



International child abduction to and from Australia

**Submission by the
Australian Federal Police**

August 2011

Introduction

The Australian Federal Police (AFP) welcomes the opportunity to make a submission to the inquiry of the Senate Legal and Constitutional Affairs References Committee into *International child abduction to and from Australia*.

2. The AFP plays a significant role in the prevention of international child abduction, and the location and recovery of abducted children. In performing this role, the AFP works alongside the International Family Law section of the Commonwealth Attorney-General's Department, which is the nominated Central Authority under the *Hague Convention on the Civil Aspects of International Child Abduction* (the Abduction Convention).

3. This submission seeks to address the following aspects of the inquiry's terms of reference:

(c) the roles of various Commonwealth departments involved in returning children who were wrongly removed or retained, to their country of habitual residence; and

(d) policies, practices and strategies that could be introduced to streamline the return of abducted children;

by explaining the AFP's role in relation to international child abduction matters, and outlining some of the practical difficulties that the AFP encounters in undertaking that role.

THE AFP'S ROLE IN INTERNATIONAL CHILD ABDUCTION MATTERS

4. The AFP's role in the family law process is to act on and facilitate specific orders of Australian Courts. Relevant to international child abduction, the AFP has a role to apply family law orders which relate to the travel of children from Australia.

5. One of the primary ways in which the overseas travel of a child can be monitored is through an alert being triggered on what is commonly referred to as the "Watch List". The Watch List operates at all international sea ports and airports. It is a system that is designed to identify children are the subject of a court order that prohibits their removal from Australia. When the subject of an alert on the Watch List presents his or her passport at an international seaport or airport, the alert is triggered. The triggering of the alert allows for appropriate intervention by AFP officers.

6. AFP policy is that child can only be placed on the Watch List if there is a court order, or an application for an immediate order, that requests the AFP to place the name of the child on the Watch List. The order from the court must be specific and not implied.

7. The AFP Operations Coordination Centre (AOCC) coordinates the AFP's family law response obligations. Within the AOCC, the Operations and Alerts Response Teams:

- provide a central point for the receipt, registration and initial management of certain family law orders;
- create and manage Watch List alerts;

- facilitate urgent after-hours overseas liaison communications; and
- operate Interpol's National Central Bureau for Australia (the Australian NCB).

The AOCC Operations and Alerts Response Teams provide 24 hour operational support in each of their functions.

8. The table below illustrates the number of family law pace activations that have been actioned by the AFP over the last two financial years. The AFP generally responds to all outgoing Watch List alert activations. Incoming Watch List alerts are assessed on a case by basis with immediate AFP response generally only required in circumstances where there is a recovery order or arrest warrant in existence.

Family Law Watch List Alert Activations July 2009 - June 2011

Activation Financial Year	Alert Type						Total
	FAMILY LAW	APPLICATION/ INTERIM ORDER	COURT ORDER	HAGUE CONVENTION	RECOVERY ORDER	WARRANT	
2009/10	15	127	2074	64	2	0	2524
2010/11	17	214	2504	65	2	5	2565
Total	32	341	4578	129	4	5	5089

9. The Australian NCB supports all Interpol enquiries to and from Australia. The Australian NCB is the designated contact point for Interpol's General Secretariat, AFP regional offices and other member countries requiring assistance with overseas investigations, and the location and apprehension of fugitives. The Australian NCB also undertakes enquiries via Interpol at the request of State/Territory Police, or the Attorney-General's Department, to locate internationally abducted children.

10. Police in member countries share critical crime-related information using the organisation's system of international notices. The AFP facilitates the transmission of Interpol communications to a specific country or countries, or to all 188 Interpol member countries (via a Diffusion Notice), seeking assistance to locate abducted children and their parents. Enquiries can be undertaken when a child is identified as being subject to an application under the Abduction Convention or has been removed from Australia in breach of an Australian family law order.

11. Interpol Yellow Notices (which contain information about missing persons overseas) are generally issued in relation to the abducted child. The issuing of an Interpol Red Notice (which relates to people whose arrest is requested with a view to extradition) may also be considered in relation to the abducting party in cases where an Australian arrest warrant has been issued.

12. The AFP's Crime Operations portfolio delivers a law enforcement response to a wide range of Commonwealth offences including family law offences. This operational area plays a role in the investigation of child abduction offences and the actioning of recovery orders issued by the courts.

PRACTICAL CHALLENGES FACED BY THE AFP

Administering family law orders and alerts

Clarity of orders requesting placement on the Watch List

13. AFP policy for the placement of a child on the Watch List is that there must be a court order which prohibits the removal of the child from Australia.

14. The AOCC Operations and Alerts Response Teams are responsible for actioning family law orders that deal with a child's ability to travel outside Australia. These orders often contain insufficient information or ambiguities which require clarification before the AFP can act.

