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27 February 2023

The Hon Mark Dreyfus KC MP
c/o Family Law Reform
Attorney-General's Department
3–5 National Circuit
BARTON ACT 2600
Email: FamilyLawReform@ag.gov.au

Dear Attorney-General

Family Law Amendment Bill 2023 (Cth) - Exposure Draft

Thank you for the opportunity to provide feedback on the exposure draft of the Family Law Amendment Bill 2023 (Cth). We are legal academics with expertise in family and child law, with a particular focus on children's rights and participation in family law proceedings.

Scope of submission

Our submission addresses Schedule 1 and Schedule 4 of the exposure draft. It comments on:

1. The proposed redraft of the objects clause (consultation questions 1 and 2);
2. The wording of the 'best interests' factors (consultation questions 3-5);
3. The simplification of the legislative pathway for parenting order proceedings (consultation question 8);
4. The proposed requirement that the Independent Children's Lawyer ('ICL') must meet with a child and provide the child with an opportunity to express a view (consultation questions 21-23); and
5. The proposed repeal of s 68L(3) (consultation questions 24 and 26).

Schedule 1

Proposed redraft of objects clause (consultation questions 1 and 2)

As redrafted, the proposed objects clause (s 60B) appears to give greater prominence to the *United Nations Convention on the Rights of the Child* ('CRC').¹ Australia ratified the CRC on 17 December 1990 and it came into force for Australia on 16 January 1991. However, this Convention has not been incorporated into domestic law at the federal level. While the Full Court of the Family Court of Australia has held that the CRC must be given 'special significance' when interpreting domestic law,² recent Full Court decisions have emphasised that the contents of the CRC 'are not enshrined as operative principles of law' in Australia and that the Convention applies 'only to the extent that it has been incorporated by specific provisions of the Family Law Act'.³

We note that amending the objects clause does not change the *status* of this international convention in Australian domestic law. The CRC will remain a limited interpretive tool only. Reference to the Convention in the objects of Part VII of the *Family Law Act 1975* (Cth) ('FLA') 'does not give any legally enforceable rights to children and is unlikely to be of great value in the adjudication of individual cases'.⁴ A recent empirical study by one of the authors into the use of the CRC in judicial decision-making has revealed considerable scepticism about its relevance to Part VII proceedings.⁵

We are also concerned that the proposal to list only two objects – namely, (a) to ensure that children's best interests are met; and (b) to give effect to the CRC – may spur a tendency to dichotomise the child's best interests and the child's rights. The two are not at odds; rather, the determination of a child's best interests must be informed by the child's rights under the CRC, particularly the child's right under art 12 to express their views and be heard.⁶ The UN Committee on the Rights of the Child ('CRC Committee') has explained that the 'best interests' principle in art 3(1) of the CRC and the right in art 12 have 'complementary roles': the former 'aims to realize the child's best interests' while the latter

¹ *United Nations Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

² *In Marriage of B* (1997) 140 FLR 11, 82 (Nicholson CJ, Fogarty and Lindenmayer JJ).

³ *Ralton v Ralton* [2017] FamCAFC 182, [18] (Bryant CJ, Strickland and Aldridge JJ). See also *Oram v Lambert* [2019] FamCAFC 4, 29 [156] (Ainslie-Wallace, Aldridge and Watts JJ).

⁴ *Zammit v Zammit* [2020] FamCA 950, [24]; see also Michelle Fernando, 'Express Recognition of the UN Convention on the Rights of the Child in the *Family Law Act*: What Impact for Children's Participation?' (2012) 36(1) *University of New South Wales Law Journal* 88 ('Express Recognition').

⁵ See Georgina Dimopoulos, 'The Right Time for Rights? Judicial Engagement with the *UN Convention on the Rights of the Child* in Part VII Proceedings' (2023) *Australian Journal of Family Law* (forthcoming).

⁶ Georgina Dimopoulos, *Decisional Privacy and the Rights of the Child* (Routledge, 2022) 71 ('*Decisional Privacy*'). See also John Tobin, 'Judging the Judges: Are They Adopting the Rights Approach in Matters Involving Children?' (2009) 33 *Melbourne University Law Review* 579, 589.

