SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S DEPARTMENT

Inquiry name: International child abduction to and from Australia

Senator Pratt asked the following question at the hearing on 26 August 2011:

Senator PRATT: Clearly there are parallels between domestic cases and international cases—these kinds of abductions are not uncommon even within Australia. How do you draw those similarities out in terms of getting best practice for international abductions.

Chief Justice Bryant: In international abductions we are pretty much guided by best practice principles put out by The Hague. They are different in the sense that abductions in Australia are often in breach of orders so you have the local police looking for people and it is not so difficult. You do not need to worry about criminality once they have breached an order. You can have a recovery order, a warrant for arrest and the police will be looking for children.

Senator PRATT: How many international abductions would be in breach of an order?

Chief Justice Bryant: I am not sure. We can try to find out if you like. We will take it on notice and see whether we can tell you that. Certainly there is no doubt some are. They would probably mostly be retention cases where there had been an order in place and there had been some agreement that they would come for a particular period and then the child is not returned.

As the Court only has visibility of Convention applications resolved by court order, the committee would like to ask the same question of AGD, as the Commonwealth Central Authority.

The answer to the honourable senator's question is as follows:

The Attorney-General's Department, as the Commonwealth Central Authority (CCA), is responsible for assessing applications made under the Hague *Convention on the civil aspects of international child abduction*. Applications received by the CCA are assessed against the key criteria of the Convention, being:

- a child must be under 16 years old
- the applicant must have "rights of custody" in relation to the child
- the applicant must have been exercising their 'rights of custody' at the time the child was wrongfully removed from or retained outside of the requesting country
- the child must have been habitually resident in the requesting country immediately before the child's alleged wrongful removal or retention
- the child must have been wrongfully removed from or retained outside a country which is a party to the Hague Convention, and
- the child must have been wrongfully removed from or retained outside a Convention country without the applicants consent or the consent of a relevant judicial or administrative authority.

While pre-existing court orders *may* be attached to an application as a supporting document, they do not form a core component of the CCA's assessment of an application under the Hague Convention.

As such the CCA does not generally record statistics relating to breaches of pre-existing orders prior to receiving an application under the Convention as any breach of such orders is not directly relevant to an assessment of an application under the Convention.