

Budget Estimates: February 2023

Last updated: 24 January 2023 13 January 2023

Consular - Japan child abduction and custody

Consular - Japan child abduction and custody

Handling Note: FAS CCD Kate Logan to lead on consular issues. Questions relating to cases which fall under the 1980 Hague *Convention on the Civil Aspects of International Child Abduction* should be referred to the Attorney-General's Department (AGD).

Key Messages

- Japanese domestic law does not allow for joint custody following the separation of parents, leaving access to a child at the discretion of the parent with whom the child lives.
- DFAT is providing consular assistance to affected Australian parents facing difficulties exercising rights of access or rights of custody in Japan.
- While recognising these are matters for Japan, we continue to work sensitively to encourage Japan to find a solution acceptable to all and in the best interests of the children.
- The Australian Government is considering the merits of making a submission to Japan's public consultation process on family law reform, which is open for public comment until 18 February 2023.
- Domestic abduction and custody disputes fall outside the jurisdiction of the 1980 Hague *Convention on the Civil Aspects of International Child Abduction* (Hague Convention) – Hague Convention matters relate to international parental child abduction and access applications and are managed by AGD.

What is the Australian Government doing to assist Australian parents facing child abduction and custody issues in Japan?

- The Australian Government is concerned about the number of Australian-Japanese children subject to parental abduction and custody disputes in Japan
 - while these are matters for the Japanese courts, we consider it important that children at the centre of parental disputes are able to maintain meaningful relationships with both parents, and extended family.
- DFAT provides consular assistance to affected Australians in accordance with the Consular Services Charter
 - we encourage Australians to seek legal advice and representation in Japan.
- Australian ministers have raised the issue with Japanese counterparts [most recently Foreign Minister Wong to Foreign Minister Hayashi on 9 December 2022].
- Australian officials regularly raise the issue with Japanese authorities [most recently on 13 December 2022].
- Attorney-General's Department (AGD) continues to work closely with Japanese authorities to manage applications and requests under the 1980 Hague *Convention on the Civil Aspects of International Child Abduction* [Hague Convention] for the return of

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children who have been wrongfully removed or retained overseas by another parent and for access.

Will the Australian Government make a submission on the family law reform interim proposal?

- DFAT is currently considering the merits of making a submission.

How many parents has this affected? Are case numbers going up/down?

- In recent years, DFAT has seen an increase in the number of Australian parents contacting our Embassy in Tokyo to report and/or seek assistance in relation to child custody issues in Japan.
- Since 2004, DFAT has provided consular assistance to the parents of 85 children involved in parental abduction and child custody cases in Japan.

What is the Government doing to assist Mr X/Ms X (whose children have been abducted by their spouse in Japan)?

- Due to privacy considerations, it is not appropriate to comment on individual cases.

Did Prime Minister Albanese raise the issue with Prime Minister Kishida when they met in October [annual leaders' meeting, Perth] or September [Shinzo Abe's state funeral in Tokyo]?

- It would not be appropriate to disclose the specifics of leader-level conversations.
- Foreign Minister Wong has raised the issue twice with Japanese Foreign Minister Hayashi [in July and 9 December 2022]
 - Australian officials regularly raise this issue with Japanese authorities, including through our Embassy in Tokyo s 33(a)(iii)

Why were the outreach sessions with affected parents cancelled?

- Due to privacy considerations of consular clients, we are not planning further group sessions.
- The Australian Government continues to communicate with affected parents regarding their individual consular cases and to provide updates on our advocacy work [most recently 4 July 2022. A further communication was under preparation as at 13 January 2023].

Japan's Ambassador has objected to Australia's use of the term 'abductions'. Why does Australia continue to use it in this context?

- The term is appropriate for the Australian domestic context and is consistent with the 1980 Hague *Convention on the Civil Aspects of International Child Abduction*.

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Background

Overview of issue

Japan's family law system does not allow for joint custody of children following divorce. s 33(a)(iii)

. Critics argue this incentivises parental abduction. Where parents are unable to agree on custody and care arrangements, they should seek the assistance of lawyers to pursue their case through the relevant family courts. s 33(a)(iii)

AGD has ongoing engagement with Japanese authorities on the 1980 Hague *Convention on the Civil Aspects of International Child Abduction* (Hague Convention).

Since 2020, there has been an increase in advocacy by Australian parents facing domestic abduction and custody issues within Japan (i.e. matters falling outside the Hague Convention), which remain a matter for the Japanese courts.

s 47C(1)

s 47E(d)

s 33(a)(iii)

s 47C(1)

Government engagement

s 33(a)(iii)

The Prime Minister was asked by an Australian journalist if he had raised the issue with Kishida in September 2022 at Shinzo Abe's state funeral in Tokyo. The Prime Minister responded he had not raised the issue but that he was very aware of it and our Embassy in Japan continued to provide consular assistance to Australian affected parents.

Foreign Minister Wong has raised the issue twice with Japanese Foreign Minister Hayashi. First on 7 July 2022, during a bilateral meeting on the margins of the G20 Foreign and Development Ministers' Meeting in Bali, Indonesia; and then on 9 December in the margins of the Japan-Australia 2+2 Foreign and Defence Ministerial Consultations held in Tokyo, Japan.

s 33(a)(iii)

Australian officials regularly raise the issue with Japanese counterparts. Most recently, the Australian Embassy in Tokyo met with Justice Minister Saito Ken on 13 December 2022 and discussed child custody in the context of a broader meeting.

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Government of Japan

s 33(a)(iii)

Affected parent engagement

s 47F(1)

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International Developments

In the UN Human Rights Committee's concluding observations on the seventh periodic report of Japan (released on 30 November 2022) it wrote "the Committee is concerned at reports of frequent cases of parental child abduction, both domestic and international, and a lack of adequate response by the State party".

Supporting information

Questions on Notice

No QoNs asked.

Freedom of Information (FOI) Requests

None

Recent Ministerial Comments

- On 27 September 2022, during the visit to Japan to attend former Prime Minister Abe's state funeral, Prime Minister Albanese told media he had not raised child custody issues with Japanese Prime Minister Kishida but that he was very aware of it and our Embassy in Japan continued to provide consular assistance to Australian affected parents.

Relevant Media Reporting

- Anticipated reporting: on the advice of Australian affected parents, two articles on child custody issues in Japan will be published soon: one in the Sydney Morning Herald featuring affected Australian parents; and a full feature Bloomberg article written by a Japanese/American journalist featuring affected parents of several nationalities, including Australian affected parent Ms Henderson.

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- On 22 December 2022, SBS published an [op-ed by Catherine Henderson](#), an affected Australian parent featured in the SBS Dateline episode.
- On 11 October 2022, SBS Dateline aired the episode, 'Japan's Taken Children', which highlighted the problems non-custodial parents experience navigating Japan's sole custody laws.
- On 27 September 2022, while in Japan, Prime Minister Albanese was asked by a journalist if he had raised child custody issues with Japan's Prime Minister Kishida. Prime Minister Albanese said he had not raised the issue but that he was very aware of it and our Embassy in Japan continued to provide consular assistance to Australian affected parents.
- On 11 January 2022, video recordings of the December 2020 Australian Embassy Tokyo outreach session for parents were used in [TikTok](#) videos. The videos included recordings of DHOM Tokyo and affected parents speaking. A further version of the same video was released on 16 February 2022.
- On 15 December 2021, Japan's Ambassador to Australia, Shingo Yamagami wrote an [opinion](#) piece published by the Sydney Morning seeking to clarify Hague Convention statistics and raise concerns about Australia's use of the term 'abduction' – reserved in Japan for DPRK state-sponsored abductions - in child custody cases.
- On 14 December 2021, the Sydney Morning Herald published an [article](#) on child abduction and custody issues, which included comment from Ambassador Yamagami suggesting Australian parents were 'confused' by Japan's legal system.
- On 14 August 2021, the Sydney Morning Herald published an [article](#) on child abduction and custody issues alleging the Japanese Government had organised sessions with Japanese parents in locations around the world advising them how to retain custody of their children following separation. The article included quotes from affected Australian parents Scott McIntyre and Catherine Henderson and quoted DFAT officials from the parent outreach session held in June 2021.
- Scott McIntyre demonstrated support for affected French father, Vincent Fichot, undertaking a hunger strike in Tokyo in July 2021, by appearing in his video updates and in media articles: [French father on hunger strike awaits Macron in Tokyo - Nikkei Asia](#)
- Scott McIntyre wrote an opinion piece in the Sydney Morning Herald on 18 November 2020 – [Australia must raise tragedy of child abductions in Japan](#).

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Consultation: JPN, Tokyo Post, Consular Operations (Team A), Defence and AGD Name: s 22(1)(a)(ii)	Date: 13 January 2023 Ext: s 22(1)(a)(ii)
Cleared by CFO / CPO: N/A	
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ATTACHMENT A – Timeline of Key Developments and Representations

Date	Event
18 February 2022	Deadline to make a submission to Japan's interim proposal on family law reform .
22 December 2022	SBS published an op-ed by affected parent Catherine Henderson to compliment the SBS Dateline program.
s 33(b)	
s 33(a)(iii)	
15 November 2022	Japan's Family Law Subcommittee released its interim proposal on family law reform, which included an option to adopt joint custody .
s 33(a)(iii)	
11 October 2022	SBS aired the Dateline episode 'Japan's Taken Children'.
s 33(a)(iii)	
27 September 2022	Prime Minister Albanese was asked by a journalist if he had raised child custody issues with Japan's Prime Minister Kishida while visiting Japan. Prime Minister Albanese said he had not raised the issue but that he was very aware of it and our Embassy in Japan continued to provide consular assistance to Australian affected parents.
26 August 2022	Japanese media reported that the Ministry of Justice confirmed the interim proposal would be delayed due to continued heated debate.

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19 July 2022	Japan's Family Law Subcommittee publicly released a draft summary (in Japanese) of its interim proposal on family law changes which, for the first time, considered joint custody as an option. The proposal was due to be presented to the Ministry of Justice at the end of August.
s 33(a)(iii)	
4 July 2022	Affected parents were provided an email update on advocacy and a Frequently Asked Questions document on citizenship issues prepared by the Department of Home Affairs.
s 33(a)(iii)	
16 February 2022	A covert recording of the December 2020 parent outreach session was released to TikTok.
s 33(a)(iii)	
31 January 2022	Affected parents were advised of the cancellation of the scheduled February 2022 group outreach session.
11 January 2022	Covert recordings of the December 2020 parent outreach sessions were released to TikTok. Discovered by DFAT on 20 January 2022.

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s 33(a)(iii)	
9 August 2021	Petition EN2796 submitted to the Standing Committee on Petitions requesting: <i>"We therefore ask the House to Suspend all defense [sic] agreements with Japan until Joint custody has been adopted and implemented. Australia should denounce Japan and not align with a country that is actively denying the rights of Australian children and supporting child abuse."</i>
s 33(a)(iii)	
July 2021	French affected father, Vincent Fichot, undertook a 20-day hunger strike coinciding with the Tokyo Olympics.
23 June 2021	Second outreach session with Australian affected parents, hosted by DHOM Tokyo.
22 June 2021	Parents' submission translated and provided to MOJ.
s 33(a)(iii)	
18 December 2020	First outreach session with Australian affected parents hosted by DHOM Tokyo.
18 December 2020	Japan travel advice updated with strengthened language on child custody issues. The Embassy added a page to its website to provide more detailed information for Australian parents in Japan.
s 33(a)(iii)	

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Handling Note: FAS CCD [Kate Logan] to lead on consular issues. Questions relating to cases which fall under the 1980 Hague *Convention on the Civil Aspects of International Child Abduction* should be referred to the Attorney-General's Department (AGD).

Key Messages

- Japanese domestic family law does not allow for joint custody following the separation of parents, leaving access to a child at the discretion of the parent with whom the child lives.
- Since 2004, DFAT has assisted the parents of 85 children.
- There are currently 15 affected parents and 22 children.
- We continue to encourage Japan, including at Ministerial and officials' levels to find a solution that allows children to have relationships with both parents, and extended family.
- In February 2023, as part of the public consultation on proposed family law reform in Japan, DFAT and AGD made a joint submission in support of an approach that allowed for shared parenting where it is in the best interests of the child and safe to do so.
- Hague Convention matters relate to international parental child abduction and

What is the Australian Government doing to assist Australian parents facing child abduction and custody issues in Japan?

- Foreign Minister Wong has raised the issue twice with Japanese Foreign Minister Hayashi [7 July 2022; 9 December 2022].
- Attorney-General Dreyfus and Japan's Justice Minister Saito exchanged letters on the issue in March 2023.
- Australian officials continue to raise the matter with Japanese authorities, and to coordinate advocacy with likeminded countries.
- DFAT provides consular assistance to affected Australians in accordance with the

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Consular Services Charter. This includes periodic updates on Australian Government advocacy work.

