

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

**Program 1.1**

**Question No. 51**

**Senator Boswell asked the following question at the hearing on 22 February 2011.**

We have received several representations from constituents who've had children abducted (by their Japanese mothers) in Japan. One man hasn't seen his child since 2005 when his ex-wife took their child on a 'holiday' to Japan after receiving joint-custody in which the Family Court allowed the mother to take their child to Japan, even though Japan is not a signatory to the Hague Convention on the Civil Aspects of International Child Abduction.

What is the Australian Government doing to encourage Japan to become a signatory and to recover these children?

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

The Australian Government has been an active participant in several international fora aimed at encouraging Japan to ratify the Hague Convention on the Civil Aspects of International Child Abduction.

On 9 February 2011, Australia joined ten other countries in making a high-level demarche to the Japanese Parliamentary Vice-Minister of Foreign Affairs, Mr Ikuo Yamahana. The demarche emphasised the importance of the Hague Convention as a proven law-based instrument to manage international child abduction cases. This action follows Australia's previous participation in joint demarches to the Minister of Justice on 16 October 2009 and 22 October 2010 and the Minister of Foreign Affairs on 30 January 2010, as part of an ongoing campaign to address the concerns and sensitivities apparent in the Japanese polity and thereby encourage Japan to join the Hague Convention.

Australia has also actively participated in two multi-nation symposiums in Japan in March and July 2010. Experts from Convention countries were invited to these symposiums to share their experiences with the Japanese Government and legal fraternity in implementing the Hague Convention. Australia was represented at the March symposium by the Attorney-General's Department, and at the July symposium by the Family Court of Australia.

While the Australian Government provides significant support to parents in Hague Convention abduction matters, it is more difficult when a child is removed to a non-Convention country. Currently, under the Overseas Custody (Child Removal) Scheme, the Australian Government can provide limited financial assistance to parents whose child has been abducted to Japan. This is a merits and means-tested scheme to assist in commencing legal proceedings for the recovery of the child to Australia. It may cover the reasonable costs of engaging an overseas lawyer; and travel costs, if the parent is required by the court to travel overseas to attend the hearing of the case or to collect the child.

The Department of Foreign Affairs and Trade is responsible for the day-to-day management of the consular aspects of international child abduction cases involving Australians. DFAT can provide some limited financial assistance in the form of conditional loans, a list of local lawyers and interpreters, and can issue passports, including emergency passports. While consular officials seek

to ensure that the child's welfare is protected, there are practical difficulties when children are abducted to non-Convention countries as the abducting parent or family members caring for them must agree to provide access to the children.

In the event that Japan does ratify the Convention, neither Australia nor any other Convention country will be able to make a request to Japan for the return of children who were abducted prior to Japan's ratification of the Convention, as the Convention is not retrospective.