

16 November 2022

JAPAN: CHILD ABDUCTION AND CUSTODY

ISSUES

- Japanese domestic family law does not allow for joint custody following parents' separation, leaving access to the goodwill of the parent with whom the child lives.
- An interim proposal on family law reform prepared by the Family Law Subcommittee of the Legislative Council [at the request of Japan's Ministry of Justice] is expected to be released for public comment and consultation in due course
 - Japanese media reported the Family Law Subcommittee of the Legislative Council released the interim proposal on 17 November
 - the proposal reportedly includes a joint custody option.

KEY MESSAGES

- The Australian Government provides consular assistance to Australians facing difficulties exercising rights of access or rights of custody in Japan.
- We continue to work sensitively to encourage Japan to find a solution acceptable to all and in the best interest of the children.

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.
- 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 acceptable to all which focuses on the best interests of the children
 - I (Foreign Minister Wong) have raised the issue with my counterpart [Foreign Minister Hayashi in July]
 - Australian officials continue to raise this matter with Japanese authorities.
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children who have been wrongfully removed or retained overseas by another parent and for access.

How many parents has this affected?

- Since 2004, DFAT has provided consular assistance to the parents of 82 children involved in parental abduction and child custody cases 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)?

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

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s 33(a)(iii)

Background

As a longstanding feature of Japanese domestic family law, shared parental authority or alternating custody is not recognised following separation of parents, leaving access to a child solely to the goodwill of the parent with whom the child lives. Australia considers it important children at the centre of parental conflict are able to maintain meaningful relationships with both parents, and extended family.

s 33(a)(iii)

Recent developments

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s 47E(d), s 47F(1)

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JAPAN: CHILD ABDUCTION AND CUSTODY

ISSUES

- We are concerned by the number of Australian-Japanese children subject to parental abduction and custody disputes in Japan
- Japanese domestic family law does not allow for joint custody following the separation of parents, leaving access to a child solely to the goodwill of the parent with whom the child lives.
- We are aware of cases where Australian parents have not had access to their children for some time, irrespective of the legal status of the parents' relationship, often resulting in one parent being unable to exercise their parental rights.
- It is important that children at the centre of parental conflict are able to maintain meaningful relationships with both parents, and extended family.
- We respect the legal differences between Japan and Australia continue to work with Japan on this issue to find a solution acceptable to all which focuses on the best interests of the children.

KEY MESSAGES

- The Australian Government continues to provide consular assistance to affected Australian parents facing difficulties exercising parental rights in Japan.
- We continue to work sensitively to encourage Japan to find a solution acceptable to all and in the best interest of the children.

What is 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.
- It is important to remember that these are matters for the Japanese courts
 - we encourage Australians to seek legal advice and representation in Japan.
- Due to privacy, it is not appropriate to comment on individual cases.
- The Australian Government continues to encourage Japan to find a solution acceptable to all which focuses on the best interests of the children

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- I (Foreign Minister Wong) raised the issue during my meeting with Foreign Minister Hayashi in July
- Australian officials continue to raise this issue with Japanese authorities, including during bilateral consular consultations [May 2022] and through our Embassy in Tokyo
- the Embassy continues to brief the families affected, and work with other embassies in Tokyo
- the Attorney-General's Department (AGD) also engages with Japanese authorities
 - sharing information on Australian family law and shared parental responsibility arrangements.

If Asked: Are reports Japan plans to propose joint parental authority for divorced parents in Japan accurate?

- We are aware of recent media reports that the Japanese Ministry of Justice is considering introducing a joint custody system for divorced couples with children as an option alongside the sole custody stipulation of the current Civil Code
 - with an interim draft of the revision by August
 - followed by comments from the public and consultation.
- Australia welcomes these developments.

How many parents has this affected in the past 10 years?

- Since 2004, the Australian Government has provided consular assistance with respect to a total of 77 domestic and international child custody and abduction cases 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 child custody issues in Japan.

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

- The Government continues to communicate with affected parents regarding their individual consular cases and to provide updates on our advocacy work.
- Due to privacy considerations of consular clients, we are not continuing group sessions at this stage.

If Asked: Why doesn't Australia make a public statement on this issue as it does when calling for the resolution of the abduction of Japanese citizens by the DPRK (16 June 2022 UN Symposium)

- State-sponsored abductions by the DPRK and custody disputes between parents are different issues which should be pursued in different ways.
- The Australian Government has consistently spoken out against the North Korean Government for its history of abductions and other human rights abuses.
- We believe quiet but persistent advocacy on child custody, engaging the Japanese Government constructively and using our strong bilateral relationship with Japan, will be more effective in seeking family law reform.

If Asked: Will the Australian Government join international calls for trade and diplomatic sanctions against Japan to assist in the return of abducted children?

- We assess our current approach of targeted and sustained advocacy on child custody with the Japanese Government and other stakeholders is the best way to support favourable outcomes
 - and will be more effective in seeking family law reform.
- We appreciate Japan's ongoing and constructive engagement with Australia on this issue.
- Australia continues to make representations to Japanese authorities, encouraging Japan to find a solution acceptable to all and in the best interests of children.
- AGD continues to work with Japanese authorities to resolve Hague Convention cases.

Background**Developments in Japan**

On 21 June 2022, media reported that Japanese Ministry of Justice plans to submit a proposal to the Legislative Council, an advisory panel to the justice minister, to revise the

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Civil Code to enable joint parental authority for divorced parents in Japan. The Council is slated to draft an interim proposal on revisions to the Civil Code in August

As a longstanding feature of Japanese domestic family law, shared parental authority or alternating custody is not recognised following separation of parents, leaving access to a child solely to the goodwill of the parent with whom the child lives.

