The following are particulars of pending family law or child welfare proceedings concerning the child:

(set out brief particulars of any pending proceedings and the court in which the proceedings are pending)

or

*7. There are no pending family law or child welfare proceedings concerning the child.

Attachments

8. The request in relation to access to the child under the Convention is attached.

9. The following documents are also attached:

- * (a) certified copy of relevant decision or agreement concerning custody or access;
- * (b) certificate or affidavit as to the applicable law;
- * (c) information relating to the social background of the child;
- * (d) authorization empowering the Central Authority to act on behalf of the applicant;
- * (e) other (*specify*).

Dated this day of 19 .

.....
(Signature of applicant)

* Cross out whichever is not applicable.

AFFIDAVIT

I, (*full name, address and occupation*)
make oath and say/affirm:

1. I am the applicant in, and I have read, this application.
2. The facts stated in this application that are within my personal knowledge are true. All other facts stated in this application are true to the best of my knowledge, information and belief.

SWORN (*or AFFIRMED*) by the
applicant at
on the day of

(Signature of applicant)

Before me:

.....
(Signature and title of person
before whom affidavit sworn)

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on *h* 1986.

1 May /