- AGD continues to work closely with Japanese authorities to manage applications and requests under the Hague Convention for the return of children who have been wrongfully removed or retained overseas by another parent and for access to children overseas.

Why hasn't Prime Minister Albanese raised the issue with Prime Minister Kishida?

- The Australian Government regularly raises this issue with Japanese authorities.
- The Prime Minister has publicly stated [September 2022] he was very aware of the issue and that our Embassy in Japan continued to provide consular assistance to Australian affected parents.
- Foreign Minister Wong has raised the issue twice with Japanese Foreign Minister Hayashi [on 7 July and 9 December 2022]
 - Attorney-General Dreyfus and Japan's Justice Minister Saito exchanged letters in March 2023

Did the Government make a submission on Japan's family law reform proposal? What is the chance the reforms will lead to a joint custody system in Japan?

- On 17 February 2023, DFAT and AGD made a joint submission in support of an approach that establishes shared parenting where it is in the best interests of the child and safe to do so. This is intended to give effect to international obligations under the *UN Convention on the Rights of the Child*, and is consistent with the objectives of the Hague Convention.
- The proposal includes the option for Japan to adopt joint custody, which is the first time Japan has considered its introduction.

How many consular cases are involved in this issue? Are case numbers going up/down?

- DFAT currently provides consular assistance to 15 parents (22 children) on parental abduction and child custody issues in Japan.
- In recent years, DFAT has seen an increase in the number of Australian parents contacting our Embassy in Tokyo to report and/or seek assistance in relation to

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child custody issues in Japan.

- Since 2004, DFAT has provided consular assistance to the parents of 85 children involved in parental abduction and child custody cases in Japan.

Why were the outreach sessions with affected parents cancelled?

- The Government continues to communicate with affected parents regarding their individual consular cases and to provide periodic updates on our advocacy work [most recently on 20 February 2023].
- Due to privacy considerations of consular clients, we are not planning further group sessions.

Why didn't the Foreign Minister agree to 60 Minutes' request for an interview?

- Foreign Minister Wong provided a written statement to 60 Minutes which was released on the program's website.

Why didn't the Australian Government send Catherine Henderson's daughter a letter advising her she was eligible for an Australian passport and could receive consular assistance if she required it?

- Foreign Minister Wong has asked the department to carefully explore this option as a priority.

Background

Japan's family law system does not allow for joint custody of children following divorce. s 33(a)(iii)

Where parents are unable to agree on custody and care arrangements, they can pursue their case through Japan's family court. s 33(a)(iii)

There are also parents who are experiencing challenges with exercising their rights of access or rights of custody for children abducted overseas to or from Japan pursuant to the 1980 Hague *Convention on the Civil Aspects of International Child Abduction* (Hague Convention). The AGD continues to engage with Japanese authorities.

Government engagement

Foreign Minister Wong has raised the issue twice with Japanese Foreign Minister Hayashi: on 7

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July 2022, during a bilateral meeting on the margins of the G20 Foreign and Development Ministers' Meeting in Bali, Indonesia; and on 9 December in the margins of the Japan-Australia 2+2 Foreign and Defence Ministerial Consultations held in Tokyo, Japan.

On 1 May 2023, Assistant Foreign Minister Watts raised the issue with Ito

____ Kiichiro,
Acting Director-General, International Bureau, LDP during a virtual meeting.

s 33(a)(iii)

Australian journalist Eryk

Bagshaw asked the Prime Minister if he had raised the issue with Kishida at Abe Shinzo's state funeral in Tokyo on 27 September 2022. The Prime Minister responded he had not but that he was very aware of it and that our Embassy in Japan continued to provide consular assistance to Australian affected parents.

s 33(b)

Government of Japan

Japan's Justice Ministry's Family Law Subcommittee conducted a public consultation process on family law reform, which included consideration of a joint custody model. DFAT and AGD made a joint submission encouraging Japan to allow for shared parenting arrangements to enable children to benefit from the relationship with both parents where it is safe to do so. The submission was lodged on 17 February 2023. s 33(b)

s 33(a)(iii)

Japanese media reported on 18 April 2023 that the Family Law Subcommittee had shelved the option of maintaining the current sole custody system and was expected to consider allowing parents to choose between sole and joint custody. s 33(a)(iii)

Affected parent engagement

DFAT provides consular assistance to 15 affected parents (in respect of 22 children) in relation

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to child custody and abduction issues in Japan. s 47F(1)

Further assistance is available through AGD where parents have made an application under the Hague Convention for the return of their child who has been wrongfully removed or retained overseas by another parent or to seek access to their child. s 47F(1)

- QoN 1835 – Senate (6 April 2023) – Senator Birmingham – Has the Minister taken action in response to media reports about child abductions in Japan?

Freedom of Information (FOI) Requests

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Recent Ministerial Comments

- A [statement](#) from Foreign Minister Wong was added to the 60 Minutes website in response to the program “Kidnapped in Japan” which aired on 19 March 2023.

Relevant Media Reporting

- Journalist Eryk Bagshaw (SMH) plans to attend the G7 in Japan according to an affected parent. The G7 is scheduled for 19-21 May 2023.
- On 22 March 2023, the Sydney Morning Herald published the article, “Amid global outcry, Australia intervenes in Japan sole custody debate”.
- On 21 March 2023, The Sydney Morning Herald published the article, “Japanese MPs condemn child abductions, call on Australia to pressure Tokyo”.
- On 20 March 2023, The Sydney Morning Herald published the article, “Abducted in Japan - Sarah had 24 hours to abduct her own children or never see them again”.
- On 19 March 2023, the Sydney Morning Herald published the article, “Eighty-two Australian children have been abducted in Japan – and it’s legal”.
- On 19 March 2023, 60 Minutes aired the episode “Kidnapped in Japan”.
- On 25 January 2023, Bloomberg published the article “Japan Tries to Fix a Child Custody System Under Fire From All Sides” which made a brief reference to an affected Australian.
- On 22 December 2022, SBS published an [op-ed by Catherine Henderson](#), an affected Australian parent featured in the SBS Dateline episode.
- On 11 October 2022, SBS Dateline aired the episode, “Japan’s Taken Children”, which highlighted the problems non-custodial parents experience.

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- On 27 September 2022, while in Japan, Prime Minister Albanese was asked by a journalist if he had raised child custody issues with Japan's Prime Minister Kishida. Prime Minister Albanese said he had not raised the issue but that he was very aware of it and our Embassy in Japan continued to provide consular assistance to Australian affected parents.
- On 11 January 2022, video recordings of the December 2020 Australian Embassy Tokyo outreach session for parents were used in [TikTok](#) videos. The videos included recordings of DHOM Tokyo and affected parents speaking. A further version of the same video was released on 16 February 2022.
- On 15 December 2021, Japan's former Ambassador, [Yamagami Shingo](#) wrote an [opinion](#) piece published by the Sydney Morning seeking to clarify Hague Convention statistics and raise concerns about Australia's use of the term 'abduction' – reserved in Japan for DPRK state-sponsored abductions - in child custody cases.
- On 14 December 2021, the Sydney Morning Herald published an [article](#) on child abduction and custody issues, which included comment from (then) Ambassador Yamagami suggesting Australian parents were 'confused' by Japan's legal system.
- On 14 August 2021, the Sydney Morning Herald published an [article](#) on child abduction and custody issues alleging the Japanese Government had organised sessions with Japanese parents in locations around the world advising them how to retain custody of their children following separation.
- Scott McIntyre demonstrated support for affected French father, Vincent Fichot, undertaking a hunger strike in Tokyo in July 2021: [French father on hunger strike awaits Macron in Tokyo - Nikkei Asia](#).
- Scott McIntyre wrote an opinion piece in the Sydney Morning Herald on 18 November 2020 – [Australia must raise tragedy of child abductions in Japan](#).

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PDR No: SB23-000110	
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Consultation: NSD/NEB/JPN, Tokyo Post, AGD, Date: 1 May 2023	

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HOM meeting with Saito Ken, Minister of Justice

Time: 1745 – 1805 **Date:** Tuesday 14 March **Venue:** Ministry of Justice

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s 33(a)(iii)

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JAPAN: CHILD ABDUCTION AND CUSTODY

ISSUES

- Japanese domestic family law does not allow for joint custody following the separation of parents, leaving access to a child at the discretion of the parent with whom the child lives.
- We provide consular assistance to Australian parents facing difficulties maintaining contact with their children in Japan.

KEY MESSAGES

- I (Minister Wong) acknowledge the distress experienced by Australian parents who have been separated from their children.
- We continue to work sensitively to encourage Japan to find a solution that allows children to have meaningful relationships with both parents, and extended family.
- On 17 February, as part of a public consultation on proposed family law reform in Japan, DFAT and AGD made a joint submission in support of an approach that allowed for shared parenting where it is in the best interest of the child and safe to do so.
- I (Minister Wong) raised the issue with my counterpart twice in the last year.

What is the Government doing to assist Australian parents facing child abduction and custody issues in Japan?

- We are providing consular assistance to affected Australians in accordance with the Consular Services Charter. This includes periodic updates on Australian Government advocacy work.
- It is important to remember that these are matters for the Japanese courts
 - we encourage Australians to seek legal advice and representation in Japan.
- The Australian Government encourages Japan to find a solution that allows children to have meaningful relationships with both parents, and extended family
 - I (Foreign Minister Wong) have raised the issue twice with my counterpart Foreign Minister Hayashi [most recently on

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9 December 2022]

- Australian officials continue to raise this matter with Japanese authorities [most recently on 14 March 2023].
- AGD continues to work closely with the Japanese authorities to manage applications and requests under the 1980 *Hague Convention on the Civil Aspects of International Child Abduction* (Hague Convention) for the return of children who have been wrongfully removed or retained overseas by another parent and for access.

If Asked: Did the Australian Government make a submission on Japan's draft family law reform proposal?

- On 17 January, DFAT and AGD made a joint submission in support of an approach that establishes shared parenting where it is in the best interests of the child and safe to do so. This is intended to give effect to international obligations under the UN *Convention on the Rights of the Child*, and is consistent with the objectives of the Hague Convention.

If Asked: What is the chance Japan's draft family law proposal will lead to a joint custody system in Japan?

- The draft proposal includes the option for Japan to adopt joint custody, which is the first time Japan has considered its introduction
- Australia welcomes these developments, noting decisions are matters for the Government of Japan.

How many Australian consular cases are involved in this issue?

- DFAT currently provides consular assistance to **15** affected parents (in respect of 22 children) in relation to parental abduction and child custody issues in Japan.
- Since 2004, DFAT has provided consular assistance to the parents of 85 children with respect to parental abduction and child custody concerns in Japan.

If Asked: What is the Government doing to assist Mr X/Ms X (whose children have been abducted by their spouse in Japan)?

- Due to privacy considerations, it is not appropriate to comment on individual cases.

If Asked: Did Prime Minister Albanese raise the issue with Japanese Prime Minister Kishida when they met in October 2022 [for the annual leaders' meeting in Perth] and in September 2022 [at Shinzo Abe's

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state funeral in Tokyo]?

- The Prime Minister discussed a range of bilateral matters of mutual interest with Prime Minister Kishida on these two occasions.
- I (Foreign Minister Wong) have raised the issue twice with my counterpart [Foreign Minister Hayashi in July and December 2022]
 - Australian officials regularly raise this issue with Japanese authorities, including s 33(a)(iii) and through our Embassy in Tokyo.

If Asked: Why has the Australian Government cut off communication with affected parents?

- The Government continues to communicate with parents regarding their individual consular cases and to provide periodic updates on our advocacy work [most recently on 20 February 2023].
- Due to privacy considerations of consular clients, we are not planning further group sessions.

If Asked: Japan's Ambassador has objected to Australia's use of the term 'abduction'. Why does Australia continue to use it?

- The term is appropriate for the Australian domestic context and is consistent with the 1980 Hague *Convention on the Civil Aspects of International Child Abduction*.

If Asked: How will the Government ensure that more Australian parents, including those stationed in Japan under the reciprocal access agreement, will not fall victim to these laws?

- The Smartraveller website provides advice to travellers on Japan's sole custody laws, including advice that access for non-custodial parents may be limited and that courts usually give sole custody to the parent that has taken care of the child most recently.
- Australians stationed in Japan under the reciprocal access agreement receive country briefs prior to deployment.

If Asked: What more is the government proposing to do to protect Australian citizens and encourage Japan to change their laws?