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25 August 2022

s 47E(d)

- sharing information on Australian family law and shared parental responsibility arrangements.

If Asked: What is the chance the interim proposal for parental authority for divorced parents will lead to a joint custody system in Japan?

- Aware of Japan's family law reform process and proposals being considered to allow for joint custody in Japan
 - Australia welcomes these developments
 - noting decisions are matters for the Government of Japan.
- The Australian Government will continue to work sensitively with Japan to find a solution acceptable to all and in the best interest of the children
 - officials continue to provide consular assistance to affected Australian parents facing difficulties maintaining contact with their children in Japan.

How many parents has this affected?

- Since 2004, we have provided consular assistance to 82 domestic and international child custody and abduction cases in Japan.
- An increased number of Australians have contacted our Embassy in Tokyo in recent years to report or seek assistance in relation to child custody.

s 33(a)(iii)

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

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- Due to privacy considerations of consular clients, we are not continuing group sessions at this stage.

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s 47E(d)

Background Developments in Japan

On 19 July 2022, following persistent international and domestic advocacy and approximately 18 months of deliberation, Japan's Family Law Subcommittee released a draft summary of its interim proposal on family law changes. The draft proposes that Japan either introduce a joint custody system or retain sole custody. It is the first time Japan has considered joint custody. s 33(a)(iii)

The interim proposal was presented to the Ministry of Justice (MOJ) at the end of August and will then be available for public comment. Once presented to the MOJ, we anticipate a lengthy consultation process as MOJ collates public comment and determines which options it will recommend. Legislative changes will then need to pass the Diet.

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KEY MESSAGES

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- We continue to work sensitively to encourage Japan to find a solution acceptable to all and in the best interest of the children.

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

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 - Australian officials continue to raise this matter with Japanese authorities.
- The Attorney-General's Department (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.

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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).

Strategic Message

- DFAT is providing consular assistance to Australian affected parents facing difficulties exercising rights of access or rights of custody in Japan.
- 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.
- Japanese domestic law does not allow for joint custody, and we continue to work sensitively to encourage Japan to find a solution acceptable to all and in the best interests of the children.
- An interim proposal on family law reform prepared by the Family Law Subcommittee of the Legislative Council [at the request of Japan's Minister of Justice] is expected to be released for public comment and consultation in due course.

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 dispute 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.
- DFAT continues to work sensitively on this issue to encourage Japan to find a solution acceptable to all and in the best interests of the children.
- We continue to raise Australia's concerns with Japanese authorities
 - on 7 July 2022 Foreign Minister Wong raised Australia's interest in this issue with Japanese Foreign Minister Hayashi
- DFAT continues to work with the Attorney-General's Department (AGD) on a whole-of-government response to this issue
 - including sharing information with Japanese authorities on Australian family law and shared parental responsibility arrangements
 - : and facilitating discussions on these issues between AGD and Japan's Ministry of Justice [held on 21 December 2021].

How many parents has this affected in the past 10 years? Are case numbers going up/down?

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- DFAT has information on how many parents have sought consular assistance, not how many families this has affected in Japan (i.e. there may be affected parents who have not sought consular assistance).
- 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.

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.

Why were the outreach sessions with affected parents cancelled?

- Our Embassy in Tokyo held periodic private sessions with affected parents to provide updates on our advocacy work and to allow parents an opportunity to raise issues and ask questions.
- Due to privacy considerations of consular clients, we are not planning to continue group sessions at this stage.
- The Australian Government will continue to communicate with affected parents regarding their individual consular cases and to provide updates on our advocacy work when available.

If pressed: Was this in response to video recordings being released on social media [TikTok]?

- We take our obligations to protect the privacy of our consular clients seriously
 - unfortunately, we are unable to achieve this through the group outreach sessions.
- Australia will continue to advocate and engage with Japan on this issue and provide individual updates to affected parents when available.

Our quiet diplomacy strategy – when will we decide this is not working? What indicators are we using to benchmark whether it is working or not?

- We assess our current approach of targeted and sustained advocacy on child custody with the Japanese Government and other stakeholders is the best approach to support favourable outcomes
 - and will be more effective in seeking family law reform.
- We appreciate Japan's ongoing and constructive engagement with Australia on this issue.
 - Australia continues to make representations to Japanese authorities to encourage Japan to find a solution acceptable to all focussed on the best interests of the children.
 - AGD continues to work closely with the Japanese authorities to manage applications and requests under the Hague Convention.
- We understand an interim proposal on family law reform prepared by the Family Law Subcommittee of the Legislative Council [at the request of Japan's Minister of Justice] is expected to be released for public comment and consultation in due course

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- we understand the proposal includes the option for Japan to adopt joint custody, which would be the first time Japan has considered its introduction
- Australia welcomes these developments, noting decisions are a matter for the Government of Japan.

Why did Australia sign a significant defence agreement with Japan while Australian children are still missing?

- We consider targeted and sustained advocacy on child custody with the Japanese Government and other stakeholders is the best approach to support favourable outcomes for parents
 - and will be more effective in seeking family law reform.

s 33(a)(iii)

Background

As a longstanding feature of Japanese domestic family law, shared parental authority or alternating custody is not recognised following separation of parents, leaving access to a child to the goodwill of the parent with whom the child lives. Custody and care arrangements for children following parent separation are governed by the domestic family laws of the relevant legal jurisdiction – usually the country in which the family resides. 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)**

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s 33(a)(iii)

s 33(a)(iii), s 47F(1)

s 47E(d)

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s 33(a)(iii), s 47F(1)

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

s 33(a)(iii)

Supporting information

Questions on Notice

None for the 47th parliament.

