

DOCUMENTS TABLED ON 25 NOVEMBER 2009:

- **National Interest Analysis [2009] ATNIA 22**
with attachment on consultation

- **Agreement between Australia and the Republic of Lebanon regarding Cooperation on Protecting the Welfare of Children, done at Beirut on 18 March 2009**
[2009] ATNIF 9

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

**Agreement between Australia and the Republic of Lebanon regarding
Cooperation on Protecting the Welfare of Children,
done at Beirut on 18 March 2009
[2009] ATNIF 9**

Nature and timing of proposed treaty action

1. The proposed treaty action is to bring the *Agreement between Australia and the Republic of Lebanon regarding Cooperation on Protecting the Welfare of Children* ('the Agreement') into force, following its signature on 18 March 2009. Pursuant to Article 14, the Agreement will enter into force on the first day of the second month after the later of the two notifications has been received specifying that the Parties' respective legal requirements for entry into force have been met.
2. Subject to completion of Australian domestic treaty scrutiny requirements, Australia's notification for entry into force will be provided by May 2010.

Overview and national interest summary

3. The Agreement establishes formal procedures to assist Australian and Lebanese nationals whose children have been abducted by a parent to either Lebanon or Australia, or where difficulties with contact between a parent and child have arisen.
4. The Agreement is important because it reflects the provisions of the United Nations Convention on the Rights of the Child, to which Australia and Lebanon are both parties. Article 11 of that Convention specifically obliges States to take measures to combat the illicit transfer and non-return of children abroad and to promote the conclusion of bilateral agreements to this end.
5. It is in Australia's interest to conclude a treaty with Lebanon to ensure that there are mechanisms in place to effectively resolve child abduction cases. In the absence of any treaty arrangements, the only assistance available to parents whose children are abducted to Lebanon is the grant of financial assistance by the Attorney-General's Department under the Overseas (Child Custody Removal) Scheme. To date, these grants have been successful in obtaining the return of few, if any, Australian children from Lebanon.

Reasons for Australia to take the proposed treaty action

6. The Agreement is required because there is currently no mechanism to assist Australian nationals whose children have either been abducted to Lebanon or where difficulties with contact between a parent and their child have arisen. The Agreement will establish formal procedures to assist Australian nationals in these circumstances.

7. The Agreement is in Australia's interests because Lebanon is not a party to *1980 Hague Convention on the Civil Aspects of International Child Abduction – [1987] ATS 2* (the 'Child Abduction Convention'). Hence the mechanisms and protocols available under the Child Abduction Convention cannot be utilised in cases involving Lebanon.

8. The Agreement will benefit Australia as it mandates 'the best interest of the child' as being of primary importance in matters relating to parents' rights of custody and access. It also seeks to maintain the child's personal relations with both parents on a regular basis and aims to assist a child to recover from any harmful effects suffered in the removal of the child by a parent from Australia or Lebanon to the other country (Article 1).

9. The numbers of children abducted from Australia to Lebanon each year are unknown. However, some statistics are available. In the period between 1992 until July 2009 there have been at least six requests for grants of financial assistance under the Overseas (Child Custody Removal) Scheme involving children abducted from Australia to Lebanon; and over the last two financial years, the Department of Foreign Affairs and Trade has provided consular assistance in 12 matters involving children abducted from Australia to Lebanon.

10. Australia has a similar agreement with the Arab Republic of Egypt, [2002] ATS 03, upon which this Agreement is based. The Agreement between Australia and Egypt came into force on 1 February 2002. Under that Agreement the Attorney-General's Department and the Department of Foreign Affairs and Trade have assisted in negotiating two return applications to Australia for Australian children who had been abducted to Egypt.

Obligations

11. The Agreement is of a facilitative and administrative nature. It provides a consultative mechanism to formulate and implement recommendations to effectively resolve child abduction cases. There are no measures that require legal enforcement, for example, through the courts of either country. The Agreement extends to children who are of Australian, Lebanese or dual Australian and Lebanese nationality (Article 2).