15. Orders can be made by the Family Court of Australia (which has registries in all States and Territories except Western Australia), the Family Court of Western Australia, the Federal Magistrates Court or a local court that exercises jurisdiction under the Family Law Act. Orders from local courts may be issued by courts which infrequently exercise powers under the Family Law Act and who are therefore unfamiliar with the issues which may affect the clarity of these orders. Orders can also be drafted by consent (ie by the parents or their legal representatives) and then endorsed by the court. However, there is no standardised approach or template for orders that relate to international travel restrictions for children. The lack of uniformity in the orders impacts on the effective administration of alerts by the AFP.

16. On an almost daily basis, the AFP seeks to clarify the intention of orders, in particular, whether any conditions must be fulfilled before a child can be taken outside Australia. Where conditions do apply, the AFP is frequently required to make a time sensitive assessment of whether the parties have adequately complied with requirements.

17. Orders frequently contain ambiguities which require clarification before the appropriate action can be determined. An example of this is as follows. A Watch List alert was triggered by a child travelling with her step-mother. Court orders prevented the child being taken out of Australia by "the wife" of the child's father. The order was intended to prevent the child travelling outside Australia with her mother. However the father had remarried and his "wife" was now the child's step mother. Strict execution of the order would not have achieved what the order intended.

18. Internal inconsistencies within the order can also raise issues. Frequently, orders contain one clause which states that the child may not travel outside Australia and another stating that they can travel under specified circumstances.

19. To address issues of clarity in relation to preventing the removal of child from Australia, the AFP promotes a preferred form of words to achieve this outcome through the AFP website¹. However, this wording is often not adopted in the orders. This form of words has been promoted through the AFP website for over five years. AOCC has met with the Family Law Court as well as the Western Australian Family Court to address issues relating to the wording of orders and other issues affecting management of the Watch List.

¹ <<http://www.afp.gov.au/policing/family-law/family-law-kit>>

20. The preferred wording currently promoted by the AFP is as follows.

That until further Order each party, (first name, second name, surname and date of birth of each party) their servants and/or agents be and are hereby restrained from removing or attempting to remove or causing or permitting the removal of the said child/children (first name, second name, surname and date of birth of each party) from the Commonwealth of Australia AND IT IS REQUESTED that the Australian Federal Police give effect to this order by placing the name/names of the said child/children on the Airport Watch List in force at all points of arrival and departure in the Commonwealth of Australia and maintain the child's/children's name/names on the Watch List until the Court orders its removal.

21. The AFP is currently discussing with the Family Court the possibility of introducing a sunset clause for Watch List entries. See further comment on this issue under "Out of date Watch List alerts".

Clarity of recovery orders

22. Part VII Division 8 Subdivision C of the Family Law Act deals with location and recovery orders.

23. A recovery order is a court order made under section 67U of the Family Law Act which directs Federal, State or Territory police to recover and return a child mentioned in the order to a nominated person. These orders are mostly used in relation to children who have been wrongfully removed within Australia. However, recovery orders can also be used by the courts in relation to children who have been abducted to Australia.

24. The AOCC Operations and Alerts Response Teams is the central point for the receipt, registration and initial management of recovery orders. The AFP Crime Operations portfolio is the operational area responsible for actioning recovery orders issued by the courts in relation to International abductions to Australia. Recovery orders raise similar clarity issues for the AFP, and for similar reasons, as outlined above.

25. Recovery orders often contain insufficient information or ambiguities which require clarification before they can be executed appropriately. While the majority of recovery orders relate to abductions within Australia, such orders are relevant to international abduction (where children have been abducted into Australia). In a number of cases the AFP has received recovery orders that contain no detail in relation to what specific action is required of the AFP. It is then incumbent upon the AFP to seek to clarify the intended action with the court.

26. Prior to 2005 a Form existed in the Family Law Rules which provided a form of words for a recovery order. The AFP considers that, in part, removal of the standard wording has reduced the clarity of these orders.

Out of date Watch List alerts

27. Approximately 12,000 children are currently on the Watch List. Each of these children may trigger an alert at international sea ports and airports in Australia if they attempt to travel overseas. Approximately 1500 of these alerts have been on the Watch List for ten years or more and over 4500 have been on the Watch List for more than five years. Operational experience suggests to the AFP that the majority of the orders that are older than five years are likely to be out of date with the current family circumstances.

28. In many cases a child's name is placed on the Watch List and remains there until they become an adult. In many other cases the child's name remains on the Watch List for a number of years until an attempted international departure by the child triggers an alert at which time the parties, reminded of the existence of the alert, seek a court order to remove the travel restriction thereby giving rise to the child's removal from the Watch List. Out of date Watch List alerts place a considerable administrative burden on the AFP and can cause significant distress and expense to the parties and the child concerned.