‘provides the methodology’ for hearing the child’s views and including those views in the best interests assessment.⁷

In ratifying the *CRC*, Australia agreed to implement the rights that it contains (art 4). While a range of principles in the *CRC* are incorporated into Part VII of the FLA and embedded in court processes, several are not – most notably, the child’s right to express their views and be heard in judicial proceedings (art 12).⁸

Given its minimal practical influence, we query the need to retain the objects clause in s 60B. Instead, we consider that for children’s rights to be promoted meaningfully in Part VII proceedings, the right under art 12 of the *CRC* should be implemented in the legislative framework of Part VII, as the CRC Committee has recommended several times.⁹ We discuss this further below in our response to consultation questions 3 to 5.

Wording of the ‘best interests’ factors (consultation questions 3-5)

The proposed re-wording of s 60CC is a welcome development. The current separation of s 60CC into ‘primary’ and ‘additional’ considerations is unnecessary and confusing, and there is repetition between several of the factors. As redrafted, the proposed s 60CC accurately captures the issues that may be relevant to a child’s best interests, without being overly prescriptive about what a court may take into account. It allows the court and the parties to focus on the best interests of a particular child and the factors that may be relevant in their individual circumstances. It also minimises the risk that a lengthy list of considerations will be treated as a ‘tick the box’ exercise.¹⁰

We commend the emphasis on the safety of the child and the child’s carers in proposed s 60CC(2)(a), given the alarming prevalence of family violence and abuse allegations in Part VII proceedings. We also note that the ‘catch-all’ provision in proposed s 60CC(2)(f) would allow a court to consider any circumstance that may not otherwise fall within the section. While the ‘best interests’ factors, in their current or their proposed form, do not expressly require the court to consider a child’s rights when determining the child’s best interests, we submit that proposed s 60CC(2)(f) would enable the court

⁷ UN Committee on the Rights of the Child (‘CRC Committee’), *General Comment No 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Art 3, Para 1)*, UN Doc CRC/C/GC/14 (29 May 2013) [43] (‘General Comment No 14’).

⁸ Fernando, ‘Express Recognition’ (n 4).

⁹ CRC Committee, *Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Australia*, UN Doc CRC/C/AUS/CO/5-6 (1 November 2019) [22(a)] (‘Concluding Observations’).

¹⁰ *Karamalis v Karamalis* (2018) 57 Fam LR 588, 591 [17] (Bennett J) (‘Karamalis’).

to consider the model of children's rights under the *CRC* to determine the best interests of the child in each case.¹¹

Treatment of children's views

We are concerned that Part VII of the FLA, both in its current form and in the exposure draft, does not require the court to ascertain the views of children and does not give children a right to be heard.

The proposed s 60CC(2)(b) requires a court, in determining what is in the child's best interests, to consider 'any views expressed by the child'. First, we support the proposed repeal of the requirement in the current s 60CC(3)(a) for the court to also consider 'any factors (such as the child's maturity or level of understanding) that the court thinks are relevant to the weight it should give to the child's views'. It is appropriate that this qualification is removed, and that, as noted in the Consultation Paper, a court would have discretion around how much weight to place on the child's views in the circumstances of the case.¹² The absence of an express reference to the qualifying factors is promising for children's participation, for it may reduce the risk that the child's age, perceived immaturity or lack of understanding of the issues could be used to dismiss or disregard the child's views.

However, we note that neither the current s 60CC(3)(a) nor the proposed s 60CC(2)(b) require the court to ascertain the views of children or give children the opportunity to express their views. The court is only required to consider any views that have been expressed. The ALRC noted in its Final Report that 'there is no current obligation to ensure that a child has in fact had the opportunity to express [their] views'.¹³ While earlier Full Court authority seemed to indicate that children's views should ordinarily be ascertained,¹⁴ the High Court of Australia in *Bondelmonte v Bondelmonte* held that s 60CC(3)(a) does not expressly or impliedly require the court to seek the views of a child; it only requires that views that have been 'expressed' are considered.¹⁵ The High Court in that case also emphasised that children's views 'are but one consideration of a number to be taken into account in

¹¹ Dimopoulos, *Decisional Privacy* (n 6) 20; CRC Committee, *General Comment No 14* (n 7) [6], [32]; Ursula Kilkelly, 'The Best Interests of the Child: A Gateway to Children's Rights?' in Elaine E Sutherland and Lesley-Anne Barnes Macfarlane (eds), *Implementing Article 3 of the United Nations Convention on the Rights of the Child: Best Interests, Welfare and Well-being* (Cambridge University Press, 2016) 51.