Freedom of Information (FOI) Requests

None.

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Recent Ministerial Comments

None.

Relevant Media Reporting

- [On 11 October 2022 (TBC), SBS Dateline aired a program on Japan’s sole custody laws, highlighting the stories of Australian parents navigating Japan’s sole custody system to seek return of their children.]
- 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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PDR No: s 47E(d)	
Prepared by: s22(1)(a)(ii) Mob: s22(1)(a)(ii) Ext: s22(1)(a)(ii) Date: 20 September 2022	Cleared by Branch/Division Head: Jenny Dee, A/g FAS Consular and Crisis Management Division Mob: s22(1)(a)(ii) Ext: s22(1)(a)(ii) Date: 20 September 2022

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Consultation: Japan desk, Tokyo Post, Consular Operations (Team A), Defence and AGD Name: s22(1)(a)(ii)	Date: 16 September 2020 Ext: s22(1)(a)(ii)
Cleared by CFO / CPO: <i>If brief includes financial or HR data, it must be jointly cleared with relevant FAS to ensure consistency and accuracy. Enter the date brief was jointly cleared (in column right) or type N/A if not applicable. These instructions can then be deleted.</i>	Date: Click or tap to enter CFO/CPO clearance date.
Cleared by Deputy Secretary:	Date:

ATTACHMENT A – Timeline of Key Developments and Representations

Date	Event
26 August 2022	Japanese media reported that the Ministry of Justice confirmed the interim proposal would be delayed due to continued heated debate.
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.
7 July 2022	Foreign Minister Wong raised the issue with Japanese Foreign Minister Hayashi during a bilateral meeting on the margins of the G20 Foreign and Development Ministers’ Meeting in Bali, Indonesia.
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)	[Redacted]
	s 33(a)(iii), s 33(b)

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s 33(a)(iii)	[Redacted]
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. s 47E(d)
s 33(a)(iii)	[Redacted]
s 33(a)(iii), s 33(b)	
22 October 2021	The former Foreign Minister responded to petition EN2796 – see 9 August 2021 entry below.
s 33(a)(iii), s 33(b)	
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)	

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July 2021	French affected father, Vincent Fichot, undertook a 20-day hunger strike coinciding with the Tokyo Olympics.
s 47E(d)	
s 33(a)(iii)	
s 47E(d)	
s 33(a)(iii)	

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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

- DFAT is providing consular assistance to Australian affected parents facing difficulties exercising rights of access or rights of custody in Japan.
- 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.
- Japanese domestic law does not allow for joint custody, and we continue to work sensitively to encourage Japan to find a solution acceptable to all and in the best interests of the children.
- An interim proposal on family law reform prepared by the Family Law Subcommittee of the Legislative Council [at the request of Japan's Minister of Justice] is expected to be released for public comment and consultation in due course.

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 dispute 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.
- DFAT continues to work sensitively on this issue to encourage Japan to find a solution acceptable to all and in the best interests of the children.
- We continue to raise Australia's concerns with Japanese authorities
 - on 7 July 2022 Foreign Minister Wong raised Australia's interest in this issue with Japanese Foreign Minister Hayashi.
- DFAT continues to work on a whole-of-government response to this issue
 - including **facilitating the Attorney-General's Department (AGD) to share information and hold a discussion** with Japanese authorities on Australian family law and shared parental responsibility arrangements.

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How many parents has this affected in the past 10 years? Are case numbers going up/down?

- Since 2004, DFAT has provided consular assistance to the parents of 82 children involved in parental abduction and child custody cases 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 child custody issues 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.

Why were the outreach sessions with affected parents cancelled?

- Our Embassy in Tokyo held periodic private sessions with affected parents to provide updates on our advocacy work and to allow parents an opportunity to raise issues and ask questions.
- Due to privacy considerations of consular clients, we are not planning further group sessions.
- We take our obligations to protect the privacy of our consular clients seriously
 - unfortunately, we are unable to achieve this through the group outreach 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].

When will we decide our quiet diplomacy is not working?

- We assess our current approach of targeted and sustained advocacy on child custody with the Japanese Government and other stakeholders is the best approach to support favourable outcomes
 - and will be more effective in seeking family law reform.
- We appreciate Japan's ongoing and constructive engagement with Australia on this issue.
 - AGD continues to work closely with the Japanese authorities to manage applications and requests under the Hague Convention.
- We understand an interim proposal on family law reform prepared by the Family Law Subcommittee of the Legislative Council [at the request of Japan's Minister of Justice] is expected to be released for public comment and consultation in due course
 - we understand the proposal includes the option for Japan to adopt joint custody, which would be the first time Japan has considered its introduction
 - Australia welcomes these developments, noting decisions are a matter for the Government of Japan.

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Why did Australia sign a significant defence agreement with Japan while Australian children are still missing?

- We consider targeted and sustained advocacy on child custody with the Japanese Government and other stakeholders is the best approach to support favourable outcomes for parents
 - and will be more effective in seeking family law reform.

s 33(a)(iii)

Background

As a longstanding feature of Japanese domestic family law, shared parental authority or alternating custody is not recognised following separation of parents, leaving access to a child to the goodwill of the parent with whom the child lives. 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)

Recent developments

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 Catherine Henderson was the main participant in the program. Her lawyer, Tamayo Omura, is joint legal counsel in two class action cases on the issue being: failure to outlaw parents abducting their children; and failure to have a system that ensures a child has access to their non-custodial parent. The program noted that DFAT has provided consular assistance to 82 children involved in parental abduction and child custody cases in Japan since 2004.