- I (Minister Wong) will continue to raise the issue with my Japanese counterpart.
- Australian officials, including the Ambassador, will continue to raise the issue with Japanese officials.
- The Attorney General has written to the Japanese Minister of Justice to

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- explore ways to share information about reform.
- The Australian Ambassador in Tokyo is engaging with Ambassadors of similarly affected countries on opportunities for advocacy.
- AGD and DFAT will explore opportunities for Australia's family courts, lawyers and police to share information about Australia's experiences.

If Asked: Why isn't Japan abiding by its commitments to Interpol?

- This is a matter for Japanese authorities, and it would be inappropriate to comment on individual cases or policing matters.

If Asked: Why didn't the Foreign Minister agree to 60 Minutes' request for an interview

- I (Minister Wong) provided a written statement to 60 Minutes which has been released on the program's website.

If Asked: Why didn't the Australian Government send Catherine Henderson's daughter a letter advising her she was eligible for an Australian passport and could receive consular assistance if she required it?

- It is currently not standard practice for the Department of Foreign Affairs to notify people that they are eligible for an Australian Passport.
- I (Minister Wong) am aware that some other nations do send these letters out as a standard procedure.
- I (Minister Wong) have directed my department to explore options for contacting children in these circumstances to offer avenues to establish Australian citizenship and apply for an Australian passport.
- But it's important that we understand the risks and implications of contacting these children directly to prevent any further harm.

If Asked: Can you confirm the statement reported in the Sydney Morning Herald on 21 March 2023 that Australia has refused four requests to return children to Japan under the Hague Convention?

- Children have been returned to Australia from Japan, through enforceable arrangements reached between the parents within the Japanese legal process. One child has been returned to Japan from Australia.
- Any questions on the Convention should be directed to the Attorney-General.

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Background

Japan's family law system does not allow for joint custody of children following the separation of parents. s 33(a)(iii)

Critics argue this incentivises parental abduction. Where parents are unable to agree on custody and care arrangements, they can pursue their case through Japan's family court. s 33(a)(iii)

There are also parents who are experiencing challenges with exercising their rights of access or rights of custody for children abducted overseas to or from Japan pursuant to the 1980 Hague *Convention on the Civil Aspects of International Child Abduction* (Hague Convention). The Attorney-General's Department (AGD) continues to engage with Japanese authorities in relation to cases made under the Hague Convention regarding the return of children who have been wrongfully removed or retained overseas by another parent, and for access to children overseas.

Since 2020, there has been an increase in advocacy by Australian parents facing domestic abduction and custody issues within Japan (i.e. matters falling outside the Hague Convention), which remain a matter for the Japanese courts.

s 47C(1)

s 47E(d)

s 33(a)(iii)

s 47C(1)

Government engagement

s 33(a)(iii)

In September 2022, at Shinzo Abe's state funeral in Tokyo, the Prime Minister was asked by an Australian journalist if he had raised the issue with Kishida. The Prime Minister responded that he had not, but that he was very aware of it and our Embassy in Japan continued to provide consular assistance to Australian affected parents.

You (Foreign Minister Wong) have raised the issue twice with Japanese Foreign Minister Hayashi: on 7 July 2022, during a bilateral meeting on the margins of the G20 Foreign and Development Ministers' Meeting in Bali, Indonesia; and on 9 December 2022, in the margins of the Japan-Australia 2+2 Foreign and Defence Ministerial Consultations held in Tokyo, Japan.

s 33(a)(iii)

Australian officials regularly raise the issue with Japanese counterparts. Most recently, the

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Australian Ambassador to Japan raised the issue with Justice Minister Saito Ken on 14 March 2023.

Government of Japan

Japan's Justice Ministry's Family Law Subcommittee has conducted a public consultation process on proposed family law reform, which included consideration of a joint custody model. The draft proposal was available for public comment until 18 February 2023. Japan's Justice Ministry confirmed anyone could make a submission but has not confirmed if/how submissions will be shared with the public.

DFAT and AGD's joint submission, which you approved (Foreign Minister Wong), encouraged Japan to allow for shared parenting arrangements to enable children to benefit from relationships with both parents, and their extended families, where it is safe to do so. The submission was lodged on 17 February. s 33(b)

s 33(a)(iii)

s 33(b)

Australian affected parent engagement

DFAT provides consular assistance to 15 affected parents (in respect of 22 children) in relation to child custody and abduction issues in Japan. s 47F(1)

s 47F(1)

To update parents on Australia's advocacy efforts, our Embassy in Tokyo previously hosted two virtual talks (23 June 2021 and 18 December 2020). s 47E(d)

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s 47E(d)

Updates

to parents on our advocacy continue individually as part of regular consular case management, and through periodic email updates. The most recent update was emailed on 20 February 2023, advising parents that DFAT and AGD had made a joint submission in support of shared parenting arrangements as part of the public consultation process on family law reform.

On 19 March 2023, 60 Minutes aired the program "Kidnapped in Japan" which covered the issues faced by Australian non-custodial parents under Japan's sole custody laws. Australian parents Scott McIntyre and Randolph Kavanagh were the main participants in the program. The piece was critical of Prime Minister Albanese for not raising the issue directly with his counterpart. The story noted that you (Minister Wong) had raised the issue but had declined to be interviewed and instead offered a written statement. Written companion pieces appeared in The Age and Sydney Morning Herald on 19, 20 and 21 [REDACTED]

s 22(1)(a)(ii)

s 22(1)(a)(ii)

s 22(1)(a)(ii)

s 22(1)(a)(ii)

15 March 2023

s 22(1)(a)(ii)

JAPAN: CHILD ABDUCTION AND CUSTODY ISSUES

- Japanese domestic family law does not allow for joint custody following the separation of parents, leaving access to a child at the discretion of the parent with whom the child lives.
- We provide consular assistance to Australian parents facing difficulties maintaining contact with their children in Japan.

KEY MESSAGES

Australian parents who have been separated from their children.

- We continue to work sensitively to encourage Japan to find a solution that allows children to have relationships with both parents, and extended family.
- On 17 February, as part of a public consultation on proposed family law reform in Japan, DFAT and AGD made a joint submission in support of an approach that allowed for shared parenting where it is in the best interest of the child and safe to do so.
- I (Minister Wong) raised the issue with my counterpart twice in the last year.

What is the Government doing to assist Australian parents facing child abduction and custody issues in Japan?

- We are providing consular assistance to affected Australians in accordance with the Consular Services Charter. This includes periodic updates on Australian Government advocacy work.
- It is important to remember that these are matters for the Japanese courts
 - we encourage Australians to seek legal advice and representation in Japan.
- The Australian Government encourages Japan to find a solution that allows children to have relationships with both parents, and extended family
 - I (Foreign Minister Wong) have raised the issue twice with my counterpart Foreign Minister Hayashi [most recently on 9 December 2022]
 - Australian officials continue to raise this matter with Japanese authorities [most recently on 14 March 2023].

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s 22(1)(a)(ii)

- AGD continues to work closely with the Japanese authorities to manage applications and requests under the 1980 Hague *Convention on the Civil Aspects of International Child Abduction* (Hague Convention) for the return of children who have been wrongfully removed or retained overseas by another parent and for access.

If Asked: Did the Australian Government make a submission on Japan's draft family law reform proposal?

- On 17 January, DFAT and AGD made a joint submission in support of an approach that establishes shared parenting where it is in the best interests of the child and safe to do so. This is intended to give effect to international obligations under the UN *Convention of the Rights of the Child*, and is consistent with the objectives of the Hague Convention.

If Asked: What is the chance Japan's draft family law proposal will lead to a joint custody system in Japan?

- The draft proposal includes the option for Japan to adopt joint custody, which is the first time Japan has considered its introduction
- Australia welcomes these developments, noting decisions are matters for the Government of Japan.

How many Australian consular cases are involved in this issue?

- DFAT currently provides consular assistance to **15** affected parents (in respect of 22 children) in relation to parental abduction and child custody issues in Japan.
- Since 2004, DFAT has provided consular assistance to the parents of 85 children with respect to parental abduction and child custody concerns in Japan.

If Asked: What is the Government doing to assist Mr X/Ms X (whose children have been abducted by their spouse in Japan?

- Due to privacy considerations, it is not appropriate to comment on individual cases.

If Asked: Did Prime Minister Albanese raise the issue with Japanese Prime Minister Kishida when they met in October 2022 [for the annual leaders' meeting in Perth] and in September 2022 [at Shinzo Abe's state funeral in Tokyo]?

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- The Prime Minister discussed a range of bilateral matters of mutual interest with Prime Minister Kishida on these two occasions.
- I (Foreign Minister Wong) have raised the issue twice with my counterpart [Foreign Minister Hayashi in July and December 2022]
 - Australian officials regularly raise this issue with Japanese authorities, including s 33(a)(iii) through our Embassy in Tokyo.

If Asked: Why has the Australian Government cut off communication with affected parents?

- The Government continues to communicate with parents regarding their individual consular cases and to provide periodic updates on our advocacy work [most recently on 20 February 2023].
- Due to privacy considerations of consular clients, we are not planning further group sessions.

If Asked: Japan's Ambassador has objected to Australia's use of the term 'abduction'. Why does Australia continue to use it?

- The term is appropriate for the Australian domestic context and is consistent with the 1980 *Hague Convention on the Civil Aspects of International Child Abduction*.

If Asked: How will the Government ensure that more Australian parents, including those stationed in Japan under the reciprocal access agreement, will not fall victim to these laws?

- The Smartraveller website provides advice to travellers on Japan's sole custody laws, including advice that access for non-custodial parents may be limited and that courts usually give sole custody to the parent that has taken care of the child most recently.
- Australians stationed in Japan under the reciprocal access agreement receive country briefs prior to deployment.

If Asked: What more is the government proposing to do to protect

- I (Minister Wong) will continue to raise the issue with my Japanese counterpart.
- Australian officials, including the Ambassador, will continue to raise the issue with Japanese officials.

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s 22(1)(a)(ii)

- The Attorney General has written to the Japanese Minister of Justice to explore ways to share information about reform.
- The Australian Ambassador in Tokyo is engaging with Ambassadors of similarly affected countries on opportunities for advocacy.
- AGD and DFAT will explore opportunities for Australia's family courts, lawyers and police to share information about Australia's experiences.

If Asked: Why isn't Japan abiding by its commitments to Interpol?

- We encourage Japan to abide by any commitments to INTERPOL, noting this is a matter for Japanese authorities.
- manage applications and requests under the 1980 Hague *Convention on the Civil Aspects of International Child Abduction* (Hague Convention) for the return of children who have been wrongfully removed or retained overseas by another parent and for access.

If Asked: Why didn't the Foreign Minister agree to 60 Minutes' request for an interview

- I (Minister Wong) provided a written statement to 60 Minutes which has been released on the program's website.

If Asked: Why didn't the Australian Government send Catherine Henderson's daughter a letter advising her she was eligible for an Australian passport and could receive consular assistance if she required it?

- the Department of Foreign Affairs currently does not send notifications to minors who are approaching their 18th birthday advising they are eligible for an Australian Passport.
- I (Minister Wong) am aware that while some other nations do send these letters out as a standard procedure, there would be significant resource implications if we were to do so.

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s 22(1)(a)(ii)

Background

Japan's family law system does not allow for joint custody of children following the separation of parents. s 33(a)(iii)

. Critics argue this incentivises parental abduction. Where parents are unable to agree on custody and care arrangements, they can pursue their case through Japan's family court. s 33(a)(iii)

There are also parents who are experiencing challenges with exercising their rights of access or rights of custody for children abducted overseas to or from Japan pursuant to the 1980 *Hague Convention on the Civil Aspects of International Child Abduction* (Hague Convention). The Attorney-General's Department (AGD) continues to engage with Japanese authorities in relation to cases made under the Hague Convention regarding the return of children who have been wrongfully removed or retained overseas by another parent, and for access to children overseas.

Since 2020, there has been an increase in advocacy by Australian parents facing domestic abduction and custody issues within Japan (i.e. matters falling outside the Hague Convention), which remain a matter for the Japanese courts.

s 47C(1)

s 47E(d)

s 33(a)(iii)

s 47C(1)

Government engagement

s 33(a)(iii)

. In September 2022, at Shinzo Abe's state funeral in Tokyo, the Prime Minister was asked by an Australian journalist if he had raised the issue with Kishida. The Prime Minister responded that he had not, but that he was very aware of it and our Embassy in Japan continued to provide consular assistance to Australian affected parents.

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s 33(b)

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15 March 2023

s 22(1)(a)(ii)

Australian officials regularly raise the issue with Japanese counterparts. Most recently, the Australian Ambassador to Japan raised the issue with Justice Minister Saito Ken on 14 March 2023.