¹² Attorney-General's Department (Cth) ('AGD'), *Exposure Draft - Family Law Amendment Bill 2023 Consultation Paper* (January 2023) 13.

¹³ Australian Law Reform Commission ('ALRC'), *Family Law for the Future - An Inquiry into the Family Law System* (Report No 135, March 2019) [10.105] ('*Family Law for the Future*').

¹⁴ See, eg, *Joannou v Joannou* (1985) FLC 91-642; *Harrison v Woollard* (1995) 18 Fam LR 788.

¹⁵ *Bondelmonte v Bondelmonte* (2017) 259 CLR 662, 675 [43] (Kiefel, Bell, Keane, Nettle and Gordon JJ).

the overall assessment of a child's best interests', such that they are not determinative or decisive in and of themselves.¹⁶

The FLA must provide children with a right to express their views and the opportunity to be heard in accordance with art 12 of the *CRC*. Art 12(1) gives a child who is capable of forming their own views 'the right to express those views freely in all matters affecting the child', with those views being given 'due weight' in accordance with the child's age and maturity. Article 12(2) provides that a child is to be given 'the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law'. In *Duffy v Gomes*, Harman J said that to be given 'life or meaning', the right under art 12 of the *CRC* demands 'active engagement with the child – meeting them, explaining their options to them and giving them the opportunity to participate how and should they wish'.¹⁷

Without an express right to be heard in Part VII proceedings, children are not afforded due process. As a result, the commitment that Australia has made to children in ratifying the *CRC* is not being met. As noted above, the CRC Committee has made ongoing entreaties to Australia to implement the child's right to be heard in the FLA.¹⁸

Several other jurisdictions have legislated to provide children with a right to express their views and to be heard. The *Care of Children Act 2004* (NZ) states that 'a child must be given reasonable opportunities to express views on matters affecting the child'; and 'any views the child expresses (either directly or through a representative) must be taken into account' (s 6(2)). Similarly, s 11(7)(b) of the *Children (Scotland) Act 1995* (UK) states that a court 'taking account of the child's age and maturity, shall so far as practicable-

- (i) Give him [sic] an opportunity to indicate whether he wishes to express his views;
- (ii) If he does so wish, give him an opportunity to express them; and
- (iii) Have regard to such views as he may express'.

Research in the family law context, both in Australia and overseas, has explained the value of children being afforded the opportunity to express their views and to have those views taken into account in

¹⁶ Ibid 673 [34].

¹⁷ *Duffy v Gomes* (2015) 52 Fam LR 562, 582 [106].

¹⁸ CRC Committee, *Concluding Observations* (n 9) [22(a)].

decision-making about matters that affect them.¹⁹ Children’s participation in the assessment of their best interests has been found to improve children’s capacity for independent decision-making and to promote their social and emotional empowerment.²⁰ Listening to and taking into account children’s views can produce more well-informed, relevant decisions.²¹ It may enhance compliance with parenting orders²² and there are ‘potential dispute resolution benefits for the parents of hearing what their children have to say’.²³

However, research has found that children feel marginalised by the family law system. They perceive that adults in the decision-making process do not listen to, take into consideration or care about their views.²⁴ Children have emphasised the importance of ‘having “someone” to listen to their views and then communicat[ing] those views so that they could inform the decision making in their case’.²⁵ They have expressed a desire for ‘a bigger voice more of the time’ in family law decision-making processes that affect them.²⁶

Enshrining a child’s right to express their views and to be heard in the FLA would:

- ensure that children’s rights under art 12 of the *CRC* are protected and upheld;
- enable Australia to fulfil its obligations under the *CRC*; and
- allow an appeal to be brought on the basis that a child has been denied the right to express their views and be heard, as occurred in the New Zealand case of *Carpenter v Armstrong*.²⁷

We propose that these objectives can be achieved by inserting a new section into Part VII of the FLA, as follows:

¹⁹ See, eg, Rachel Carson et al, *Children and Young People in Separated Families: Family Law System Experiences and Needs* (Final Report, Australian Institute of Family Studies, 2018) 30 (‘*Separated Families*’); Patrick Parkinson and Judy Cashmore, *The Voice of a Child in Family Law Disputes* (Oxford University Press, 2008) 4-13; ALRC, *Family Law for the Future* (n 13) [12.28]; Judy Cashmore, ‘Children’s Participation in Family Law Decision-Making: Theoretical Approaches to Understanding Children’s Views’ (2011) 33(4) *Children and Youth Services Review* 515; Rachel Birnbaum, ‘Views of the Child Reports: Hearing Directly from Children Involved in Post-Separation Disputes’ (2017) 5(3) *Social Inclusion* 148; Anne B Smith, Nicola J Taylor and Pauline Tapp, ‘Rethinking Children’s Involvement in Decision-Making After Parental Separation’ (2003) 10(2) *Childhood* 201.

²⁰ Parkinson and Cashmore (n 19) 67-8, 193-4.

²¹ *Karamalis* (n 10) 591 [16] (Bennett J).

²² See Rachel Carson et al, *Compliance with and Enforcement of Family Law Parenting Orders: Final Report* (Research Report No 20, October 2022).

²³ *Ibid* 74.

²⁴ ALRC, *Seen and Heard: Priority for Children in the Legal Process* (Report No 84, November 1997) [4.23].

²⁵ Carson et al, *Separated Families* (n 19) 44.

²⁶ *Ibid* 68.

²⁷ Unreported, High Court of New Zealand, 31 July 2009 (Heath J).

Child's right to express views and be heard

- (a) In all proceedings under this Part, a child has a right to express their views in all matters affecting the child.*
- (b) For the purposes of subsection (a), a child will be provided with a reasonable opportunity to be heard in the proceedings, in a manner consistent with the child's evolving capacities.*

This provision would not interfere with the current s 60CE which, appropriately, stipulates that children cannot be required to express their views.

**Simplification of the legislative pathway for making parenting orders
(consultation question 8)**

The repeal of the presumption of equal shared parental responsibility (s 61DA) and the consideration of specific time arrangements (s 65DAA) is a welcome development. We agree with the Consultation Paper that repealing the presumption will have the advantage of simplifying the extremely complicated legislative framework.²⁸ It will also enable the court to assess the best interests of a child in each case, rather than presuming a particular outcome, which may have the effect of exposing the child to harm or the risk of harm.

We also agree with the view, shared by many submissions to the ALRC inquiry into the family law system, that the requirement to consider equal time or substantial and significant time with each parent is unnecessary, detracts from the child's best interests, and provides scope for exacerbating conflict.²⁹ The proposed repeal of s 61DA and s 65DAA re-focusses the process of making parenting decisions on children's best interests. It is consistent with art 18(1) of the *CRC*, which provides that the best interests of the child must be parents' 'basic concern'. The presumption of equal shared parental responsibility and specific time provisions detract from this concern; they have also spurred a problematic interpretation that emphasises 'parental rights' to 'equal time'.³⁰

However, in removing the presumption, we consider that a requirement to consult the other parent in relation to major long-term issues (s 65DAC) should be retained in some form, to ensure that the

²⁸ Grant Riethmuller, 'Deciding Parenting Cases under Part VII – 42 Easy Steps' (2015) 24(3) *Australian Family Lawyer* 1.

²⁹ AGD (n 12) 16.

³⁰ See, eg, *Longford v Byrne* [2017] FCCA 762, [60] n 11 (Harman J).

principle in art 18(1) of the *CRC* – that ‘both parents have common responsibilities for the upbringing and development of their child’ – is recognised and respected appropriately.

Schedule 4

Proposed requirement that an ICL must meet with a child and provide the child with an opportunity to express a view (consultation questions 21-23)

We agree with the proposed requirement in s 68LA(5A)(a) that ICLs meet with children. The benefits to be gained by this requirement include better recognising and respecting children’s agency, autonomy and evolving capacities, promoting children’s right to participate in the decision-making process, and enhancing the accountability of ICLs to children.³¹ This proposed addition to the specific duties of the ICL will go some way to addressing children’s reported negative experiences of participation in family law decision-making, including having minimal – and in some cases, no – contact with the ICL.³² It would also address the recommendation of the CRC Committee, in its 2019 concluding observations on Australia, that ICLs be provided with training and support ‘to ensure that such lawyers have direct contact with the children they represent’.³³

However, we are concerned about the proposed s 68LA(5A)(b), which states that the ICL must ‘provide the child with an opportunity to express any views in relation to the matters to which the proceedings relate’. This proposed provision appears to respond to the ALRC’s concern that there is currently no obligation to ensure that a child has in fact had the opportunity to express their views in Part VII proceedings.³⁴ Although the *CRC* does not specify whether a ‘best interests’ model or a ‘direct instructions’ model of representation is required to satisfy art 12(2) of the *CRC*,³⁵ ICLs meeting with children whose interests they represent is not the same as giving children an opportunity to express their views in judicial proceedings affecting them.