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s 33(a)(iii)

s 33(a)(iii), s 47F(1)

s 33(a)(iii)

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

Supporting information

Questions on Notice

No QoNs asked.

Freedom of Information (FOI) Requests

None.

Recent Ministerial Comments

No recent comments.

Relevant Media Reporting

- 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.

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- 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.](#)

Division: ISG CCD Consular Communications and Policy Branch	
PDR No: s 47E(d)	
Prepared by: s22(1)(a) Mob: s22(1)(a)(ii) Ext: s22(1)(a)(ii) Date: 12 October 2022	Cleared by Branch/Division Head: Kate Logan, FAS Consular and Crisis Management Division Mob: s22(1)(a)(ii) Ext: s22(1)(a)(ii) Date: 14 October 2022
Consultation: JPN, Tokyo Post, Consular Operations (Team A), Defence and AGD Name: s22(1)(a)(ii)	Date: 12 October 2022 Ext: s22(1)(a)(ii)
Cleared by CFO / CPO: n/a	
Cleared by Deputy Secretary: Craig Maclachlan Date: 18 October 2022	

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ATTACHMENT A – Timeline of Key Developments and Representations

Date	Event
s 33(a)(iii)	
11 October 2022	SBS aired the Dateline episode 'Japan's Taken Children'.
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.
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)	
s 47E(d)	
s 33(a)(iii)	
s 33(a)(iii), s 33(b)	
s 33(a)(iii)	

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	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)	
s 47E(d)	
11 January 2022	Covert recordings of the December 2020 parent outreach sessions were released to TikTok. s 47E(d)
s 33(a)(iii)	
s 33(a)(iii), s 33(b)	
22 October 2021	The former Foreign Minister responded to petition EN2796 – see 9 August 2021 entry below.
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.

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s 47E(d)	[Redacted]
s 33(a)(iii)	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
s 47E(d)	[Redacted]
s 33(a)(iii)	[Redacted]
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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

- DFAT is providing consular assistance to Australian affected parents facing difficulties exercising rights of access or rights of custody in Japan.
- 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.
- Japanese domestic law does not allow for joint custody, and we continue to work sensitively to encourage Japan to find a solution acceptable to all and in the best interests of the children.
- An interim proposal on family law reform prepared by the Family Law Subcommittee of the Legislative Council [at the request of Japan's Minister of Justice] is expected to be released for public comment and consultation in due course.

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 dispute 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.
- DFAT continues to work sensitively on this issue to encourage Japan to find a solution acceptable to all and in the best interests of the children.
- We continue to raise Australia's concerns with Japanese authorities
 - on 7 July 2022 Foreign Minister Wong raised Australia's interest in this issue with Japanese Foreign Minister Hayashi.
- DFAT continues to work on a whole-of-government response to this issue
 - including facilitating the Attorney-General's Department (AGD) to share information and hold a discussion with Japanese authorities on Australian family law and shared parental responsibility arrangements.

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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 82 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 with Japanese Foreign Minister Hayashi [in July]
 - Australian officials regularly raise this issue with Japanese authorities, including through our Embassy in Tokyo and during bilateral consular consultations

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].

When will we decide our quiet diplomacy is not working?

- We assess our current approach of targeted and sustained advocacy on child custody with the Japanese Government and other stakeholders is the best approach to support favourable outcomes
 - and will be more effective in seeking family law reform.
- We appreciate Japan's ongoing and constructive engagement with Australia on this issue
 - AGD continues to work closely with the Japanese authorities to manage applications and requests under the Hague Convention.
- We understand an interim proposal on family law reform prepared by the Family Law Subcommittee of the Legislative Council [at the request of Japan's Minister of Justice] is expected to be released for public comment and consultation in due course
 - we understand the proposal includes the option for Japan to adopt joint custody, which would be the first time Japan has considered its introduction
 - Australia welcomes these developments, noting decisions are a matter for the Government of Japan.

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Phone s22(1)(a)(ii)

Why did Australia sign a significant defence agreement with Japan while Australian children are still missing?

- We consider targeted and sustained advocacy on child custody with the Japanese Government and other stakeholders is the best approach to support favourable outcomes for parents
 - and will be more effective in seeking family law reform.

s 33(a)(iii)

Background

Recent developments

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 Catherine Henderson was the main participant in the program. Her lawyer, Tamayo Omura, is joint legal counsel in two class action cases on the issue being: failure to outlaw parents abducting their children; and failure to have a system that ensures a child has access to their non-custodial parent. The program noted that DFAT has provided consular assistance to 82 children involved in parental abduction and child custody cases in Japan since 2004.

s 33(a)(iii), s 47F(1)

Overview of issue

As a longstanding feature of Japanese domestic family law, shared parental authority or alternating custody is not recognised following separation of parents, leaving access to a child to the goodwill of the parent with whom the child lives. 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)

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Cleared By:

Name: Kate Logan
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s 33(a)(iii), s 47F(1)

s 33(a)(iii)

s 33(a)(iii), s 47F(1)

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

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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

- 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.

