

High Court of Australia Considers Hague Convention on Child Abduction

The High Court of Australia has recently addressed the Hague Convention on the Civil Aspects of International Child Abduction: *MW v Director-General, Department of Community Services* [2008] HCA 12. In a 3:2 decision, the Court considered that the Director-General (as State Central Authority) had not sufficiently established that the removal of a child from New Zealand to Australia was wrongful, and thus the Family Court of Australia ought not to have made an order for the return of the child.

In Australia, the Hague Convention does not apply of its own force, but is instead implemented by the Family Law Act 1975 (Cth) and the Family Law (Child Abduction Convention) Regulations 1986(Cth). The case turned on reg 16(1A)(c) of the Regulations, which provides that “the person, institution or other body seeking the child’s return had rights of custody in relation to the child under the law of the country in which the child habitually resided immediately before the child’s removal to, or retention in, Australia”. As such, the High Court was required to address difficult factual and legal questions relating to the child’s circumstances in New Zealand. At least in the case of New Zealand law, that task was eased in Australia by the Evidence and Procedure (New Zealand) Act 1994 (Cth).