Government of Japan

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s 33(a)(iii)

s 33(b)

Australian affected parent engagement

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To update parents on Australia's advocacy efforts, our Embassy in Tokyo previously hosted two virtual talks (23 June 2021 and 18 December 2020). s 47E(d)

Updates to parents on our advocacy continue individually as part of regular consular case management, and through periodic email updates. The most recent update

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15 March 2023

s 22(1)(a)(ii)

was emailed on 20 February 2023, advising parents that DFAT and AGD had made a joint submission in support of shared parenting arrangements as part of the public consultation process on family law reform.

On 19 March 2023, 60 Minutes aired the program "Kidnapped in Japan" which covered the issues faced by Australian non-custodial parents face in Japan's sole custody laws. Australian parents Scott McIntyre and Randolph Kavanagh were the main participants in the program. The piece was critical of the PM for not raising the issue directly with his counterpart. The story noted that you (Minister Wong) had raised the issue but had declined to make a statement. Eryk Bagshaw, North Asia correspondent for The Sydney Morning Herald and The Age, produced the story. Written companion pieces appeared in the Age and Sydney Morning Herald on 19 March 2023, along with an editorial broadly supportive of Australia taking more robust action to encourage Japan to change its laws.

Other Australian parents, Catherine Henderson, Scott Beattie and Daniel Potocki participated in the stories. On 10 March, 60 Minutes filmed Japan's Embassy in Canberra without permission, leaving the premises only when approached by the Australian Federal Police. The Embassy of Japan subsequently complained to the Nine Network about the incident. 60 Minutes showed secretly filmed footage of Australian Embassy officials, including former Deputy Ambassador HK Yu. 60 Minutes also showed secretly filmed footage inside police stations in Japan (the faces of officers were blanked out).

On 11 October 2022, SBS Dateline aired the program, 'Japan's Taken Children', which highlighted the problems non-custodial parents experience navigating Japan's sole custody laws. Australian affected parent Ms Henderson was the main participant in the program. On 22 December 2022, SBS published an op-ed by Ms Henderson to complement the SBS Dateline program. A Bloomberg article published on 25 January 2023, also made a brief reference to Ms Henderson's situation.

s 47F(1)

International Developments

In the UN Human Rights Committee's concluding observations on the seventh periodic report of Japan (released on 30 November 2022), the Committee wrote it was "concerned at reports of frequent cases of parental child abduction, both domestic and international, and a lack of adequate response by the State party".

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s 47C(1)

Since mid-2020, Australia has:

s 33(a)(iii)

- Foreign Minister (Minister Payne and Minister Wong) has raised with counterpart four times.
- Attorney-General Dreyfus and Japan's Justice Minister Saito exchanged letters on child custody and family law reform.
- Raised child custody at Ambassador level with Japan's Minister for Justice on five occasions.

s 33(a)(iii)

- s 33(a)(iii)

s 33(a)(iii)

- Raised the issue in Australia’s statement to Japan’s Universal Periodic Review by welcoming Japan’s family law reform review, including consideration of joint custody.

s 33(a)(iii)

Supported Australians

- Delivered considerable consular assistance to Australian parents, both on their individual consular cases and through regular group engagement to provide updates on our advocacy with Japan.
- Strengthened our travel advice on family law issues and provided more detailed information on the Tokyo Post website.

s 47C(1)

s 33(a)(iii)

We assess our overall approach, s 33(a)(iii)
s 33(a)(iii) remains effective and appropriate, s 33(a)(iii)

s 33(a)(iii)



Next steps

s 33(a)(iii)

Short term
s 33(a)(iii)

s 33(a)(iii)

Medium to Longer Term
s 33(a)(iii)



[REDACTED]

s 33(a)(iii)

- Australian Embassy Tokyo to identify further opportunities to alert Australians to the differences between Australian and Japanese domestic family law through our travel advice, on our website and through other publicly available materials.

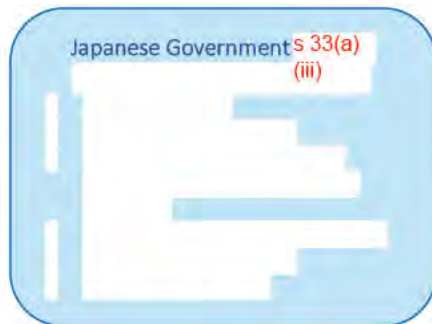
s 33(a)(iii)

Key Stakeholders

There are a number of stakeholders with whom we will engage to pursue our advocacy including:

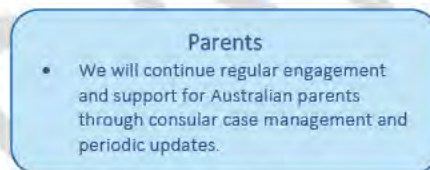
s 33(a)(iii)

[REDACTED]



s 33(a)(iii)

s 33(a)(iii)



The current family law reform process in Japan is an unprecedented opportunity for meaningful change. s 33(a)(iii)

While consideration of joint custody in Japan's proposed reform is a significant step, currently affected parents argue the existence of joint custody alone would likely not be retrospectively applied and not get them access. s 33(a)(iii)

s 33(a)(iii)





s 33(a)(iii)

s 47E(d)

Our engagement with some parents on their individual cases is frequent – s 47E(d)

We must continue to provide all assistance possible but within the scope of the Consular Services Charter and the constraints of Japan's privacy and legal settings. Managing the expectations of affected parents on the extent to which the embassy can assist in their individual case, particularly where they have exhausted all legal avenues through Japan's family court, is becoming increasingly challenging.

We also have a duty of care to the children concerned, and their custodial parents, to ensure that we do not inadvertently cause harm or distress. For example, we must assiduously comply with the Australian Privacy Act and ensure we act in accordance with Japan's legislative framework.

Background

Australia's parents

DFAT currently provides consular assistance to 15 affected parents (in respect of 22 children) in relation to child custody and abduction issues in Japan. s 47F(1)



[REDACTED]

s 47F(1) Tokyo Post is providing consular assistance to several Australian parents residing in Japan, affected by parental abduction, custody and access disputes. s 47F(1)

Australian families have been very active in lobbying Australian ministers and politicians and they have attracted media attention in both Japan and Australia.

DRAFT

[REDACTED]



Complex legal and cultural issues

Japan's laws do not currently recognise shared parental custody² s 33(a)(iii)

Japan's family law practices are rooted in deeply historic cultural norms. Japan is considering a proposal on family law reform with the possible inclusion of joint custody. The proposal was released for public comment in December 2022. Australia s 33(a)(iii) made submissions in support of family law reform during the public consultation process. Due to the significant number of submissions received, no timeline has not been announced but it is expected to be a lengthy process, with a recommendation unlikely to be put to the Diet before 2024. Groups advocating for single mothers are strongly opposed to the introduction of joint custody.

s 33(a)(iii)

Australia's perspective

The differences between Australian and Japanese family law practices are not peculiar or unique to the Australia-Japan relationship and Australia's emphasis on shared parenting arrangements is in line with western international trends. Australia's laws reflect the *Convention on the Rights of the Child* (CRC), particularly: that children, as far as possible, have the right to know and be cared for by their parents³; the right of the child to preserve their identity, including family relations as recognised by law without unlawful interference⁴; and the right of the child to maintain personal relations and direct contact with both parents (unless contrary to a child's best interests⁵). s 33(a)(iii)

² Australia's laws no longer refer to 'custody'; but apply two different concepts: (i) 'shared parental responsibility' – which includes duties, responsibilities and powers and authority both parents have for a child including decision-making; and (ii) 'time with' or 'lives with' which concerns physical contact.

³ Article 7 of the CRC

⁴ Article 8 of the CRC

⁵ Article 9 of the CRC



s 33(a)(iii)

DRAFT

Our objective

To increase access for Australian parents in child custody and parental abduction cases in Japan

- s 33(a)(iii)
- improved short to medium term outcomes for Australian parents separated from their children
s 33(a)(iii)

Steps so far

Since mid-2020, Australia has:

s 33(a)(iii)

- Foreign Minister (Minister Payne and Minister Wong) has raised with counterpart four times.
- Raised child custody at Ambassador level with Japan's Minister for Justice on five occasions.

s 33(a)(iii)

Supported Australians –

- Delivered consular assistance to Australian parents, both on their individual consular cases and through regular group engagement to provide updates on our advocacy with Japan.
- Strengthened our travel advice on family law issues and provided more detailed information on the Tokyo Post website.

Next steps

s 33(a)(iii)

s 33(a)(iii)

We will continue regular engagement and support for Australian parents through consular case management and periodic updates.

Risks

The current reform process is an unprecedented opportunity for meaningful reform. s 33(a)(iii)

While consideration of joint custody in Japan's proposed reform is a significant step, currently affected parents argue the existence of joint custody alone would likely not be retrospectively applied and not get them access. s 33(a)(iii)



Australian Government
Department of Foreign Affairs and Trade

OFFICIAL: Sensitive

s 22(1)(a)(ii)

Ministerial Submission

Cleared by:

Date sent to MO: 3 February 2023

FOR: Senator the Hon Penny Wong

Action Requested By: 15 February 2023

Reason for Urgency: Not Applicable

Recommendation for DFAT and AGD to make a submission to Japan's family law reform proposal

Japan has released for public comment a proposal on family law reform including, for the first-time, consideration of a joint parental custody model. s 33(a)(iii)

we recommend making a submission in support of reform.

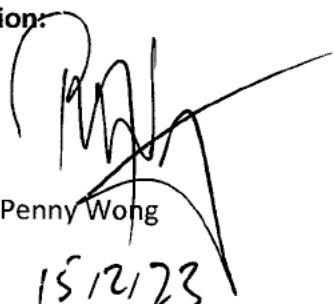
Recommendation:

That you:

- a) Agree that DFAT and AGD make a submission to Japan's family law reform public consultation process.
- b) Should you agree to a), agree that we inform affected parents at an appropriate time in advance of making the submission.

Decision:Agreed / Not AgreedAgreed / Not Agreed

Domestic/Media Considerations: Australian parents continue to engage with the media on the implication of Japan's family law system for access to their children.

Action:

Penny Wong

15/2/23

From: Alison Duncan, AS CIB, ISG | CCD | Consular Communications and Policy Branch

s 22(1)(a)(ii)

s 22(1)(a)(ii)

Can this proposal be funded from within your existing divisional allocation (departmental/aid)? Not Applicable

If the proposal high risk/high value (over \$100m) concept has been approved by the Aid Governance Board? Not Applicable

Consultation: AGD, Tokyo and Geneva Posts, NEB, HRB, GEB, FMO

**Background:**

Japan has released for public comment a proposal on family law reform including, for the first-time, consideration of a joint parental custody model. See post translation (**Attachment A**). This is a significant step **s 33(a)(iii)**. Nevertheless, we recommend a submission given the impact of the law on Australian families. The proposed draft (**Attachment B**) supports a parental joint custody model based on the Australian Family Law Act 1975, international obligations under the UN *Convention on the Rights of the Child*, and consistent with the 1980 Hague *Convention on the Civil Aspects of International Child Abduction*. Submissions are likely to be made public.

s 33(a)(iii), s 33(b)

3. Consistent with a whole-of-government approach and noting AGD's engagement with Japanese authorities on the Hague Convention, we have worked with AGD on the submission. AGD advised that Australian family law recognises that the rights of children extend to having connection with their parents, extended family and culture, where this is in the child's best interest and is safe to do so. On 30 January 2023, AGD released the Exposure Draft for the Family Law Amendment Bill 2023. The Bill proposes to amend various sections of the *Family Law Act 1975* including in relation to concepts of parental responsibility and the best interests of the child; to ensure a focus on safety. The Bill continues to recognise the benefit of children maintaining a relationship with both parents where it is safe to do so as part of the assessment of a child's best interests.

s 47F(1)

Submission to the public consultation process on family law reform in Japan

The Australian Department of Foreign Affairs and Trade and the Attorney-General's Department welcome the work of the Family Law Subcommittee of the Legislative Assembly on family law reform, including consideration of a joint custody model. We welcome the opportunity to comment on the *Interim Proposals for Revisions to the Family Law System* and share information about Australia's principles for shared parental responsibility of children after the separation of parents.

Underlying Principles on the Rights and Best Interests of the Child

Australian family law recognises that the rights of children extend to having connection with their parents, extended family and culture, where this is in the child's best interest and is safe to do so. This approach is intended to give effect to the *United Nations Convention of the Rights of the Child* and is also consistent with objects of the *Hague Convention on the Civil Aspects of International Child Abduction*. The *Convention of the Rights of the Child* includes:

- Article 9(3): States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
- Article 18(1): States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

The relationship between parent and child, when free from violence, abuse, neglect and other harm, is unique and one that nurtures the physical, emotional, and social development of the child. Prolonged separation in a healthy parent-child relationship can significantly impact the mental health and wellbeing of not only the child, but also the separated parent, causing ongoing distress. Children, parents and their extended families (grandparents, aunts, uncles, cousins) can experience harmful feelings of grief and loss with long-term impacts on their wellbeing.