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- 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.](#)

Division: ISG CCD Consular Communications and Policy Branch	
PDR No: s 47E(d)	
Prepared by: s22(1)(a) Mob: s22(1)(a)(ii) Ext: s22(1)(a)(ii) Date: 25 October 2022	Cleared by Branch/Division Head: Kate Logan, FAS Consular and Crisis Management Division Mob: s22(1)(a)(ii) Ext: s22(1)(a)(ii) Date: 28 October 2022
Consultation: JPN, Tokyo Post, Consular Operations (Team A), Defence and AGD Name: s22(1)(a)(ii)	Date: 12 October 2022 Ext: s22(1)(a)(ii)
Cleared by CFO / CPO: n/a	
Cleared by Deputy Secretary: Craig Maclachlan Date: 31 October 2022	

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ATTACHMENT A – Timeline of Key Developments and Representations

Date	Event
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.
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)	
s 47E(d)	
s 33(a)(iii)	
s 33(a)(iii), s 33(b)	

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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)	
s 47E(d)	
11 January 2022	Covert recordings of the December 2020 parent outreach sessions were released to TikTok. s 47E(d)
s 33(a)(iii)	
s 33(a)(iii), s 33(b)	
22 October 2021	The former Foreign Minister responded to petition EN2796 – see 9 August 2021 entry below.
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)	

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July 2021	French affected father, Vincent Fichot, undertook a 20-day hunger strike coinciding with the Tokyo Olympics.
s 47E(d)	
s 33(a)(iii)	
s 47E(d)	
s 33(a)(iii)	

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From: DFAT Talking Points **s 47E(d)** @dfat.gov.au>
Sent: Wednesday, 21 December 2022 9:29 AM
To: CHCH CCD Consular and Crisis Management Division
Subject: DFAT Talking Points - Japan Parental abduction and child custody - v3
 [SEC=OFFICIAL Sensitive]

Categories: For Filing

OFFICIAL:Sensitive



Australian Government

Department of Foreign Affairs and Trade

**MEDIA TALKING POINTS
 DISTRIBUTION:
 CONSULAR CASE**

Topic: CONSULAR

Originating Division: CCD

Subject: Japan: Parental abduction and child custody

Version Date: 21/12/2022

Reason for Update: Release of the interim proposal on family law reform

Version: 3

Expiry: 22/07/2023

Talking Points

- 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 maintain meaningful relationships with both parents
 - Australia welcomes Japan's consideration of family law reform, which *includes* a joint custody model

If raised: what is Australia doing to assist Australian parents?

- The Australian Government continues to provide consular assistance and updates to affected Australian parents
 - engagement with parents occurs individually as part of consular case management
- We encourage Japan to find a solution that allows for children to maintain meaningful relationships with both parents
 - 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 children who have been wrongfully removed or retained overseas by another parent and for access

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

- It would not be appropriate to disclose the specifics of leader-level conversations
- Foreign Minister Wong raised the issue with Foreign Minister Hayashi in July 2022
 - Australian officials regularly raise this issue with Japanese authorities, including during bilateral consular consultations and through our Embassy in Tokyo

If raised: is the Australian Government considering making a submission on the family law reform interim proposal?

- *Aware anyone can make a submission regardless of nationality or place of residence*
- *No decision has been made to make a submission on the family law proposal*

If raised: will the interim proposal on parental authority for divorced parents lead to a joint custody system in Japan?

- Aware of the interim proposal on *family law reform which includes* a joint custody model
 - Australia welcomes Japan's consideration of these issues
 - noting the outcome of this process is a matter for the Government of Japan

If raised: 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 raised: how many Australian consular cases are involved in this issue?

- DFAT currently provides consular assistance to 16 affected parents (in respect of 24 children) in relation to parental abduction and child custody issues in Japan

If raised: has the Australian Government ceased communication with affected parents?

- The Australian Government continues to communicate on an individual basis with affected parents regarding their individual consular cases and to provide updates

s 33(a)(iii)

Any use or disclosure of personal information about individuals and the incidents contained in this background should not be made public. To do so may constitute a breach of the Privacy Act 1988 (Cth).

Background

Overview of issue

Japan's family law system does not allow for joint custody of children following divorce. Children traditionally live with one parent and often have no contact with the non-custodial parent. The principle of continuity (of parenting) favours the 'taking' parent over the 'left-behind' parent in family courts s 33(a)(iii).

s 33(a)(iii), s 47F(1)

s 33(a)(iii)

s 33(a)(iii), s 47F(1)

s 33(a)(iii)

Japanese developments

On 15 November 2022, Japan's Family Law Subcommittee finalised its interim proposal on family law reform. The proposal marks the first time Japan has considered a joint custody model. s 33(a)(iii)

Travel advice

DFAT has strengthened the wording in the Travel Advice for Japan on parental abduction and child custody issues and the Embassy added a page to its website to provide more detailed information for Australian parents in Japan in December 2020.

Handling Notes

None

Media Interest

During a visit to Japan to attend former Prime Minister Shinzo Abe's funeral on 27 September 2022, Prime Minister Albanese was asked by an Australian journalist if he had raised child custody issues with Japanese Prime Minister Kishida. Prime Minister Albanese 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 affected parents.