12. Article 3 of the Agreement provides for the establishment of a Joint Consultative Commission ('the Commission'). The Commission is an administrative body made up of representatives from government authorities in both countries:

- (a) in Australia: the Attorney General's Department and the Department of Foreign Affairs and Trade, and

(b) in Lebanon: the Ministries of Justice, Foreign Affairs and Emigrants and the Ministry of Interior and Municipalities.

13. The Commission will assist in locating children who have been abducted, encouraging dialogue between parents and facilitating the return of children in some cases.

The Commission will, in accordance with the laws of each Party:

- act as a monitoring body which will consider and assist attempts to resolve individual cases (Article 6(b) and (c));
- perform an educative function ensuring respect for the rights of children and promoting awareness and cooperation between concerned authorities (Articles 5);
- assist parents and children to obtain travel documentation (Article 6(d)).
The Agreement provides that the Commission's role in immigration matters is limited to facilitation (Article 5(3));
- play a role in facilitating and settling disputes between parents, and it may take recommendations to the appropriate authorities to assist in taking all appropriate measures, in accordance with the laws of each Party, to achieve the objectives of the Agreement (Article 6);
- follow the progress of cases with a view to providing timely status reports to the concerned authorities of both countries and promoting awareness and cooperation between the concerned authorities (Article 6(e)); and
- receive, exchange and facilitate the transmission of information and documents related to cases to the concerned authorities of either Party as required (Article 6(f)).

14. The Agreement provides some guidance as to how the Commission will do its work. It will communicate using diplomatic channels (Article 7), and meetings of the Commission will be arranged when requested by either Party (Article 8). Commission reports concerning the operation of the Agreement will be sent to the Ministry of Foreign Affairs and Emigrants (Lebanon) and the Department of Foreign Affairs and Trade (Australia) (Article 10). In carrying out its duties, the Commission is to ensure the confidentiality of information regarding individual cases (Article 9).

15. The Agreement:

- is not meant to affect the rights and obligations arising from other treaties which apply to both Parties, in particular, the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations;
- is meant to complement, rather than displace, other means of communication and consideration of cases between the Parties;
- is not meant to preclude court proceedings from being commenced before the judicial or administrative authority of a Party in respect of a child (Article 11); and
- provides that cases that began before the Agreement commenced can be considered under the Agreement (Article 15).

Implementation

16. No legislation is required to implement the Agreement.

17. In order to implement the Agreement, Australia will utilise the expertise and experience of officers within the Attorney General's Department responsible for implementing the Child Abduction Convention, as well as officers from the Department of Foreign Affairs and Trade. Australia will draw upon the existing governmental framework and communication channels currently used in child abduction cases as appropriate. In addition, in suitable cases, assistance may be sought from States and Territories, for example in locating and aiding abducted children within their jurisdictions.

18. In implementing the Child Abduction Convention in Australia, officials from the Attorney General's Department and officers from relevant state and territory agencies currently perform prescribed functions pursuant to the *Family Law (Child Abduction Convention) Regulations 1986*. These functions are performed by Commonwealth, State and Territory Central Authorities established under the Regulations.

19. The Central Authorities locates children wrongfully removed and attempts to secure their voluntary return. It also provides information of a general character as to the law of the child's State. Where necessary it commences judicial proceedings with a view to obtaining the return of the child. It also has a role in securing the effective exercise of rights of contact.

Costs

20. Commission meetings will entail communication by teleconference. Other means of communication such as letters, cables, email and telephone will facilitate the routine consideration and conduct of cases by the Commission. Given the nature of the work and the comparatively low number of cases expected, the Attorney-General's Department anticipates that costs incurred in performing the Commission's functions (Articles 5 and 6), arranging Commission meetings (Article 8), recording and reporting on the Commission's work (Articles 9 and 10) and translating written communications (Article 12) will be negligible. The performance of these tasks will be funded from the current budget of the Attorney-General's Department drawing upon its existing budget for child abduction cases.