29. Children trigger Watch List alerts on a daily basis at airports around Australia. The vast majority of these alerts are triggered by children whose parents would consent to the child travelling but have not provided the requisite written consent to the AFP prior to travelling. Alerts are triggered with increased frequency during school holiday periods. To provide some idea of the scope of this activity, in May 2011 there were 142 "activations" (incoming and outgoing alerts triggered at the airport gate). On a weekly basis, the AFP estimates that two children, on average, would be denied travel in circumstances where the parties did not intend that travel be prevented.

30. The triggering of an alert at the airport requires AFP officers to decide whether the child will be allowed to travel. AFP officers will generally attempt to contact the relevant parties to the order to establish whether they consent to the departure. These decisions are, because of the nature of international travel departure schedules, very time sensitive.

31. In some cases, as soon as an airline becomes aware that an alert has been triggered, the airline will immediately offload the passenger's luggage to ensure that flight timetables are not affected. Such decisions made by the airline can pre-empt any decision being made by AFP. Consequently, child passengers and their parents frequently experience the inconvenience, and in some instances the expense, of having to book another international flight after the alert situation is clarified. This situation also means that AFP resources are diverted to matters where there is no legitimate threat of international child abduction.

32. Currently, there is no process to prompt parties to review whether there is an ongoing need for a Watch List alert in respect of a particular child. In the AFP's experience, parties often forget about the existence of alerts and older children are frequently prevented from travelling overseas in situations where both parents consent to the travel. Once the alert is triggered, this can cause considerable distress and inconvenience to the parties and the child. It is not uncommon for children to be prevented from attending school excursions (which involve overseas travel) due to the failure of parties to consider the existence of an alert. We note that this situation is in contrast with situations where the child is considered to be unaccompanied as discussed below, because in such cases the teacher is considered the servant or agent of one of the parents.

33. In one situation an attempt by the mother of a child to legitimately facilitate the father's access to the child was prevented by the existence of an out of date Watch List alert. The unaccompanied child was placed on a domestic flight (from Melbourne to Sydney) by his mother and his travel was escorted by the airlines. The child then attempted to board an international flight in Sydney to meet his father.

34. This action triggered an alert and the AFP attempted to contact the child's mother to determine whether she had consented to the travel. As the AFP was unable to confirm with the mother that she had consented to the flight, the child was prevented from travelling. Later, it was established that the child's mother had consented to the travel. However, the AFP was unable to establish this fact until well after the international flight had departed, without the child on board.

35. Discussions are presently underway with the Family Law Court about the possibility of making orders restricting travel subject to a sunset clause. It would then be the responsibilities of the parties to the order to actively seek new orders prior to the expiration of the original order.

Investigative tools

Telecommunications interception

36. Section 65Y of the Family Law Act makes it an offence for a person (who was a party to proceedings in which a parenting order was made) to take or send the child (who was the subject of that order) outside Australia without written consent of the other party or a court order. Section 65Z extends this criminality to situations where proceedings for a parenting order are pending.

37. Currently, it is not possible to use telecommunications interception powers to investigate an offence under section 65Y. Further, it is not possible to obtain telecommunications data, or stored communications data, nor access telecommunications interception tools in relation to the execution of a recovery order under the Family Law Act (see above for more details on recovery orders).

38. While telecommunications data and stored communications can be accessed for child abduction offences under sections 65Y and 65Z these powers have not always proven to be sufficient in the investigation of these types of offences.

39. The following example demonstrates the efficacy of being able to use telecommunications interception product to locate and secure the return of abducted children.

40. In this particular example, the Brisbane registry of the Family Court made a recovery order after one parent failed to hand the child to the other as required by family law orders. Police suspected that the maternal grandmother of the child was assisting the mother to conceal the whereabouts of the child. Telecommunications data from the grandmother's phone was obtained by the AFP, but this did not provide any information to assist with the location of the mother and child. The AFP later established that the grandmother had taken deliberate steps to conceal communication with her daughter, including using public telephones in another city.

41. The AFP obtained a telephone interception warrant relying on the state offence of "child stealing" under section 363 of the Criminal Code 1899 (Qld). This offence carries a maximum penalty of 7 years imprisonment. Under warrant, the AFP intercepted a conversation between the grandmother and her son (the uncle of the child) which indicated a family reunion (including the mother) was planned. The intercepted conversations also indicated when the uncle would arrive in Australia. When the uncle arrived, Customs officers seized the uncle's mobile telephone, and text messages stored on the phone indicated a mobile number for the mother (which was registered in another name).

42. Ultimately the mother was arrested and the child recovered almost four years after the child's disappearance. However, had the case happened in a different jurisdiction there may not have been a relevant offence for which a telecommunications interception warrant could be obtained.