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 s 47E(d), s 47F(1)

s 33(a)(iii)

Approval	
Consultation	AGD, Tokyo Post, JPN, CSA
Author	s22(1)(a)(ii) CCD, s22(1)(a)(ii)
Cleared by	Jenny Dee, Assistant Secretary CIB, CCD

Distribution	
Media Liaison Section, AS PMB, Senior Executive, CCD, FMO, AFMO, PMO and PM&C addressees s22(1)(a)(ii)	
Duncan, Alison, s22(1)(a)(ii), s	, Gerard, Ian, Salvio, Marco, Roberts, Peter, Elias, Claire, s22(1)(a)(ii)
s22(1)(a)(ii)	

s22(1)(a)(ii)

From: DFAT Talking Points **s 47E(d)** @dfat.gov.au>
Sent: Wednesday, 9 November 2022 3:39 PM
To: CHCH CCD Consular and Crisis Management Division
Subject: DFAT Talking Points – Japan: Parental abduction and child custody - v2
 [SEC=OFFICIAL:Sensitive]

OFFICIAL:Sensitive



Australian Government

Department of Foreign Affairs and Trade

**MEDIA TALKING POINTS
 DISTRIBUTION:
 CONSULAR CASE**

Topic: CONSULAR

Originating Division: CCD

Subject: Japan: Parental abduction and child custody

Version Date: 9/11/2022

Reason for Update: Added information on Japanese PMs visit to Australia and general updates

Version: 2

Expiry: 22/07/2023

Talking Points

- 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 maintain meaningful relationships with both parents*
 - *Australia welcomes Japan's consideration of family law reform, which we understand may include a joint custody model*

If raised: what is Australia doing to assist Australian parents?

- The Australian Government continues to provide consular assistance *and updates* to affected Australian parents
 - *engagement with parents occurs individually as part of consular case management*
- We encourage Japan to find a solution that allows for children to maintain meaningful relationships with both parents
 - Australian ministers have raised the issue with Japanese counterparts [most recently Foreign Minister Wong to Foreign Minister Hayashi on 7 July 2022]
 - Australian officials regularly raise the issue with Japanese authorities [*most recently on 5 October 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 children who have been wrongfully removed or retained overseas by another parent and for access

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

- *It would not be appropriate to disclose the specifics of leader-level conversations*
- *Foreign Minister Wong raised the issue with Foreign Minister Hayashi in July 2022*
 - *Australian officials regularly raise this issue with Japanese authorities, including during bilateral consular consultations and through our Embassy in Tokyo*

If raised: will the interim proposal on parental authority for divorced parents lead to a joint custody system in Japan?

- *Aware of a proposal being considered which we understand may include a joint custody model*
 - *Australia welcomes Japan's consideration of these issues*
 - *noting the outcome of this process is a matter for the Government of Japan*

If raised: 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

If raised: has the Australian Government ceased communication with affected parents?

- The *Australian* Government continues to communicate *on an individual basis* with affected parents regarding their individual consular cases and to provide updates.

If raised: Japanese authorities do not use the term 'abduction' in relation to parental abduction and child custody cases. Why does Australia continue to use it?

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

Any use or disclosure of personal information about individuals and the incidents contained in this background should not be made public. To do so may constitute a breach of the Privacy Act 1988 (Cth).

Background

Overview of issue

As a longstanding feature of Japanese domestic family law, shared parental authority or alternating custody is not recognised following separation of parents, leaving access to a child to the goodwill of the parent with whom the child lives.

s 33(a)(iii)

s 33(a)(iii), s 47F(1)

s 33(a)(iii)

s 33(a)(iii), s 47F(1)

s 33(a)(iii)

s 33(a)(iii)

Japanese developments

On 19 July 2022, Japan's Family Law Subcommittee publicly released (in Japanese) a draft summary of its interim proposal on family law changes. *The Family Law Subcommittee is a subcommittee of the Legislative Council, a Ministry of Justice (MOJ) advisory body, and was created with the aim of considering best practices in detail for child custody systems after divorce.* s 33(a)(iii)

Travel advice

DFAT has strengthened the wording in the Travel Advice for Japan on parental abduction and child custody issues and the Embassy added a page to its website to provide more detailed information for Australian parents in Japan in December 2020.

Handling Notes

None

Media Interest

During a visit to Japan to attend former Prime Minister Shinzo Abe's funeral on 27 September 2022, Prime Minister Albanese was asked by an Australian journalist if he had raised child custody issues with Japanese Prime Minister Kishida. Prime Minister Albanese 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 affected parents.

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. s 47E(d), s 47F(1)

s 33(a)(iii)

s 33(a)(iii)

Approval	
Consultation	AGD, Tokyo Post, JPN, CSA
Author	s22(1)(a)(ii) CCD, s22(1)(a)(ii)
Cleared by	Jenny Dee, Assistant Secretary CIB, CCD

Distribution	
Media Liaison Section, AS PMB, Senior Executive, CCD, FMO, AFMO, PMO and PM&C addressees s22(1)(a)(ii)	
s 47F(1)	Gerard, Ian, Salvio, Marco, Roberts, Peter, Elias, Claire;
s22(1)(a)(ii)	

s22(1)(a)(ii)

From: DFAT Talking Points s 47E(d) @dfat.gov.au>
Sent: Tuesday, 11 October 2022 10:15 AM
To: CHCH CCD Consular and Crisis Management Division
Subject: DFAT Talking Points - Japan Parental abduction and child custody - v1
 [SEC=OFFICIAL Sensitive]