In Australia, the *Family Law Act 1975* provides the primary legal framework for resolving arrangements for children and property following a relationship breakdown. Family courts have jurisdiction to hear and resolve parenting and property disputes when these cannot be resolved by the parties themselves. The *Family Law Act* provides that the objects when dealing with parental responsibility and children's care matters and resolving parenting disputes include to: ensure the best interests of the child are met; and to give effect to the international rights and obligations of the United Nations Convention on the Rights of the Child.

Proposed Amendments to Australia's Family Law

Australia continues to review and update our system to support the best interests of children. Proposed amendments to Australia's *Family Law Act 1975* were announced on 30 January 2023. The amendments are intended to clarify, simplify and strengthen the legislation, with an emphasis on the welfare of children. Among other changes, the draft *Family Law Amendment Bill 2023* proposes to simplify the factors a court must consider when determining the best interests of a child to the following six principles:

- what arrangements best promote the safety of the child and the child's carers, including safety from family violence, abuse, neglect or other harm

- any views expressed by the child
- the developmental, psychological and emotional needs of the child
- the benefit of being able to maintain relationships with each parent and other people who are significant to them, where it is safe to do so
- the capacity of each proposed carer of the child to provide for the child's developmental, psychological and emotional needs, having regard to the carer's ability and willingness to seek support to assist them with caring, and
- anything else that is relevant to the particular circumstances of the child.

Information about the proposed reforms can be found at <https://consultations.ag.gov.au/families-and-marriage/family-law-amendment-bill/>.

Australia's Approach to Parenting After Separation

In Australia, in the majority of cases, both parents will continue to play an active role in parenting after separation – that is, they will both have a role in making decisions about a child's upbringing, including such things as a child's education, medical care, and their legal and financial matters.

Parents are encouraged, where it is safe to do so, to negotiate and agree on how much time is spent with each parent, where the child resides, where they spend weekends and holidays, and how parents divide responsibility for day-to-day parenting, such as preparing meals, helping with homework, discipline, and taking children to school, sports or social activities. Arrangements can also include other people important in the child's life, such as grandparents or other relatives. This approach reflects that each family is different and parents are usually best placed to make caring arrangements that will work best for their child.

Relationship breakdowns are an emotionally challenging time, especially for children. Australia's family law system is intended to support the majority of parents to amicably agree on arrangements for the support and care of children as quickly and simply as possible. A key aspect of this is helping parents to avoid the stress, conflict, cost and time of adversarial legal processes pursued through the courts. Instead, parents can access a range of free or low-cost government-funded support services, such as the *Family Relationships Advice Line* (a free-call telephone service available to all Australian callers) or other information sources such as Family Relationships Online (familyrelationships.gov.au) to assist them to amicably resolve disputes and negotiate arrangements for the shared care and upbringing of their child. These services include online, telephone and in-person counselling and family dispute resolution services and a range of helpful informational resources. Parents can voluntarily enter into parenting agreements to clearly set out their arrangements and expectations. Community-based family support services can help parents make a parenting agreement to suit their particular family circumstances.

Australia's approach is to provide the information, tools and support to help separating parents navigate this difficult change in their lives and put the interests of their child first. Most parents in Australia successfully and cooperatively make their own agreements about caring for their child without going to court. In cases where parents are unable to agree, or where there are concerns about family violence or child safety, cases can be brought before Australia's family courts for decision.

The Role of the Family Court and Protecting the Child from Harm

It is a sad reality that in some cases family violence, abuse, neglect or other harms exist. This can have devastating impacts on children and their carers. These are broader societal issues that require concerted effort across all levels of government and society, but the family law system plays a key role in ensuring appropriate safeguards are in place to identify risks of family violence and abuse and protect children.

In these cases, which are generally the most complex, a family court can make parenting orders for the care of children. The Court can also make orders requiring a parent(s) to attend family counselling, family dispute resolution, or participate in a parenting course, program or other service. Once the Court has made orders, parents are legally obliged to comply with them. Enforceable penalties exist for parents who breach court orders.

Conclusion

We continue to support Australian parents seeking to be reunited with their children in Japan. Many have not seen or spoken to their children for years. Affected Australian parents have highlighted to us the barriers they experience engaging with the current Japanese family law system, as well as the ongoing psychological, emotional, and financial difficulties they face while seeking to maintain relationships with their children.

Australia considers both parents taking an active role in parenting is in the best interests of children where it is safe to do so. Australia encourages Japan to introduce family law reform which establishes shared parenting arrangements to enable children to benefit from ongoing, meaningful relationships with both parents, and their extended families, after divorce.

The relevant Australian authorities would be happy to engage with Japan's authorities on the content and operation of Australia's current and draft legislation and exchange views on how best to use family law processes to safely support the needs of children.

「家族法制の見直しに関する中間試案」に関する意見の提出

オーストラリア政府外務貿易省及び司法省は、共同親権案の検討を含む、法制審議会家族法制部会による家族法制の改革に向けた取り組みを歓迎する。オーストラリア政府は「家族法制の見直しに関する中間試案」に意見を述べると共に、両親の離別後、子に対する親の責任を共有するオーストラリアの原則について情報を共有する機会を歓迎する。

子の権利と最善の利益についての根本的原則

オーストラリアの家族法では、子の最善の利益になると共に、安全が保証される限りにおいて、子の権利は彼らの両親や親族、文化とのつながりにまで及ぶ。この考え方は児童の権利に関する条約の履行を意図としており、ハーグ条約（国際的な子の奪取の民事上の側面に関する条約）の目的とも一致している。児童の権利に関する条約には、以下の内容が含まれる：

- 第9条(3)：締約国は、児童の最善の利益に反する場合を除くほか、父母の一方又は双方から分離されている児童が定期的に父母のいずれとも人的な関係及び直接の接触を維持する権利を尊重する。
- 第18条(1)：締約国は、児童の養育及び発達について父母が共同の責任を有するという原則についての認識を確保するために最善の努力を払う。父母又は場合により法廷保護者は、児童の養育及び発達についての第一義的な責任を有する。児童の最善の利益は、これらの者の基本的な関心事項となるものとする。

親子の関係は、暴力や虐待、保護の怠慢（ネグレクト）または他の危害がない場合、独自のものであり、子の身体的、情緒的、社会的発達を促すものである。健全な親子関係における離別の長期化は子のみならず、離別した親の精神的健康や幸福に大きな影響を及ぼし、継続的な苦悩の原因となる。子や両親、彼らの親族（祖父母やおば、おじ、いとこ）は悲しみや喪失感といった有害な感情に苛まれる可能性があり、こうした人々の幸福に長期的な影響が及ぶ場合がある。

オーストラリアで、関係崩壊後の子や財産をめぐる取り決めに解決する主要な法的枠組みを提供するのは1975年家族法である。養育や財産をめぐる争いが当事者間で解決できない場合、家庭裁判所がこうした争いを聞き、解決にあたる。親の責務や子の監護の問題を扱い、養育面での争いを解決する上での目的は、子の最善の利益の確保、及び児童の権利に関する条約にある国際的権利や義務の履行であると、家族法は定めている。

オーストラリアの家族法改正の提案

オーストラリアは子の最善の利益を支えるべく、制度の見直しや改定に引き続き取り組んでいる。オーストラリアの1975年家族法改正の提案は、2023年1月30日に発表された。この改正は、子の幸福に主眼を置きつつ、本法の明瞭化や簡素化、強化を図るものである。2023年家族法改正案では、数ある変更のひとつとして、子の最善の利益を決定するにあたって裁判所が検討すべき要因を以下の6つの原則に絞るよう提案がなされた。

-

どのような取り決めが、家庭内暴力や虐待、ネグレクトや他の危害からの安全を含め、子や子の監護者の安全を最も促進するのか

- 子が示したあらゆる意見
- 子における発達や心理、情緒面での必要性
- 安全が保証される限りにおいて、各親や他の大切な人々との関係を維持できることの利点
- 監護者が世話においてサポートを求めることができる能力や意思を考慮した上で、提案された子の各監護者が、子の発達や心理、情緒面での必要性に応えられるか
- 子が置かれた特定の状況にあてはまる、その他すべての要素

提案された改革についての情報は、以下のウェブサイトより参照できる。

<https://consultations.ag.gov.au/families-and-marriage/family-law-amendment-bill/>

離別後の養育に対するオーストラリアの取り組み

オーストラリアでは多くの場合、両親は離別後も養育において、引き続き積極的な役割を担う。言い換えると、双方が子の教育や医療、法的及び資金的問題などの点で、子の養育についての決定に関わる。両親は安全が保証される限りにおいて協議を行い、意見を合わせるよう促される。この内容には各親とどのくらいの時間を過ごすかや、子の居住場所、週末や休日を過ごす場所、さらには食事の準備や宿題のサポート、しつけ、学校の送り迎え、スポーツや社会活動といった日常の養育においていかに責任を分担するのかが含まれる。こうした取り決めには、祖父母や他の親族など、子の暮らしに欠かせない他の人物が関わることもある。このアプローチには、家族は夫々に異なるという考え、及び通常は両親こそが、子にとって最良となる監護の形態を定める上で最も適した立場にあるという考えが反映されている。

関係の崩壊はとりわけ子にとり、情緒面で試練の時となる。オーストラリアの家族法制は、多くの両親が子へのサポートや監護について、可能な限り早く簡素な形で円満に合意するのを助ける点を目指している。これには、両親が裁判において対立的な法的過程を経る場合に生じるストレスや争い、費用や時間の回避という重要な側面がある。両親は代わりに、揉め事を円満に解決し、子の監護や養育の分担を取り決める協議を行うのを助けるような、政府が拠出する一連の無料もしくは低価格の支援サービスを利用できる。これにはFamily Relationships Advice Line (全国民が利用できる無料電話サービス) や、Family Relationships Online (familyrelationships.gov.au)

のような他の情報サービスがある。これらはオンラインや電話、対面によるカウンセリングを行ったり、家庭内紛争解決サービスや、役に立つ様々な情報源の提供を行っている。両親は自発的に養育の取り決めを結び、こうした取り決めや期待について明確に定めることが可能である。地域に根差した家族支援サービスは、各家庭に固有の状況に見合う両親による養育の合意の形成を支援することができる。

オーストラリアの特徴は、離別する両親が暮らしにおける困難な変化を乗り切れるよう、情報やツール、サポートを提供する点、及び子の利益が最優先される点にある。オーストラリアでは、大方の両親が裁判所を経由せずに、首尾よく、協力的な形で子の扶養についての取り決めを自らで定めている。だが合意が不可能な場合、あるいは家庭内暴力や子の安全にまつわる不安がある場合、オーストラリアの家庭裁判所に決定が持ち込まれることがある。

家庭裁判所の役割と、危害からの子の保護

残念ながら現実を見れば、家庭内暴力や虐待、ネグレクト、その他の危害の事例はいくつか存在する。このような場合、子や彼らの監護者に決定的な影響が及ぶことがある。これらはより広範な社会的問題であり、政府や社会のあらゆるレベルが一丸となった取り組みが求められるが、家族法制には、家庭内暴力や虐待の危険を特定し、子を守る適切な安全措置を定着させる上で大きな役割がある。

通常、最も複雑になるこうした事例では、家庭裁判所は子の監護のため、養育にまつわる命令を出すことができる。裁判所はまた、片方の親あるいは両親に、家族カウンセリングや家庭内紛争の解決、あるいは養育の講座やプログラム、他のサービスに参加するよう命令が可能である。裁判所から命じられた場合、両親にはこれに従う法的義務がある。裁判所命令に違反する両親には、強制的な罰則が科される。

結 論

オーストラリア政府は、日本にいる子との再会を待ち望むオーストラリア人の親への支援を継続する。多くの親が何年も子に面会したり、話したりしていない。影響を被ったオーストラリア人の親は政府に対し、現行の日本の家族法制と関わる中で経験した障壁や、子との関係維持に努める中で、今も直面する心理的、情緒的、資金的困難を強く訴えている。

オーストラリアは、安全が保証される限り、養育において双方の親が積極的な役割を担うことが、子の最善の利益になると考える。オーストラリアは日本に対し、子が離婚後も両親や彼らの親族との継続した、意義ある関係から恩恵を得られるよう、分担された養育のあり方を確立するような家族法の改革を導入するよう勧めたい。

オーストラリアの担当当局は、自国の現行法や改正法案の中身及び施行について、日本の当局と関わりを持つと共に、子の必要性を安全な形で支えるために、家族法の過程を最良の形で活用する方法について意見を交換する用意がある。

s 22(1)(a)(ii)

From: s 22(1)(a)(ii)
Sent: Friday, 10 March 2023 10:17 AM
To: s 22(1)(a)(ii)
Cc:
Subject: s 22(1)(a)(ii)

OFFICIAL

s 22(1)(a)(ii)

Thanks very much for forwarding It sounds like Channel 9 are still preparing on the story. We do expect it to go ahead but the FM will not be participating.

