

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

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

Underlying Principles on the Rights and Best Interests of the Child

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

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

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

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

Proposed Amendments to Australia's Family Law

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

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

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

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

Australia's Approach to Parenting After Separation

In Australia, in the majority of cases, both parents will continue to play an active role in parenting after separation – that is, they will both have a role in making decisions about a child's upbringing, including such things as a child's education, medical care, and their legal and financial matters. Parents are encouraged, where it is safe to do so, to negotiate and agree on how much time is spent with each parent, where the child resides, where they spend weekends and holidays, and how parents divide responsibility for day-to-day parenting, such as preparing meals, helping with homework, discipline, and taking children to school, sports or social activities. Arrangements can also include other people important in the child's life, such as grandparents or other relatives. This approach reflects that each family is different and parents are usually best placed to make caring arrangements that will work best for their child.

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

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

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

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

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

Conclusion

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

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

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