OFFICIAL:Sensitive



Australian Government

Department of Foreign Affairs and Trade

**MEDIA TALKING POINTS
 DISTRIBUTION:
 CONSULAR CASE**

Topic: CONSULAR

Originating Division: CCD

Subject: Japan: Parental abduction and child custody

Version Date: 11/10/2022

Reason for Update: Added information on PMs visit to Japan and general updates

Version: 1

Expiry: 22/07/2023

Talking Points

Japan: parental abduction and child custody

- Australia remains concerned by the number of Australian–Japanese children involved in parental abduction and custody disputes 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 aware of cases where Australian parents have not had access to their children for some time, often resulting in one parent being unable to exercise his/her rights of access or rights of custody
- Children have a right to enjoy meaningful relationships with each of their parents and extended family, provided this is in a child's best interests.
- We respect the differences between the Japanese and Australian legal systems
 - we will continue to engage constructively with Japanese authorities
 - and encourage Japan to find a solution acceptable to all in the best interests of the children
- We understand an interim proposal on family law reform prepared by the Family Law Subcommittee of the Legislative Council [at the request of Japan's Minister of Justice] will be released for public comment and consultation in due course
 - *we understand the proposal includes the option for Japan to adopt joint custody, which would be the first time Japan has considered its introduction*
 - Australia welcomes these developments, noting decisions are a matter for the Government of Japan

If Asked: What is Australia doing to assist Australian parents?

- The Australian Government continues to provide consular assistance to affected Australian parents facing difficulties maintaining contact with their children and exercising their rights of access or rights of custody in Japan
- It is important to remember these are matters for the Japanese courts
 - we encourage Australians to seek legal advice and representation in Japan
- We continue to work sensitively to encourage Japan to find a solution acceptable to all in the best interest of the children
 - Australian ministers have raised the issue with Japanese counterparts [*most recently Foreign Minister Wong to Foreign Minister Hayashi 7 July 2022*]
 - Australian officials regularly raise this issue with Japanese authorities, including during bilateral consular consultations [*most recently 31 May 2022*] and through our Embassy in Tokyo
 - *the Department of Foreign Affairs and Trade (DFAT) continues to work on a whole-of-government response to the issue*
 - *this included facilitating the Attorney-General's Department (AGD) to share information on Australian family law and shared parental responsibility arrangements with Japanese authorities*
- *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*
- DFAT continues to update affected families, including through our Embassy in Tokyo [*most recently 4 July 2022*]

If Asked: about specific cases

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

If Asked: What is the chance the interim proposal for parental authority for divorced parents will lead to a joint custody system in Japan?

- Aware of Japan's family law reform process and proposals being considered to allow for joint custody in Japan
 - Australia welcomes these developments
 - noting decisions are matters for the Government of Japan
- The Australian Government will continue to work sensitively with Japan to find a solution acceptable to all and in the best interest of the children
 - we continue to provide consular assistance to affected Australian parents facing difficulties maintaining contact with their children in Japan

If Asked: 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 child custody and parental abduction issues in Japan

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

- The Government continues to communicate with affected parents regarding their individual consular cases and to provide updates on our advocacy work [latter most recently 4 July 2022]
- Due to privacy considerations of consular clients, we are not continuing group sessions at this stage

If Asked: Why doesn't Australia make a public statement on this issue as it did when calling for the resolution of the abduction of Japanese citizens by the DPRK at the 16 June 2022 UN Symposium?

- The Australian Government remains concerned about both issues
- State-sponsored abductions by the DPRK and custody disputes between parents are different issues that should be pursued in different ways

If Asked: Will the Australian Government join international calls for trade and diplomatic sanctions against Japan to assist in the return of abducted children?

- We assess our current approach is the best way to support favourable outcomes
- We appreciate Japan's ongoing and constructive engagement with Australia on this issue

s 33(a)(iii)

Any use or disclosure of personal information about individuals and the incidents contained in this background should not be made public. To do so may constitute a breach of the Privacy Act 1988 (Cth).

Background

Developments

On 19 July 2022, Japan's Family Law Subcommittee publicly released (in Japanese) a draft summary of its interim proposal on family law changes. *The Family Law Subcommittee is a subcommittee of the Legislative Council, a Ministry of Justice (MOJ) advisory body, and was created with the aim of considering best practices in detail for child custody systems after divorce* s 33(a)(iii)

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

s 33(a)(iii)

Travel advice

DFAT has strengthened the wording in the Travel Advice for Japan on parental abduction and child custody issues and the Embassy added a page to its website to provide more detailed information for Australian parents in Japan in December 2020

Handling Notes

None

Media Interest

There is media interest in these cases from affected individuals/families. *Several Australian parents have been working with journalists to tell their stories* s 47E(d), s 47F(1)

s 33(a)(iii)

Approval	
Consultation	AGD, Tokyo Post, JPN, CSA
Author	s22(1)(a)(ii) CCD, s22(1)(a)(ii)
Cleared by	Jenny Dee, Assistant Secretary CIB, CCD

Distribution	
Media Liaison Section, AS PMB, Senior Executive, CCD, FMO, AFMO, PMO and PM&C addressees s22(1)(a)(ii)	s 47F(1)
s22(1)(a)(ii)	, Gerard, Ian, Salvio, Marco, Roberts, Peter, Elias, Claire,

KEY MESSAGE

- We continue to encourage Japan to find a solution that allows children to maintain meaningful relationships with both parents, and extended family.

If asked: what is the law 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.
- Japan is currently considering a range of family law reforms – this is a significant step for Japan, which we welcome

Background

Japan's family law system does not allow for joint custody of children following the separation of parents. Children traditionally live with one parent and often have no contact with the non-custodial parent. The principle of continuity (of parenting) favours the 'taking' parent over the 'left-behind' parent in family courts. [s 33\(a\)\(iii\)](#)

[s 33\(a\)\(iii\)](#), [s 47F\(1\)](#)

- In addition to Australian citizens, this issue also affects citizens from many other countries including the United Kingdom, the United States, Canada, Italy and France, along with thousands of Japanese parents.

