

International Child Abduction under Japan's Sole Parental Custody System

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International child abduction is a reality of relationship breakdown where children have parents from different countries. At Nicholes Family Lawyers, we advise clients whose children have been abducted or retained by the other parent in Japan and other nations. In some cases, the left behind Australian parent is unable to regain access to their children in Japan due to the Japanese sole parental custody framework. This continues despite Japan becoming a contracting party to the 1980 Hague Convention on Child Abduction in early 2014.

In March this year, The Sydney Morning Herald, The Age and 60 Minutes conducted investigations into the impact of Japanese sole custody laws, which have seen at least 82 Australian children retained in Japan since 2004. Although Australian parents have pleaded with the Japanese Government to facilitate the return of their children, their appeals have not yielded results due to the legal system which does not recognise shared custody. The most frustrating aspect of depriving parents of access to their children is that under Japanese law, it may be entirely legal.

Under Japan's sole parental custody system, one parent obtains complete control over every parental decision by default. These decisions range from the child's education to where they live and include whether they can spend time with the other parent. An estimated 200,000 couples separate in Japan each year. Of these couples, a third of their children completely lose contact with one parent due to the sole custody laws. Often, Japanese law grants custody to the parent who was last with the child. This instigates a race between parents to take the child and flee the country before the other parent becomes aware of the situation.

In most cases of Japanese child abduction, a Japanese parent takes the child and retains them in Japan in defiance of overseas Court orders or agreements for shared care or specific time spending arrangements. It is not only experienced by Australian left behind parents but has been raised by French and United States authorities. France has identified over 100 abducted children, and the United States 475. In the past two years, the Australian government has recorded a surge in Australian children abducted in Japan, jumping from 68 to 82 reported cases.

The Sydney Morning Herald published an interview with Melbourne-raised father of two Daniel Potocki, whose 2 children have been withheld from him by their Japanese mother for five years. It also told the story of Toowoomba-born father David Fleming, who had lived with his wife and children in Osaka. One morning while David was at work, he received a text message from his wife informing him that she had taken the children and would not return. David found out a year later that she had taken their children to a town south of Osaka, and the children had been adopted by her new partner.

Other than via the Hague Convention on Child Abduction which imposes time limits on return applications, the Australian Government does not have legal authority to compel parents or Japanese courts to return a child after a significant time. Nor can the Government compel regular visitation or intervene in mediation. The implication of Japan's sole custody laws is that the parent with sole custody mainly retains discretion regarding whether to permit visitation. Accordingly, parents with sole custody may be able to refuse the other parent access to their child, preventing them from having any concept of what is occurring in their child's

life. Australian father Scott McIntyre, who has had an Interpol notice for his 2 children since their abduction in 2019, said to The Sydney Morning Herald, "Not only do I not know where they are, but I also don't know who they are. I don't know what they're doing. I don't know if they're in school. I don't know if they died of COVID. I don't know if they had an accident."

Despite international pressure on the Japanese government to reform their sole custody laws, Japan has defended its position. Their view is that family disputes are a private affair and they are not able to comment on individual cases. They also maintain that sole custody offers protection to partners fleeing abusive relationships involving family violence. Whilst family violence is certainly a pertinent issue, outsiders argue there must be some other way to protect victim-survivors whilst also affording parents fair and equal access to their children.

Nicholes Family Lawyers extends our condolences and support to the Australian parents affected by these laws. We are available to provide legal advice and guidance should any parents wish to contact our office.

The author credits all factual information and interview content to Eryk Bagshaw and Natalie Clancy's article 'Eighty-two Australian children have been abducted in Japan – and it's legal', published in The Sydney Morning Herald on March 19 2023 and available here:
<https://www.smh.com.au/world/asia/eighty-two-australian-children-have-been-abducted-in-japan-and-it-s-legal-20230313-p5crou.html>.

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