43. The use of telecommunications interception warrants can be of even greater utility in circumstances involving international abduction. Telecommunications data for calls which originate overseas can be very limited. The AFP has received data relating to international calls that is incomplete. For example some data has contained the initial numbers (0011) to indicate that the call originated from an international destination but not the remaining digits. In other cases the use of Gateway services (within Australia) by International Service providers means that the number recorded on the data is a domestic one. Access to the content of communications would provide better leads for police in such cases.

Information gathering powers

44. Powers for the AFP to obtain information from individuals and entities that could assist in the recovery of children abducted internationally are limited.

45. Commonwealth Information Orders (sought under section 67N of the Family Law Act) only enable access to information about a child's location held in records of a Commonwealth Department or instrumentality. As such, these orders are limited in their application.

46. The AFP does not have any powers to compel financial institutions and phone companies to release transaction records or telephone and call charge records to assist in the location of children. As a consequence, information that may assist in the location of internationally abducted children is not readily available.

47. Equally there are no powers to compel individuals to provide information within their knowledge that would assist in the location of children who are the subject of recovery orders. As a result, the AFP's ability to obtain information from persons suspected to have knowledge of the whereabouts of children abducted internationally is also limited.

48. The following case study indicates some of the difficulties posed by the absence of specific information gathering powers.

49. In 1994, a two month old boy was abducted by his mother from the United States of America to New Zealand, and then to Australia. At the time, the AFP held the belief (which was subsequently confirmed) that family members of the mother and her associates (residing in Australia) were helping the mother and child to hide from authorities. Absent an ability to compel information from these parties the AFP and the father used extensive national publicity to no effect.

50. This particular matter came to resolution when solicitors for the husband brought a contempt action (relying on sections 112AB and 112AP of the Family Law Act) as the maternal grandmother had made an undertaking to use her best endeavours to encourage her daughter to come forward to the Family Court or to the AFP and assist them in their investigations. The mother subsequently delivered herself to the Family Law Court on the return date of the contempt application brought against her mother.

Other matters

Scope of offences

51. The narrow scope of the offences under sections 65Y and 65Z of the Family Law Act may also restrict the AFP's ability to investigate certain international child abduction matters. Sections 65Y and 65Z apply only to children who are taken outside Australia contrary to a parenting order or where proceedings for the making of parenting orders are pending. These provisions do not extend to situations where children are wrongfully retained overseas beyond a period for which there was consent or where there has been no court involvement in a dispute relating to children.

Unaccompanied child or child assisted by non-party

52. Section 65Y of the Family Law Act prevents a party to a parenting order, or their agent, removing a child from Australia without the consent of the parties or a further court order. Section 65Z extends this restraint to situations where proceedings for the making of a parenting order are pending.

53. Sections 65Y and 65Z, however, do not capture the departure of an unaccompanied unassisted child or the departure of a child that is assisted by a non-party who acts independently of the parties to the proceeding (ie a well-meaning older sibling or grandparent). In such situations, orders may exist which evidence a clear intention that the child not be taken out of Australia. However, the AFP would not have a clear legal basis on which to prevent the child from travelling.

Abuse of the Watch List by parties

54. The AFP has concerns that, in some cases, parents may seek to misuse the process. For example, parents may seek court orders to prevent the other parent from taking a child on a holiday or deny consent to travel when it is sought by the other parent although there is no threat of international abduction of the child.

55. The AFP is aware of cases where courts have had to act to address vexatious behaviour of parties. In these cases, the courts made orders preventing parents from seeking orders to prevent the child from travelling on any subsequent occasions.

56. One exception to AFP policy is where there is an emergency situation and there is sufficient evidence to suggest that international child abduction is imminent or highly likely to occur. The AFP makes such an assessment cognisant of its obligations under the Abduction Convention to assist in the prevention of child abduction.

57. The following case illustrates the difficulties faced by the AFP when making a decision to place a child on the Watch List on an emergency basis. In this case, the mother and father had shared care of the child. The mother, who was resident in New Zealand, sought to obtain consent from the father to enable the child to travel to New Zealand in accordance with the shared care arrangements. The conditions of the court orders required the mother to seek the father's consent to travel and the release of the child's passport by the father.

58. Despite the shared care arrangements, and the steps the mother had taken, the father refused to provide the passports or consent to travel. The mother obtained a New Zealand passport for the child and arranged for the child to travel to New Zealand using this passport. Discovering that the child's departure was imminent, the father contacted the AFP. The information supplied by the father to the AFP only indicated that the mother had not complied with court-ordered arrangements relating to the child's travel, and that the mother had obtained a New Zealand passport for the child.

59. Given the information available, and the time sensitive nature of the issue, the AFP placed the child on the Watch List on a temporary basis. However, it then became apparent that the father had not provided the AFP with accurate information, and the alert was later removed. This case illustrates the inherent tensions between the AFP seeking to fulfil its obligations under the Abduction Convention, and parties misusing the process to address personal grievances.