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

s 47F(1), s 33(a)(iii)

Background

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.

If asked what is the Government doing to assist Australian parents facing child custody and parental abduction 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.
- Australia made a submission to the Ministry of Justice's Family Law Review on 17 February [year] in support of an approach that allows for shared parenting
- The Australian Government encourages Japan to find a solution that allows children to maintain meaningful relationships with both parents, and extended family
 - Foreign Minister Wong has raised the issue twice with her counterpart Foreign Minister Hayashi [most recently on 9 December 2022]
 - Australian officials regularly raise the issue with Japanese counterparts [most recently on 13 December 2022] and engage in discussions with other countries whose citizens are affected on our respective approaches
- The 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 children who have been wrongfully removed or retained overseas by another parent and for access

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]?

- The Prime Minister discussed a range of bilateral matters of mutual interest with Prime Minister Kishida on these two occasions
- Foreign Minister Wong has raised the issue twice with her counterpart [Foreign Minister Hayashi in July and December 2022] Australian officials regularly raise this issue with Japanese authorities, including during bilateral consular consultations and through our Embassy in Tokyo

Background

§ 33(a)(iii)

s 33(a)(iii)

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

If asked: what have other countries done to assist their citizens affected by this issue

- Japan has come under increasing pressure over the issue in recent years
 - French President Emmanuel Macron raised the issue with former Japanese Prime Minister Yoshihide Suga in July 2021, and his aide met affected French father Vincent Fichot who had staged a hunger strike in protest outside Olympic Stadium in Tokyo
 - The European Union sent its Ambassadors to meet with Mr Fichot.
- In a resolution on 8 July 2020, the European Parliament urged Japan to comply with international rules on child protection and to allow for joint parental custody after a number of EU citizens were denied access to their children by Japanese mothers.
- In 2020 some countries strengthened their travel advisories for Japan, referring to the different approach Japan takes to child custody after parental separation
 - DFAT strengthened the Travel Advice wording for Japan to provide more detailed information for Australian parents in Japan in December 2020.
- Our experience with Japan is that our advocacy on this issue has been most effective when conducted constructively and discreetly.



Australian Government
Department of Foreign Affairs and Trade

BRIEF FOR THE MINISTER FOR FOREIGN AFFAIRS, SENATOR THE HON PENNY WONG



G20 FOREIGN MINISTERS' MEETING (FMM)

Bali, 7 – 8 July 2022

Front cover photo: Grey concrete statue in Ubud, Bali (by Marlon Trottmann)

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JAPAN: Hayashi Yoshimasa

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2030

Meeting with His Excellency Mr Hayashi Yoshimasa, Minister
for Foreign Affairs, Japan

2230

Australian Bilateral Meeting Room, Mulia Hotel

s22(1)(a)(ii)

s22(1)(a)(ii)



H.E. Mr HAYASHI Yoshimasa
Minister for Foreign Affairs (LPD)
JAPAN



Form of Address: Minister

s 33(a)(iii)

Year of Birth: 1961

JAPAN: HAYASHI YOSHIMASA

MINISTER FOR FOREIGN AFFAIRS

Purpose:

- s22(1)(a)(ii)
- s 33(a)(iii)

Key messages

s22(1)(a)(ii)

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s 33(a)(iii)

s 33(a)(iii), s 47F(1)

s 33(a)(iii)

s22(1)(a)(ii)



Australian Government
Department of Foreign Affairs and Trade

TENTH AUSTRALIA-JAPAN FOREIGN AND DEFENCE MINISTERIAL CONSULTATIONS 2022 BILATERAL PROGRAM



SENATOR THE HON PENNY WONG, MINISTER FOR FOREIGN AFFAIRS

Tokyo, 9 December, 2022

Front cover photo: Zojoji Temple, Tokyo,

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s 22(1)(a)(ii)

Parental Abduction

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s 22(1)(a)(ii)



s 22(1)(a)(ii)

Parental Abductions

s 33(a)(ii)

s 22(1)(a)(ii)

Parental Abduction

s 33(a)(iii)

Background

As a longstanding feature of Japanese domestic family law, **shared parental authority or alternating custody is not recognised** following separation of parents, leaving access to a child to the goodwill of the parent with whom the child lives. s 33(a)(iii)

An interim proposal on **family law reform** prepared by the Family Law Subcommittee of the Legislative Council [at the request of Japan's Ministry of Justice] included an option to introduce a joint custody model. This marks the first time the Japanese Government is considering joint custody. Media reporting notes public comment is expected to open in December.

s 33(a)(iii)

s 33(a)(iii), s 47F(1)

s 33(a)(iii)



Australian Government
Department of Foreign Affairs and Trade



s 47E(d)

Senator the Hon Penny Wong
meeting with Mr YAMAGAMI Shingo, Ambassador of Japan to Australia
3.30 to 4pm, Tuesday, 13 September 2022, Parliament House

s 22(1)(a)(ii)

s 22(1)(a)

s 22(1)(a)



s 22(1)(a)(ii)

s 47E(d)

s 33(a)(iii)

s 22(1)(a)(ii)



s 47E(d)

s 22(1)(a)(ii)

The Department provides consular assistance to affected parents in relation to child custody and parental abduction issues in Japan. Under Japanese domestic family law, shared parental authority or alternating custody is not recognised following separation of parents, leaving access to a child solely to the goodwill of the parent with whom the child lives. Australia considers it important children at the centre of parental conflict are able to maintain meaningful relationships with both parents, and extended family. s 33(a)(iii)

s 22(1)(a)(ii)

