

1. Commonwealth

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
<p>Article 11</p> <p>1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.</p> <p>2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.</p> <p><u>NOTES:</u></p>	<p>Family Law Act 1975</p>	<p>Cth</p>	<p>Section 111B</p>	<p>This section provides that regulations may make such provision as is necessary or convenient to enable the performance of the obligations of Australia, or to obtain for Australia any advantage or benefit, under the Convention on the Civil Aspects of International Child Abduction (the Child Abduction Convention).</p> <p>The Family Law (Child Abduction Convention) Regulations 1986 (Child Abduction Regulations) implement the Child Abduction Convention in Australia.</p>
<p>Article 11 is designed to protect children from being taken out of their country illegally and is particularly concerned with abductions by parents (or other relatives). Article 35 addresses 'the abduction of, the sale of or traffic in children for any purpose or in any form' so this summary does not consider wider provisions relating to child abductions or kidnapping for purposes of child trafficking (such as under section 271.4 of the <i>Criminal Code Act 1995</i> (Cth)).</p>	<p>Family Law (Child Abduction Convention) Regulations 1986</p>	<p>Cth</p>	<p>Regulation 5</p>	<p>Under the Child Abduction Convention, each convention country must nominate a Central Authority. This regulation establishes the Secretary of the Attorney General's Department as the Commonwealth Central Authority with all the duties, powers and functions that a Central Authority has under the Child Abduction Convention (which include discovering the whereabouts of a child who has been wrongfully retained or removed, to secure the voluntary return of the child, to exchange information, to provide or facilitate the provision of legal aid and advice and to provide administrative arrangements to secure the safe return of a child).</p>
<p>Article 11 also overlaps with the Hague Convention on the Civil Aspects of International Child Abduction (to which Australia is a party) and so this summary includes references to domestic legislation designed to implement this</p>	<p>Family Law (Child Abduction Convention) Regulations 1986</p>	<p>Cth</p>	<p>Regulation 11</p>	<p>A person, institution or other body that claims under an Australian law to have rights of custody to a child who has been removed from Australia to a convention country or retained in a convention country may request a responsible Central Authority to have the claim sent to the Central</p>

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<p>Convention.</p> <p>In 19 September 2011, the Australian Government announced the development of new legislation to improve Australia's response to international parent child abduction (IPCA). Draft legislation was expected to be tabled in the first half of 2012 but has not been tabled as at the date of this summary. One of the proposed changes include strengthening criminal offences for IPCA to include the wrongful retention of a child overseas as a criminal offence.</p>				<p>Authority in the country which the child has been removed or retained. The Commonwealth Central Authority must (if the request is in the prescribed form) take any action required to be taken by a Central Authority under the Child Abduction Convention.</p>
	<p>Family Law (Child Abduction Convention) Regulations 1986</p>	Cth	Regulation 13	<p>The Commonwealth Central Authority must take action to secure the return of a child under the Child Abduction Convention if it receives a request from a person, institution or body that claims to have rights of custody in relation to the child who, in breach of those rights, has been removed from a convention country to Australia.</p>
	<p>Family Law (Child Abduction Convention) Regulations 1986</p>	Cth	Regulation 14	<p>If a child is removed from a convention country to, or retained in Australia, the Commonwealth Central Authority may apply to the court to seek orders including a return order for the child, an order for the delivery of child's passport, an order that the child nor be removed from a specified place and an order directing the Australian Federal Police prevent the child being removed from a specified place.</p>
	<p>Family Law (Child Abduction Convention) Regulations 1986</p>	Cth	Regulation 15	<p>A court may make an order of the kind mentioned in regulation 14 and any other order that it considers appropriate to give effect to the Child Abduction Convention.</p>
	<p>Family Law (Child Abduction Convention) Regulations 1986</p>	Cth	Regulation 16	<p>A court must make a child return order if the court is satisfied that the child's removal or retention was wrongful (as defined in the regulation).</p>

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	Family Law (Child Abduction Convention) Regulations 1986	Cth	Regulation 17	A court may declare that the removal of a child from Australia to a convention country or the retention of a child in a convention country is wrongful within the meaning of the Child Abduction Convention.
	Family Law (Child Abduction Convention) Regulations 1986	Cth	Regulation 20	If a court makes a child return order, the responsible Central Authority must coordinate the making of arrangements to give effect to the order.
	Family Law Act 1975	Cth	Section 65Y	Where the court has made parenting orders under the Family Law Act, it is a criminal offence for a parent to remove the child from Australia (offences carry a maximum penalty of three years imprisonment). This offence is directed at contempt of court, rather than the removal of the child <i>per se</i> , as it does not apply to non-consensual removals by one parent where no parenting orders have been granted by the court.
	Family Law Act 1975	Cth	Section 65Z	Where proceedings for parenting orders under the Family Law Act are on foot, it is a criminal offence for a parent to remove the child from Australia (offences carry a maximum penalty of three years imprisonment). As with section 65Y, this offence is directed at contempt of court, rather than child removal, as it does not apply to non-consensual removals by one parent where no parenting orders have been sought from the court.
	Family Law Act 1975	Cth	Sections 67Q, 67T, 67U	A court can authorise or direct an appropriate authority to take action to find, recover and deliver a child to a person with parental responsibility for him or her (these orders can