Regulation Impact Statement

21. The Office of Best Practice Regulation, Department of Finance and Deregulation, has been consulted and confirms that a Regulation Impact Statement is not required.

Future treaty action

22. The Agreement does not provide for any future protocols or other legally binding instruments.

23. The Agreement does not contain specific amendment procedures, but in accordance with international law it may be amended from time to time by mutual consent of the Parties. Any such amendments would be subject to Australia's domestic treaty process, including tabling and consideration by the Joint Standing Committee on Treaties (JSCOT).

Withdrawal or denunciation

24. Article 16 provides that the Agreement shall remain in force until terminated by either Party. The Agreement may be terminated by either Party at any time by giving written notice to the other Party to that effect. Termination by Australia would be subject to Australia's domestic treaty process, including tabling and consideration by JSCOT. The Agreement would then cease to be effective six months after receipt of the termination notice. The Agreement also provides that, notwithstanding termination, the Commission shall make every effort to finalise cases brought to its attention prior to notice of termination.

Contact Details

International Family Law Section
Access to Justice Division
Attorney General's Department.

ATTACHMENT ON CONSULTATION

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CONSULTATION

25. In August 2005, the Attorney General's Department undertook broad consultations on the Agreement. The Department wrote to the Family Court of Australia, the Federal Magistrates Service, National Legal Aid, and representatives of the Lebanese community, advising of Australia's intention to enter the Agreement and inviting comments. Comments received were supportive of the Agreement and no objections to the Agreement were raised.

26. A list of who has been consulted follows:

Representatives of the Lebanese Community

Vice-President, Canberra Islamic Centre
Chairperson, Australian Lebanese Welfare Inc
President, Western Suburbs Lebanese Welfare Committee Inc
President, El-Menieh Association for Cultural and Social Activities
President, Al-Minia Charitable Association
President, Islamic Charity Projects Association
Former Regional President, World Lebanese Cultural Union (WLCU)
Immediate Past World President, World Lebanese Cultural Union
President, Australian Druze Community of NSW
President, Australian Lebanese Welfare Group
President, Al-Zahra Muslim Association (AZMA)
Chairman, United Australian Lebanese Movement (UALM)
Executive Board Member, World Lebanese Cultural Union
Chairman of the Muslim Council
Australian Lebanese Association of Queensland
Chairperson, Association of Bhanin-el-Minieh
Acting Chairperson, The Supreme Islamic Shite Council Australia
President, Al-Zahra Muslim Women's Association Inc
Chairperson, South Australian Lebanese Women's Association
President, Lebanese Moslem Association
President, International Council of Lebanese Migrants in Australia Inc (ICLMA)
Treasurer, The Muslim Council of NSW Inc

President, Australian Lebanese Association of Victoria Inc
President, Maronite Catholic Society
President, Arab Council Australia Inc

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President, St George Lebanese Joint Committee
President, AMAL Charitable Association
Australian Arabic Council
President, Lebanese Community Council of NSW
President, Australian Lebanese Association
Vice President, Islamic Council of NSW
President, Lebanese-Australian Chamber of Commerce and Industry Inc
President of the International Council of the Lebanese Migrants in Australia Inc
President, Lebanese Cultural Union of Queensland
Founder, Islamic Friendship Association of Australia
President, Australian Lebanese Christian Federation Inc

State and Territory Governments

27. State and Territory Governments were consulted through the Commonwealth – State / Territory Standing Committee on Treaties. Information on the negotiation of this Agreement has been included in the biannual schedules of treaties provided to State and Territory representatives.

28. Action areas of the State and Territories, namely the State and Territory Central Authorities currently performing prescribed functions pursuant to the *Family Law (Child Abduction Convention) Regulations 1986*, have also been consulted. Information on the negotiation of this Agreement has been included in the country reports presented at the biennial conferences of the Commonwealth and State Central Authorities.

Australian Courts

Chief Justice, Family Court of Australia
Chief Federal Magistrate, Federal Magistrates Court

Legal Aid Agencies

Chairperson National Legal Aid.