Cheers

s 22(1)(a)(ii)

From: s 22(1)(a)(ii) @dfat.gov.au>
Sent: Friday, 10 March 2023 11:38 AM
To: s 22(1)(a)(ii) @dfat.gov.au>
Subject: s 22(1)(a)(ii)

OFFICIAL

s 22(1)(a)(ii)

Dear

For info – indicating that the 60 minutes story might be going ahead.

Regards,

s 22(1)(a)(ii)

s 22(1)(a)(ii)

Japan Political and Strategic Section

Department of Foreign Affairs and Trade

T s 22(1)(a)(ii)

s 22(1)(a)(ii)

s 22(1)(a)(ii)

From: s 22(1)(a)(ii)
Sent: Thursday, 16 March 2023 7:13 PM
To: s 22(1)(a)(ii) @ag.gov.au; s 22(1)(a)(ii) @ag.gov.au; ; Peter Roberts; Claire Elias
Cc: s 22(1)(a)(ii) ; Kate Logan; Alison Duncan; Greg Wilcock;
Subject: Marco Salvio; s 22(1)(a)(ii)
 RE: Background for 60 minutes re Japan Child Custody [SEC=OFFICIAL]

OFFICIAL

s 22(1)(a)(ii)

Hi

Minor edits in green and strikethrough from post below for your consideration.

Many thanks

s 22(1)(a)(ii)

From: s 22(1)(a)(ii) @dfat.gov.au>
Sent: Thursday, 16 March 2023 5:14 PM
To: s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>;
 s 22(1)(a)(ii) @ag.gov.au; s 22(1)(a)(ii) @ag.gov.au; s 22(1)(a)(ii) @dfat.gov.au>; Peter
 Roberts <Peter.Roberts@dfat.gov.au>; Claire Elias <Claire.Elias@dfat.gov.au>
Cc: s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>;
 @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>; Kate Logan <Kate.Logan@dfat.gov.au>;
 Alison Duncan <Alison.Duncan@dfat.gov.au>; Greg Wilcock <Greg.Wilcock@dfat.gov.au>; Marco Salvio
 <Marco.Salvio@dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>
Subject: RE: Background for 60 minutes re Japan Child Custody [SEC=OFFICIAL]

OFFICIAL

Hello all,

Grateful input from post/AGD on proposed summary of submission for 60 minutes, and advice as to whether providing this as a written record or just as background/not for attribution would be preferred. Also grateful advice on whether we should also provide the below to affected parents if we do provide it to 60 minutes.

The Australian Government's submission to Japan's family law reform process states that Australian family law recognises that the rights of children extends to having connection with their parents, extended family, and culture, where this is in the child's best interest and is safe to do so.

The submission advises that this approach is intended to give effect to the United Nations Convention ~~of~~ on the Rights of the Child, and is also consistent with objects of the Hague Convention on the Civil Aspects of International Child Abduction.

Australia's submission acknowledges the difficulties that ~~the affected~~ Australian parents face in seeking to maintain relationships with their children, and encourages Japan to introduce family law reform which establishes shared parenting arrangements to enable children to benefit from ongoing, meaningful relationships with both parents and their extended families.

The submission offers that Australia stands ready to engage Japan's authorities further on Australia's approaches to family law and safely supporting the needs of children.

Thanks,

s 22(1)(a)(ii)

Director | Consular Policy Section
Consular Communications and Policy Branch | Consular and Crisis Management Division
Department of Foreign Affairs and Trade

T: s 22(1)(a)(ii) @dfat.gov.au

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We acknowledge the Traditional Custodians of Country throughout Australia, and their continuing connection to land, waters and community. We pay our respects to all First Nations peoples, their cultures and to their Elders, past, present and emerging.

From: s 22(1)(a)(ii) @dfat.gov.au>

Sent: Thursday, 16 March 2023 1:11 PM

To: s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>

Cc: s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>

Subject: RE: Background for 60 minutes re Japan Child Custody [SEC=OFFICIAL]

OFFICIAL

Hi s 22(1)(a)(ii)

Marco said today's background briefing with 60 minutes journalist went well. The journalist asked if we could share the submission, a summary or excerpt. s 47E(d)

Marco said that CCD and Post's views would be most important. He thought at least something should be provided to the journalist.

I'm sure the Media team will be in touch with CCD to consult with NEB and Post regarding this but thought I'd flag it.

Kind regards,

s 22(1)(a)(ii)

Senior Policy Officer | Japan Political and Strategic Section
North East Asia Branch | North and South Asia Division
Department of Foreign Affairs and Trade

P s 22(1)(a)(ii)

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We acknowledge the Traditional Custodians of Country throughout Australia, and their continuing connection to land, waters and community. We pay our respects to all First Nations peoples, their cultures and to their Elders, past, present and emerging.

From: s 22(1)(a)(ii) @dfat.gov.au>
Sent: Wednesday, 15 March 2023 1:17 PM
To: s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>;
 s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>;
Cc: s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>;
 s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>
Subject: RE: Background for 60 minutes re Japan Child Custody [SEC=OFFICIAL]

OFFICIAL

Thanks s 22(1)(a)(ii)

s 22(1)(a)(ii) Updated QTB attached.

Kind regards,

s 22(1)(a)(ii)

Director | Consular Policy Section
 Consular Communications and Policy Branch | Consular and Crisis Management Division
 Department of Foreign Affairs and Trade
T: s 22(1)(a)(ii) @dfat.gov.au
dfat.gov.au | [Twitter](https://twitter.com/dfatgovau) | [Facebook](https://facebook.com/dfatgovau) | [Instagram](https://instagram.com/dfatgovau) | [LinkedIn](https://linkedin.com/company/dfatgovau)



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From: s 22(1)(a)(ii) @dfat.gov.au>
Sent: Wednesday, 15 March 2023 12:09 PM
To: s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>;
 s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>;
Cc: s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>;
 s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>
Subject: RE: Background for 60 minutes re Japan Child Custody [SEC=OFFICIAL]

OFFICIAL

s 22(1)(a)(ii)
 Hi

Please see post's responses below in blue.

Don't hesitate to call me if you need any additional information or context.

Many thanks

s 22(1)(a)(ii)

From: s 22(1)(a)(ii) @dfat.gov.au>

Sent: Wednesday, 15 March 2023 9:15 AM

To: s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>

Cc: s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>

Subject: Background for 60 minutes re Japan Child Custody [SEC=OFFICIAL]

OFFICIAL

Colleagues,

We understand the background for the 60 minutes piece on Japan Child Custody is being scheduled for 12.30 this Thursday for Kate Logan and Marco Salvio.

Marco read the latest QTB to prepare for the background and asked a few questions. Grateful for advice so I can update Marco.

1. While noting Kate will respond to questions around the 15 affected parents (in respect of 22 children) that DFAT is providing consular assistance to, Marco asked if all of the 22 children were abducted in Japan. If it isn't all 22, he'd welcome a quick breakdown of the 22 cases in broad relevant categories.
 - o *The background of our TPs describes the breakdown like this: DFAT provides consular assistance to 15 affected parents (in respect of 22 children) in relation to child custody and abduction issues in Japan.* s 47F(1)
2. While noting any questions regarding the Hague Convention will be referred to AGD, Marco asked how Hague Convention cases worked and how are they different from abducted in Japan cases. He recognises that abducted in Japan cases are matters for Japanese courts and Japanese law applies, but he wondered if Hague Convention cases (when a child is taken from Australia to Japan) is a matter for Australian courts and Australian laws apply.
 - o *The Convention of 25 October 1980 on the Civil Aspects of International Child Abduction applies when a child is taken from one country party to this convention to another country party to this convention. When countries ratify the convention they are obligated to make necessary amendments where possible, and practical, under domestic law, to implement legislation based on the principles of the convention and provide clear avenues and mechanisms for the actioning and return of Hague cases.*
Therefore, when an abduction falls into this category, there is a process (through AGD and MoFA, each respective countries' competent authority under the Hague Convention) to seek the return of the child to their habitual residence. Ultimately it's a collaborative response where neither "court" is actively or solely involved in the return.
If a child has been removed from the custody of one parent within Japan, this is a domestic case. The only legal pathway for parents to regain access is via domestic Japanese family court.
3. s 33(a)(iii)

61 of 89

s 22(1)(a)(ii)

Second Secretary (Management) & Consul | 二等書記官兼領事

(Consular, Crisis Management & Emergency Planning, HR, Protocol)

Australian Embassy Tokyo | オーストラリア大使館

s 22(1)(a)(ii)

From: s 22(1)(a)(ii) @dfat.gov.au>
Sent: Tuesday, 14 March 2023 3:21 PM
To: s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @ag.gov.au>; s 22(1)(a)(ii) @ag.gov.au>; s 22(1)(a)(ii) @ag.gov.au>; s 22(1)(a)(ii) @ag.gov.au>; s 22(1)(a)(ii) @ag.gov.au>; s 22(1)(a)(ii) @ag.gov.au>
Cc: s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>
Subject: RE: Grateful returns by COB Wednesday, Tuesday, 14 March 2023 : Updated QTB for Japan Child Custody / Parental Abduction [SEC=OFFICIAL]

OFFICIAL

s 22(1)(a)(ii)

Thanks for consulting JPN. Our edits to the background are in tracked changes and attached. For your awareness, please find attached the letter referenced in our input.

Happy to discuss.

Thanks.

Kind regards,

s 22(1)(a)(ii)

Senior Policy Officer | Japan Political and Strategic Section

North East Asia Branch | North and South Asia Division

Department of Foreign Affairs and Trade

s 22(1)(a)(ii)

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From: s 22(1)(a)(ii) @dfat.gov.au>
Sent: Friday, 10 March 2023 2:23 PM
To: s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @ag.gov.au>; s 22(1)(a)(ii) @ag.gov.au>; s 22(1)(a)(ii) @ag.gov.au>; s 22(1)(a)(ii) @ag.gov.au>; s 22(1)(a)(ii) @ag.gov.au>

s 22(1)(a)(ii) @ag.gov.au) s 22(1)(a)(ii) @ag.gov.au>
Cc: s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>
Subject: Grateful returns by COB Wednesday, Tuesday, 14 March 2023 : Updated QTB for Japan Child Custody / Parental Abduction [SEC=OFFICIAL]

OFFICIAL

Hi all

Please find attached, updated QTB for Japan Child Custody / Parental Abduction issues.

Post: if possible, please include details about the meeting between HOM and the Japanese Justice Minister on Tuesday (understand this may not be possible).

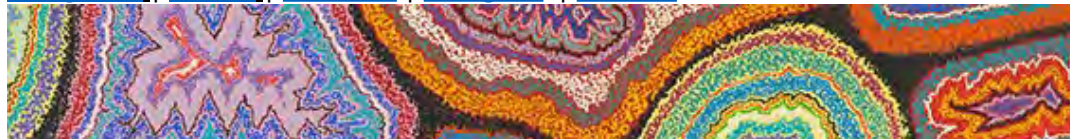
I will be away from the office next week, grateful if you could return your feedback by **COB Tuesday, 14 March 2023 to s 22(1)(a)(ii)**

Regards
s 22(1)(a)(ii)

Assistant Director | Consular Policy Section

Consular Communications and Policy Branch | Consular and Crisis Management Division
Department of Foreign Affairs and Trade
p s 22(1)(a)(ii)

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<Alison.Duncan@dfat.gov.au>; Greg Wilcock <Greg.Wilcock@dfat.gov.au>; Marco Salvio
 <Marco.Salvio@dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>
Subject: RE: Background for 60 minutes re Japan Child Custody [SEC=OFFICIAL]

OFFICIAL

Greg,

Clean copy cleared by post, AGD and CCD below if you want to follow up with s 22(1)(a)(ii) on FMOs views on sharing with 60 minutes.

I don't think there are any issues with sharing as text rather than just being attributable.

The Australian Government's submission to Japan's family law reform process states that Australian family law recognises that the rights of children extends to having connection with their parents, extended family, and culture, where this is in the child's best interest and is safe to do so.

The submission advises that this approach is intended to give effect to the United Nations Convention on the Rights of the Child, and is also consistent with objects of the Hague Convention on the Civil Aspects of International Child Abduction.

Australia's submission acknowledges the difficulties that Australian parents face in seeking to maintain relationships with their children, and encourages Japan to introduce family law reform which establishes shared parenting arrangements to enable children to benefit from ongoing, meaningful relationships with both parents and their extended families.

The submission offers that Australia stands ready to engage Japan's authorities further on Australia's approaches to family law and safely supporting the needs of children.