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				also prohibit a parent who has previously abducted or attempted to abduct the child from repeating this conduct).
	Family Law Act 1975	Cth	Section 67M	A person can be required to provide information to the court about a child's location.
	Family Law Act 1975	Cth	Section 67N	An Australian Government agency may be required to provide information to the court about the child's location that is contained in government records.
	Family Law Act 1975	Cth	Section 121	The court may make orders permitting the media and others to publish details and photographs of the missing child and the person he or she is believed to be with.
	Family Law Act 1975	Cth	Section 70H	Where a child who is habitually resident overseas is abducted to Australia, the left-behind parent may seek registration in the Family Court of family law orders made by a court in the jurisdiction of habitual residence.
	Family Law Regulations 1984	Cth	Regulation 23	Made pursuant to section 70G of the <i>Family Law Act 1975</i> , the Family Law, this regulation provide for the registration in Australian courts of overseas child orders from a prescribed overseas jurisdiction (which are listed in Schedule 1A of the Regulations and include most of the states of the United States, New Zealand, Austria, Papua New Guinea and Switzerland). Once registered, the overseas child order is enforceable throughout Australia.
	Family Law Regulations 1984	Cth	Regulation 24	Made pursuant to section 70N of the Family Law Act, this regulation provides that a child order or parenting order made by an Australian court can be sent to a prescribed overseas jurisdiction for registration and enforcement in that

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				jurisdiction. Prescribed overseas jurisdictions are listed in Schedule 1A of the Regulations and include most of the states of the United States, New Zealand, Austria, Papua New Guinea and Switzerland.

2. New South Wales

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<p>Article 11</p> <p>1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.</p> <p>2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.</p>	<p>Crimes Act 1900</p>	<p>NSW</p>	<p>Section 87</p>	<p>It is a criminal offence to take or detain a child under the age of 12 from the lawful control of any person having parental responsibility over the child without that person's consent.</p>

3. Victoria

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<p>Article 11</p> <p>1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.</p> <p>2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.</p>	<p>Crimes Act 1958</p>	<p>Vic</p>	<p>Section 63</p>	<p>It is a criminal offence to forcibly or fraudulently take or retain a child under the age of 16 with the intent to deprive any parent, guardian or other person who has the lawful care or charge of a child. However a person does not commit an offence under this provision if he or she is the mother or claims to be the father of the child or claims any right to the possession of the child so this provision would be of limited use in cases of parent child abduction.</p>

4. Queensland

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<p>Article 11</p> <p>1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.</p> <p>2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.</p>	<p>Criminal Code 1899</p>	<p>Qld</p>	<p>Section 363</p>	<p>It is a criminal offence to forcibly or fraudulently take or retain a child under the age of 16 with the intent to deprive any parent, guardian or other person who has the lawful care or charge of a child.</p>

5. South Australia

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<p>Article 11</p> <p>1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.</p> <p>2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.</p>	<p>Criminal Law Consolidation Act 1935</p>	<p>SA</p>	<p>Section 40</p>	<p>It is a criminal offence for a person to wrongfully take or send a child out of the jurisdiction. A person acts wrongfully if they have knowledge that a person who has the lawful custody of the child (either alone or jointly with someone else) does not consent to the child being taken or sent out of the jurisdiction and there is no judicial or statutory authority of the act.</p>
	<p>Criminal Law Consolidation Act 1935</p>	<p>SA</p>	<p>Section 80</p>	<p>It is a criminal offence to forcibly or fraudulently take or retain a child under the age of 16 with the intent to deprive any parent, guardian or other person who has the lawful care or charge of a child. However a person does not commit an offence under this provision if he or she has a bona fide claim to the child, including as the mother or the father of the child so this provision would be of limited use in cases of parent child abduction (in contrast to section 40 of the <i>Criminal Law Consolidation Act 1935 SA</i>).</p>

6. Western Australia

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<p>Article 11</p> <p>1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.</p> <p>2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.</p>	<p>Criminal Code Act Compilation Act 1913</p>	<p>WA</p>	<p>Section 343</p>	<p>It is a criminal offence for any person who, with intent to deprive any parent, guardian, or other person who has the lawful care or charge of a child under the age of 16 years, of the possession of such child, forcibly or fraudulently takes or detains the child. However it is a defence to this charge if the accused person claims a right to the possession of the child, or, in the case of an illegitimate child, is its mother or claimed to be its father or parent and so this provision would be of limited use in cases of parent child abduction.</p>

7. Northern Territory

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<p>Article 11</p> <p>1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.</p> <p>2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.</p>	<p>Criminal Code Act</p>	<p>NT</p>	<p>Section 202</p>	<p>It is a criminal offence for any person to take a child under 16 years out of the custody or protection of that child's mother or father or other person having the lawful care or charge of the child and against the will of such father or mother or other person.</p>

8. Tasmania

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<p>Article 11</p> <p>1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.</p> <p>2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.</p>	<p>Criminal Code Act 1924</p>	<p>Tas</p>	<p>Section 189</p>	<p>It is a criminal offence for any person to unlawfully take away, or cause to be taken away, a person under the age of 17 years out of the possession and against the will of a parent of that person or a person having the lawful charge or care of that person.</p>

9. Australian Capital Territory

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<p>Article 11</p> <p>1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.</p> <p>2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.</p>	<p>Crimes Act 1900</p>	<p>ACT</p>	<p>Section 37</p>	<p>It is a criminal offence for a person to unlawfully take, a person under the age of 16 years out of the lawful control and against the will of a person having lawful control of the person.</p>
	<p>Crimes Act 1900</p>	<p>ACT</p>	<p>Section 40</p>	<p>It is a criminal offence for a person to unlawfully take, a child under the age of 12, by force or deception, with the intention of unlawfully depriving another person of the lawful control of the child.</p>