

Agreement with Lebanon on Protecting the Welfare of Children

Introduction

- 2.1 The purpose of the *Agreement between Australia and the Republic of Lebanon regarding Cooperation on Protecting the Welfare of Children* is to establish 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. No mechanisms currently exist as Lebanon is not party to the Hague Convention on the Civil Aspects of International Child Abduction (the Child Abduction Convention).¹
- 2.2 At the time of the Committee's inquiry, 17 of the 39 active child abduction cases receiving consular assistance from the Department of Foreign Affairs and Trade were in Lebanon.²

Reasons to take treaty action

- 2.3 The agreement reflects the provisions of the United Nations Convention on the Rights of the Child. States are obliged by Article 11 of that Convention to take measures to combat the illicit transfer and non-return

1 National Interest Analysis (NIA), paras 6 and 7.

2 Mrs Toni Pirani, *Transcript of Evidence*, 1 February 2010, p. 2.

of children abroad and to promote the conclusion of bilateral agreements to this end. Both Australia and Lebanon are party to the Convention.³

- 2.4 The Committee was informed that the agreement will secure some of the benefits of the Child Abduction Convention and is seen as an improvement on the current situation and a positive step to assist and protect the welfare of Australian and Lebanese Australian children.⁴

- 2.5 Mrs Toni Pirani of the Attorney-General's Department told the Committee:

The reason such agreements are necessary is that it has become clear that countries with child custody laws based on religious law are unlikely to join the more than 80 countries that have become parties to the 1980 Hague Convention on the Civil Aspects of International Child Abduction.⁵

- 2.6 The only assistance currently available in relation to a child abducted to Lebanon is a grant of financial assistance under the Overseas (Child Custody Removal) Scheme administered by the Attorney-General's Department. This is a means-tested scheme that provides assistance with commencing legal proceedings, and can include the costs of engaging an overseas lawyer and travel costs. In the last five years, four applications have been made under this scheme in relation to Lebanon.⁶

Obligations

- 2.7 The agreement is administrative and facilitative, and has no measures that require legal enforcement. It extends to children who are of Australian, Lebanese or dual Australian and Lebanese nationality.
- 2.8 Article 3 of the agreement establishes a Joint Consultative Commission with representatives of both governments that will assist in locating children who have been abducted, encouraging dialogue between parents and facilitating the return of children in some cases.
- 2.9 In accordance with the laws of each party, the roles of the Commission will include monitoring and assistance in resolving individual cases; promoting awareness and cooperation between concerned authorities;
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3 NIA, para 4.

4 Mrs Toni Pirani, *Transcript of Evidence*, 1 February 2010, pp. 2, 3.

5 Mrs Toni Pirani, *Transcript of Evidence*, 1 February 2010, p. 2.

6 Mrs Toni Pirani, *Transcript of Evidence*, 1 February 2010, p. 3.

facilitating and settling disputes between parents; and receiving, exchanging and facilitating the transmitting of information and documents between each party.⁷ The Committee was informed that the Government expects that consideration of the cases brought to the Commission will benefit from the knowledge and experience of Commission members and also their access to government networks.⁸

2.10 The Commission will use diplomatic channels for communication and can also meet where requested by either party.⁹

2.11 The agreement mandates that the 'best interests of the child' are of primary importance in relation to parents' rights of custody and access, and seeks to maintain the child's personal relations with both parents. The agreement recognises that a child's best interests are provided for in the United Nations Convention on the Rights of the Child.¹⁰

2.12 The agreement also aims to assist a child that may have been removed by a parent to recover from any harmful effects.¹¹

2.13 The Committee was informed that if there was no success in reaching an arrangement between the parents, the parent in Australia could undertake legal proceedings in Lebanon for the return of the child. These proceedings would be governed by Lebanese laws.¹²

2.14 The agreement does not provide for Lebanese courts to recognise decisions by Australian courts.¹³ In cases where a child is removed to a country, such as Lebanon, that is not party to the Child Abduction Convention, and an Australian order exists:

It is a matter for the legal system of the country the child is in to make a determination as to whether the child has been abducted or needs to be returned to Australia, and other decisions relating to the custody of the child.¹⁴

2.15 The Committee sought clarification about Article 5(1) of the Agreement, which will require Australia to respect the decisions of Lebanon's religious

7 NIA, para 13.

8 Mrs Toni Pirani, *Transcript of Evidence*, 1 February 2010, p. 3.

9 NIA, para 14.

10 Article 1(b); Mrs Toni Pirani, *Transcript of Evidence*, 1 February 2010, p. 5.

11 NIA, para 8.

12 Mrs Toni Pirani, *Transcript of Evidence*, 1 February 2010, p. 4.

13 Mrs Toni Pirani, *Transcript of Evidence*, 1 February 2010, p. 4.

14 Mr Andrew Byrne, *Transcript of Evidence*, 1 February 2010, p. 6.

courts. The Attorney-General's Department told the Committee that even with the agreement those laws will still apply in Lebanon.¹⁵

- 2.16 The Committee also asked about Australia's consular capacity in relation to the agreement. It was informed that the Department of Foreign Affairs and Trade's consular role centres upon establishing the whereabouts and ensuring the welfare of the child. DFAT does not, in its consular role, become directly involved in legal issues surrounding custody or access to children.¹⁶

Implementation

- 2.17 Legislation is not required to implement the agreement. The Committee notes that the Government will utilise existing governmental and communication frameworks used for child abduction cases, and the expertise and experience of departmental officers in implementing the Child Abduction Convention.¹⁷

Consultation

- 2.18 Consultation was undertaken within the Commonwealth, with State and Territory Governments and representatives of the Lebanese community. Consulted parties were supportive of the agreement and raised no objections.¹⁸

Conclusion and recommendation

- 2.19 The statistics presented to the Committee suggest that Lebanon is a significant country in terms of the number of current child abduction cases receiving assistance from the Department of Foreign Affairs and Trade. The Committee recognises that Lebanon is unlikely to become party to the Child Abduction Convention and that this agreement, while it does not include all the benefits of that Convention, will be an improvement upon

15 Mrs Toni Pirani, *Transcript of Evidence*, 1 February 2010, p. 4.

16 Mr Andrew Byrne, *Transcript of Evidence*, 1 February 2010, p. 5.

17 NIA, para 17.

18 NIA, Consultation Attachment; Ms Toni Pirani, *Transcript of Evidence*, 1 February 2010, p. 3.

the arrangements currently in place to resolve these cases. The Committee therefore supports binding treaty action being taken.

Recommendation 1

The Committee supports the *Agreement between Australia and the Republic of Lebanon Regarding Cooperation on Protecting the Welfare of Children* and recommends that binding treaty action be taken.