Thanks,

s 22(1)(a)(ii)

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s 22(1)(a)(ii)

s 22(1)(a)(ii)

From: s 22(1)(a)(ii)
Sent: Thursday, 16 March 2023 1:47 PM
To: s 22(1)(a)(ii)
Cc:
Subject: RE: 60 Minutes [SEC=OFFICIAL]

OFFICIAL

Hi s 22(1)(a)(ii)

Yes, we just heard about that during Kate/Marco call with Erik. Yes, FMO and Secretary just been advised.

Thanks,

s 22(1)(a)(ii)

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 Consular Communications and Policy Branch | Consular and Crisis Management Division
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From: s 22(1)(a)(ii) @dfat.gov.au>
Sent: Thursday, 16 March 2023 3:25 PM
To: s 22(1)(a)(ii) @dfat.gov.au>
Cc: s 22(1)(a)(ii) @dfat.gov.au>
Subject: 60 Minutes [SEC=OFFICIAL]

OFFICIAL

Hi s 22(1)(a)(ii)

We've also heard s 47F(1) that the 60 Mins story will air this Sunday, 19 March. I understand FM was doing a written statement, is FMO aware of this shorter timeframe?

s 22(1)(a)(ii)

s 22(1)(a)(ii)

From: s 22(1)(a)(ii)
Sent: Thursday, 16 March 2023 3:45 PM
To: Marco Salvio; Alison Duncan; s 22(1)(a)(ii) Justin Hayhurst; Claire Elias; s 22(1)(a)(ii)
Cc: s 22(1)(a)(ii)
Subject: 60 Minutes trailer – Japan child custody [SEC=OFFICIAL]

OFFICIAL

Colleagues

In case you haven't seen it, the trailer for the 60 Minutes episode has been put out on social media:

<https://twitter.com/60Mins>

<https://www.facebook.com/60Minutes9/>

s 22(1)(a)(ii)

Counsellor (Management) and Consul-General | 参事官 兼 総領事

Australian Embassy Tokyo | オーストラリア大使館

2-1-14 Mita, Minato-ku, Tokyo 108-8361 | 〒108-8361 東京都港区三田 2-1-14

Phone s 22(1)(a)(ii)

s 22(1)(a)(ii)

From: s 22(1)(a)(ii)
Sent: Monday, 20 March 2023 3:41 PM
To: s 22(1)(a)(ii); Justin Hayhurst; s 22(1)(a)(ii); Claire Elias;
 s 22(1)(a)(ii)
Subject: Reactions to the 60 Minutes program [SEC=OFFICIAL]
Attachments: 20230320 Media and SNS monitoring on 60 mins Child Custody.docx

Hi everyone,

Please find attached some initial responses to the 60 Minutes program on social media today.

We will keep our eyes out for new comments, particularly from influential figures.

Regards
 s 22(1)(a)(ii)

From: s 22(1)(a)(ii) @dfat.gov.au>
Sent: Monday, 20 March 2023 9:30 AM
 s 22(1)(a)(ii) @dfat.gov.au>; Justin Hayhurst <Justin.Hayhurst@dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>; Claire Elias <Claire.Elias@dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>
Subject: RE: The Age article [SEC=OFFICIAL]

OFFICIAL

Good morning all

Attached is the SMH article.

Many thanks
 s 22(1)(a)(ii)

From: s 22(1)(a)(ii) @dfat.gov.au>
Sent: Monday, 20 March 2023 8:13 AM
To: Justin Hayhurst <Justin.Hayhurst@dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>; Claire Elias <Claire.Elias@dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>
Subject: The Age article[SEC=OFFICIAL]

OFFICIAL

Colleagues

In case you haven't seen it, The Age's article accompanying the 60 Minutes episode is here:

<https://amp.theage.com.au/world/asia/japan-must-bend-on-abducted-children-of-foreign-nationals-20230319-p5ctd2.html>

This is the SMH Article but unfortunately it's behind a paywall. I've asked s 22(1)(a)(ii) n CCD to send the text around.

<https://amp.smh.com.au/world/asia/eighty-two-australian-children-have-been-abducted-in-japan-and-it-s-legal-20230313-p5crou.html>

s 22(1)(a)(ii)

22 March 2023

s 22(1)(a)(ii)

JAPAN: CHILD ABDUCTION AND CUSTODY ISSUES

- Japanese domestic family law does not allow for joint custody following the separation of parents, leaving access to a child at the discretion of the parent with whom the child lives.
- We provide consular assistance to Australian parents facing difficulties maintaining contact with their children in Japan.

KEY MESSAGES

- I (Minister Wong) acknowledge the distress experienced by Australian parents who have been separated from their children.
- We continue to work sensitively to encourage Japan to find a solution that allows children to have meaningful relationships with both parents, and extended family.
- On 17 February, as part of a public consultation on proposed family law reform in Japan, DFAT and AGD made a joint submission in support of an approach that allowed for shared parenting where it is in the best interest of the child and safe to do so.
- I (Minister Wong) raised the issue with my counterpart twice in the last year.

What is the Government doing to assist Australian parents facing child abduction and custody issues in Japan?

- We are providing consular assistance to affected Australians in accordance with the Consular Services Charter. This includes periodic updates on Australian Government advocacy work.
- It is important to remember that these are matters for the Japanese courts
 - we encourage Australians to seek legal advice and representation in Japan.
- The Australian Government encourages Japan to find a solution that allows children to have meaningful relationships with both parents, and extended family
 - I (Foreign Minister Wong) have raised the issue twice with my counterpart Foreign Minister Hayashi [most recently on 9 December 2022]
 - Australian officials continue to raise this matter with Japanese authorities [most recently on 14 March 2023].

Prepared By:

Name: s 22(1)(a)(ii)
 Branch: CON/CIB/CCD
 Phone: s 22(1)(a)(ii)

Cleared By:

Name: s 22(1)(a)(ii)
 Position: A/g AS CIB
 Branch/Division: ISG | CCD | Consular Communications and Policy Branch
 Phone: s 22(1)(a)(ii)

22 March 2023

s 22(1)(a)(ii)

- AGD continues to work closely with the Japanese authorities to manage applications and requests under the 1980 Hague *Convention on the Civil Aspects of International Child Abduction* (Hague Convention) for the return of children who have been wrongfully removed or retained overseas by another parent and for access.

If Asked: Did the Australian Government make a submission on Japan's draft family law reform proposal?

- On 17 January, DFAT and AGD made a joint submission in support of an approach that establishes shared parenting where it is in the best interests of the child and safe to do so. This is intended to give effect to international obligations under the UN *Convention on the Rights of the Child*, and is consistent with the objectives of the Hague Convention.

If Asked: What is the chance Japan's draft family law proposal will lead to a joint custody system in Japan?

- The draft proposal includes the option for Japan to adopt joint custody, which is the first time Japan has considered its introduction
- Australia welcomes these developments, noting decisions are matters for the Government of Japan.

How many Australian consular cases are involved in this issue?

- DFAT currently provides consular assistance to **15** affected parents (in respect of 22 children) in relation to parental abduction and child custody issues in Japan.
- Since 2004, DFAT has provided consular assistance to the parents of 85 children with respect to parental abduction and child custody concerns in Japan.

If Asked: What is the Government doing to assist Mr X/Ms X (whose children have been abducted by their spouse in Japan?

- Due to privacy considerations, it is not appropriate to comment on individual cases.

If Asked: Did Prime Minister Albanese raise the issue with Japanese Prime Minister Kishida when they met in October 2022 [for the annual leaders' meeting in Perth] and in September 2022 [at Shinzo Abe's state funeral in Tokyo]?

Prepared By:

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Cleared By:

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22 March 2023

s 22(1)(a)(ii)

- The Prime Minister discussed a range of bilateral matters of mutual interest with Prime Minister Kishida on these two occasions.
- I (Foreign Minister Wong) have raised the issue twice with my counterpart [Foreign Minister Hayashi in July and December 2022]
 - Australian officials regularly raise this issue with Japanese authorities, including s 33(a)(iii) and through our Embassy in Tokyo.

If Asked: Why has the Australian Government cut off communication with affected parents?

- The Government continues to communicate with parents regarding their individual consular cases and to provide periodic updates on our advocacy work [most recently on 20 February 2023].
- Due to privacy considerations of consular clients, we are not planning further group sessions.

If Asked: Japan's Ambassador has objected to Australia's use of the term 'abduction'. Why does Australia continue to use it?

- The term is appropriate for the Australian domestic context and is consistent with the 1980 Hague *Convention on the Civil Aspects of International Child Abduction*.

If Asked: How will the Government ensure that more Australian parents, including those stationed in Japan under the reciprocal access agreement, will not fall victim to these laws?

- The Smartraveller website provides advice to travellers on Japan's sole custody laws, including advice that access for non-custodial parents may be limited and that courts usually give sole custody to the parent that has taken care of the child most recently.
- Australians stationed in Japan under the reciprocal access agreement receive country briefs prior to deployment.

If Asked: What more is the government proposing to do to protect Australian citizens and encourage Japan to change their laws?

- I (Minister Wong) will continue to raise the issue with my Japanese counterpart.
- Australian officials, including the Ambassador, will continue to raise the issue with Japanese officials.
- The Attorney General has written to the Japanese Minister of Justice to explore ways to share information about reform.

Prepared By:

Name: s 22(1)(a)(ii)
 Branch: CON/CIB/CCD
 Phone: s 22(1)(a)(ii)

Cleared By:

Name: s 22(1)(a)(ii)
 Position: A/g AS CIB
 Branch/Division: ISG | CCD | Consular Communications and Policy Branch
 Phone: s 22(1)(a)(ii)

22 March 2023

s 22(1)(a)(ii)

- The Australian Ambassador in Tokyo is engaging with Ambassadors of similarly affected countries on opportunities for advocacy.
- AGD and DFAT will explore opportunities for Australia's family courts, lawyers and police to share information about Australia's experiences.

If Asked: Why isn't Japan abiding by its commitments to Interpol?

- This is a matter for Japanese authorities, and it would be inappropriate to comment on individual cases or policing matters.

If Asked: Why didn't the Foreign Minister agree to 60 Minutes' request for an interview

- I (Minister Wong) provided a written statement to 60 Minutes which has been released on the program's website.

If Asked: Why didn't the Australian Government send Catherine Henderson's daughter a letter advising her she was eligible for an Australian passport and could receive consular assistance if she required it?

- It is currently not standard practice for the Department of Foreign Affairs to notify people that they are eligible for an Australian Passport.
- I (Minister Wong) am aware that some other nations do send these letters out as a standard procedure.
- I (Minister Wong) have directed my department to explore options for contacting children in these circumstances to offer avenues to establish Australian citizenship and apply for an Australian passport.
- But it's important that we understand the risks and implications of contacting these children directly to prevent any further harm.

If Asked: Can you confirm the statement reported in the Sydney Morning Herald on 21 March 2023 that Australia has refused four requests to return children to Japan under the Hague Convention?

- Children have been returned to Australia from Japan, through enforceable arrangements reached between the parents within the Japanese legal process. One child has been returned to Japan from Australia.
- Any questions on the Convention should be directed to the Attorney-General.

Prepared By:

Name: s 22(1)(a)(ii)
 Branch: CON/CIB/CCD
 Phone: s 22(1)(a)(ii)

Cleared By:

Name: s 22(1)(a)(ii)
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 Branch/Division: ISG | CCD | Consular Communications and Policy Branch
 Phone: s 22(1)(a)(ii)

22 March 2023

s 22(1)(a)(ii)

Background

Japan's family law system does not allow for joint custody of children following the separation of parents. s 33(a)(iii)

. Critics argue this incentivises parental abduction. Where parents are unable to agree on custody and care arrangements, they can pursue their case through Japan's family court. s 33(a)(iii)

There are also parents who are experiencing challenges with exercising their rights of access or rights of custody for children abducted overseas to or from Japan pursuant to the 1980 *Hague Convention on the Civil Aspects of International Child Abduction* (Hague Convention). The Attorney-General's Department (AGD) continues to engage with Japanese authorities in relation to cases made under the Hague Convention regarding the return of children who have been wrongfully removed or retained overseas by another parent, and for access to children overseas.

Since 2020, there has been an increase in advocacy by Australian parents facing domestic abduction and custody issues within Japan (i.e. matters falling outside the Hague Convention), which remain a matter for the Japanese courts.

s 47C(1)

s 47E(d)
s 33(a)(iii)

s 47C(1)

Government engagement

s 33(a)(iii)

In September 2022, at Shinzo Abe's state funeral in Tokyo, the Prime Minister was asked by an Australian journalist if he had raised the issue with Kishida. The Prime Minister responded that he had not, but that he was very aware of it and our Embassy in Japan continued to provide consular assistance to Australian affected parents.

You (Foreign Minister Wong) have raised the issue twice with Japanese Foreign Minister Hayashi: on 7 July 2022, during a bilateral meeting on the margins of the G20 Foreign and Development Ministers' Meeting in Bali, Indonesia; and on 9 December 2022, in the margins of the Japan-Australia 2+2 Foreign and Defence Ministerial Consultations held in Tokyo, Japan.

s 33(b)

Prepared By:

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Phone: s 22(1)(a)(ii)

22 March 2023

s 22(1)(a)(ii)

Australian officials regularly raise the issue with Japanese counterparts. Most recently, the Australian Ambassador to Japan raised the issue with Justice Minister Saito Ken on 14 March 2023.

Government of Japan

Japan's Justice Ministry's Family Law Subcommittee has conducted a public consultation process on proposed family law reform, which included consideration of a joint custody model. The draft proposal was available for public comment until 18 February 2023. Japan's Justice Ministry confirmed anyone could make a submission but has not confirmed if/how submissions will be shared with the public.

DFAT and AGD's joint submission, which you approved (Foreign Minister Wong), encouraged Japan to allow for shared parenting arrangements to enable children to benefit from relationships with both parents, and their extended families, where it is safe to do so. The submission was lodged on 17 February. s 33(b)

s 33(a)(iii)

s 33(b)

Australian affected parent engagement

DFAT provides consular assistance to 15 affected parents (in respect of 22 children) in relation to child custody and abduction issues in Japan. s 47F(1)

To update parents on Australia's advocacy efforts, our Embassy in Tokyo previously hosted two virtual talks (23 June 2021 and 18 December 2020). s 47E(d)

Updates to parents on our advocacy continue individually as part of regular consular case management, and through periodic email updates. The most recent update

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Phone: s 22(1)(a)(ii)

Cleared By:

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Branch/Division: ISG | CCD | Consular Communications and Policy Branch
Phone: s 22(1)(a)(ii)

22 March 2023

s 22(1)(a)(ii)

was emailed on 20 February 2023, advising parents that DFAT and AGD had made a joint submission in support of shared parenting arrangements as part of the public consultation process on family law reform.

On 19 March 2023, 60 Minutes aired the program "Kidnapped in Japan" which covered the issues faced by Australian non-custodial parents under Japan's sole custody laws. Australian parents Scott McIntyre and Randolph Kavanagh were the main participants in the program. The piece was critical of Prime Minister Albanese for not raising the issue directly with his counterpart. The story noted that you (Minister Wong) had raised the issue but had declined to be interviewed and instead offered a written statement. Written companion pieces appeared in The Age and Sydney Morning Herald on 19, 20 and 21 March 2023, along with an editorial broadly supportive of Australia taking more robust action to encourage Japan to change its laws.

Other Australian parents, Catherine Henderson, Scott Beattie, David Fleming and Daniel Potocki participated in the stories. s 33(b)

60 Minutes showed secretly filmed footage of Australian Embassy officials, including former Deputy Ambassador HK Yu. 60 Minutes also showed secretly filmed footage inside police stations in Japan (the faces of officers were blanked out).

On 11 October 2022, SBS Dateline aired the program, 'Japan's Taken Children', which highlighted the problems non-custodial parents experience navigating Japan's sole custody laws. Australian affected parent Ms Henderson was the main participant in the program. On 22 December 2022, SBS published an op-ed by Ms Henderson to complement the SBS Dateline program. A Bloomberg article published on 25 January 2023, also made a brief reference to Ms Henderson's situation.

s 47F(1)

International Developments

In the UN Human Rights Committee's concluding observations on the seventh periodic report of Japan (released on 30 November 2022), the Committee wrote it was "concerned at reports of frequent cases of parental child abduction, both domestic and international, and a lack of adequate response by the State party".

Prepared By:

Name s 22(1)(a)(ii)
Branch: CON/CIB/CCD
Phone: s 22(1)(a)(ii)

Cleared By:

Name s 22(1)(a)(ii)
Position: A/g AS CIB
Branch/Division: ISG | CCD | Consular Communications and Policy Branch
Phone s 22(1)(a)(ii)

s 22(1)(a)(ii)

From:

s 22(1)(a)(ii)

Sent:

Wednesday, 22 March 2023 11:08 AM

To:

s 22(1)(a)(ii)

Cc:**Subject:**

Podcast : Abducted in Japan, Part 1 [SEC=OFFICIAL]

OFFICIAL

Hi all

s 22(1)(a)(ii)

I'm not sure if it has come to anyone's attention as yet (but acknowledge I could be very late to the party!) that SMH/Age podcast 'Please Explain' released part one of a two part series today. I haven't had a listen as yet so not sure if there is anything in the podcast that hasn't been mentioned already.

[Please Explain: Abducted in Japan, Part 1 on Apple Podcasts](#)

Regards

s 22(1)(a)(ii)

Assistant Director | Consular Policy Section**Consular Communications and Policy Branch | Consular and Crisis Management Division****Department of Foreign Affairs and Trade**

p s 22(1)(a)(ii)

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s 22(1)(a)(ii)

From:

s 22(1)(a)(ii)

Sent:

Friday, 24 March 2023 12:46 PM

To:

s 22(1)(a)(ii)

Cc:

Subject:

Japan article updates [SEC=OFFICIAL]

Attachments:

The Japan News_Australia Asks Japan to Adopt Joint Custody System - The Japan News.pdf

OFFICIAL

Hi all

Please see the attached news article and the tweet by Catherine Henderson announcing she has set-up a GoFundMe Page.

<https://twitter.com/hayarinacat/status/1638743402748715008>

[Fundraiser by Catherine Henderson : Children in Japan spend time with both parents. \(gofundme.com\)](#)

Regards

s 22(1)(a)(ii)

Assistant Director | Consular Policy Section

Consular Communications and Policy Branch | Consular and Crisis Management Division

Department of Foreign Affairs and Trade

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**BILATERAL MEETING – ASSISTANT MINISTER WATTS WITH MS NODA
SEIKO (NO-DAA SAY-COE)**

s 33(a)(iii)

OFFICIAL



Australian Government

Department of Foreign Affairs and Trade

s 22(1)(a)(ii)

MEETING BRIEFING

SECRETARY

Through: Elly Lawson, Deputy Secretary Geostrategic Group (GSG)
Gary Cowan, First Assistant Secretary North and South Asia Division.

SUBJECT: MEETING WITH JAPAN'S ADMINISTRATIVE VICE-MINISTER FOR
FOREIGN AFFAIRS, MR MORI TAKEO – WEDNESDAY 26 JULY – 10.30 to 11.00am

s 33(a)(iii)

Key points to raise:

s 22(1)(a)(ii)



s 22(1)(a)(ii)

s 33(a)(iii)

s 22(1)(a)(ii)

Consultation: Defence, OTP, QGB, CIB, OETF, ECB, SCB.

Summary of Attachments:

s 22(1)(a)(ii)

Prepared by: Marco Salvio, Assistant Secretary, NEB/NSD/GSG
Phone Number: s 22(1)(a)(ii)
Date: 17 July 2023





s 22(1)(a)(ii)



OFFICIAL: Sensitive

PARENTAL ABDUCTION AND CUSTODY DISPUTES

Key points

- DFAT provides consular assistance to 15 affected Australian parents (22 children).
 - Japan is considering revising its domestic law to allow joint custody for the first time.
1. Japan's family law system does not recognise joint custody following the separation of parents. After separation, children traditionally live with just one parent and often have no contact with the non-custodial parent.
 2. The Department of Foreign Affairs and Trade (DFAT) is providing consular assistance to **15 affected Australian parents (in respect of 22 children)** for child custody and abduction issues in Japan. The number of Australian parents seeking assistance in relation to child custody issues has increased. Most cases are domestic custody disputes and therefore a matter for the Japanese courts. [s 47F\(1\)](#)
 3. Japan's Ministry of Justice is considering revising its domestic law to allow joint custody for the first time. Australia made a submission during the public consultation period in support of reform. [s 33\(a\)\(iii\)](#)
 4. Two programs, 'Kidnapped in Japan', aired on 19 March 2023 on *60 Minutes*, and 'Japan's Taken Children', broadcast on 11 October 2022 on *SBS Dateline*, featured Australian parents and the difficulties they face navigating Japan's sole custody system, and have given profile to the issue domestically in Australia. [s 33\(a\)\(iii\)](#)
 - 5.

Brief prepared by: [s 22\(1\)\(a\)\(ii\)](#), Japan Political and Strategic Section, DFAT, [s 22\(1\)\(a\)\(ii\)](#)

OFFICIAL: Sensitive

OFFICIAL: Sensitive

Brief cleared by: Gary Cowan, First Assistant Secretary, North and South Asia, DFAT,^{s 22(1)(a)(ii)}

OFFICIAL: Sensitive



Outlook

60 Minutes : Japan Child Custody /Parental Abduction [SEC=OFFICIAL]

From s 22(1)(a)(ii) @dfat.gov.au>
Date Thu 2023-03-09 13:12
To s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>;
@dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>;
@dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>;
@aq.gov.au>; s 22(1)(a)(ii) @aq.gov.au>;
@aq.gov.au>; s 22(1)(a)(ii) @ag.gov.au>;
Cc s 22(1)(a)(ii) @dfat.gov.au>

OFFICIAL

Hi all

s 47E(d)

Regards
s 22(1)(a)(ii)

Assistant Director | Consular Policy Section

Consular Communications and Policy Branch | Consular and Crisis Management Division

Department of Foreign Affairs and Trade

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15 March 2023

Memory joggers for Marco Salvio, AS NEB, to participate in background briefing on child abduction and custody issues in Japan

- Japanese domestic family law does not allow for joint custody following the separation of parents, leaving access to a child at the discretion of the parent with whom the child lives.
- We are conscious this affects a number of Australian parents facing difficulties maintaining contact with their children and exercising their rights of access or rights of custody in Japan.
- While recognising these are matters for Japan, we encourage Japan to find a solution that allows for children to have relationships with both parents
 - Foreign Minister Wong has raised the issue twice with her counterpart Foreign Minister Hayashi [7 July 2022; 9 December 2022] since becoming Foreign Minister [23 May 2022]
 - Australian officials continue to raise this matter regularly with Japanese authorities
 - for example, we have raised the issue twice [14 March 2023 - Ambassador; 13 December 2022 – Chargé d'affaires] with Japan's Minister for Justice Saito, the minister responsible for this matter, since his appointment [11 November 2022].
- Australia welcomes Japan's consideration of family law reform, which includes a joint custody model
 - this is the first time Japan is considering a joint custody model
 - we made a submission in support of an approach that allows for shared parenting in Japan on 17 February in the public consultation process s 33(a)(iii), s 33(b)
 - this is likely the start of a long process. Any resulting changes would need to pass the Diet [*the national legislature of Japan*].
- The Attorney-General Department continues to work closely with the Japanese authorities to manage applications and requests under the 1980 *Hague Convention on the Civil Aspects of International Child Abduction* (Hague Convention) for the return of children who have been wrongfully removed or retained overseas by another parent and for access.

15 March 2023

For 'if asked' questions or background, refer to QB23-000100 – Japan: Child Abduction and Custody (yellow highlights are updates from the version you saw yesterday).

s 47E(d)

you asked two questions. Please find Tokyo Post's response in blue below.

1. While noting Kate will respond to questions about our consular assistance / cases, you ask are all of the 22 children we are providing consulate assistance abducted in Japan.

Refer to pg 5 of the QB: *“DFAT provides consular assistance to 15 affected parents (in respect of 22 children) in relation to child custody and abduction issues in Japan.*

s 47F(1)

2. While noting any questions regarding the Hague Convention will be referred to AGD, you asked how Hague Convention cases worked and how are they different from abducted in Japan cases. You recognised that abducted in Japan cases are matters for Japanese courts and Japanese law applies, but asked if Hague Convention cases (when a child is taken from Australia to Japan) is a matter for Australian courts and Australian laws apply.

The Hague Convention on the Civil Aspects of International Child Abduction (the Hague Convention) applies when a child is taken from one country party to this convention to another country party to this convention. When countries ratify the convention they are obligated to make necessary amendments where possible, and practical, under domestic law, to implement legislation based on the principles of the convention and provide clear avenues and mechanisms for the actioning and return of Hague cases.

Therefore, when an abduction falls into this category, there is a process (through AGD and MoFA, each respective countries' competent authority under the Hague Convention) to seek the return of the child to their habitual residence. Ultimately it's a collaborative response where neither "court" is actively or solely involved in the return.

*If a child has been removed from the custody of one parent **within Japan**, this is a domestic case. The only legal pathway for parents to regain access is via domestic Japanese family court.*