Imposing a duty on the ICL to meet with the child does not equate to the child exercising their right under art 12 of the *CRC* to express their views and be heard in judicial proceedings, for several reasons:

³¹ See Rae Kaspiew et al, *Independent Children’s Lawyers Study: Final Report* (Australian Institute of Family Studies, 2nd ed, 2014).

³² Ibid 133-4, 142, 144; Carson et al, *Separated Families* (n 19) viii, 4, 51; ALRC, *Family Law for the Future* (n 13) [12.59]; Joint Select Committee on Australia’s Family Law System, *Improvements in Family Law Proceedings* (Second Interim Report, March 2021) 90-1 [4.52]-[4.54]; Joint Select Committee on Australia’s Family Law System, *Improvements in Family Law Proceedings* (Interim Report, October 2020) 183 [8.65].

³³ CRC Committee, *Concluding Observations* (n 9) [22(c)].

³⁴ ALRC, *Family Law for the Future* (n 13) [10.105].

³⁵ See Nicola Ross, ‘Images of Children: Agency, Article 12 and Models for Legal Representation of Children’ (2005) 19 *Australian Journal of Family Law* 92.

- Not all children are appointed an ICL, and children have no say about whether an ICL is appointed;
- The ICL 'is not the child's legal representative' and 'is not obliged to act on the child's instructions' (s 68LA(4)(a)-(b)). Rather, the ICL is 'a "best interests" advocate' for the child.³⁶ In light of this role, the purpose for which the ICL will ascertain the child's views is unclear. The ICL cannot give evidence to the court, nor are they compelled to make submissions which promote the child's views. The ICL can argue against the child's views and wishes if the ICL considers it to be in the child's best interests.
- It is the responsibility of the *court*, and not the ICL, to ensure that children are given an opportunity to express their views and be heard in proceedings. The proposed s 68LA(5A)(b) does not absolve the court of this responsibility. Further, the proposed sub-section frames this opportunity as a specific duty for the ICL to discharge, and not as the child's right to exercise.

While we support the addition of these specific duties to the ICL's role, we consider them insufficient to enable children to express their views and be heard in Part VII proceedings, as required by art 12 of the *CRC*. As we have suggested above, a section should be inserted into the Part VII framework, which compels the *court* (and not the ICL) to give children a reasonable opportunity to express their views, consistent with their evolving capacities.

We are also concerned about the proposed new s 68LA(5B), which provides that the ICL is *not* required to perform a duty if the child is under five years of age; or does not want to meet with the ICL or express their views; or there are 'exceptional circumstances' that justify the ICL not performing their duty. While a child should not be compelled to meet with an ICL or to express their views if they do not wish to, imposing an age restriction negates the presumption of art 12(1) of the *CRC* that *all* children are capable of forming their own views.³⁷ Furthermore, the non-exhaustive list of 'exceptional circumstances' – which would justify the ICL not performing a duty – refers to exposing the child to 'the risk of physical or psychological harm' or having 'a significant adverse effect' on the child's wellbeing (s 68LA(5C)). The 'exceptional circumstances' qualification on the ICL's duty may deny children's agency, as it is unclear whether – and if so, how – children's *own* assessment of their safety

³⁶ Kaspiew et al (n 31) ix.

³⁷ CRC Committee, *General Comment No 12 (2009): The Right of the Child to be Heard*, UN Doc CRC/C/GC/12 (20 July 2009) [20].

and wellbeing would be taken into account when the ICL or the court made a decision about the ICL meeting with the child or giving the child an opportunity to express any views (s 68LA(5D)).

The current *Guidelines for Independent Children's Lawyers* ('Guidelines') include both of the requirements that are sought to be introduced by the proposed s 68LA(5A). However, in the Guidelines, the requirements for an ICL to meet with the child (para 6.2) and to 'seek to provide the child with the opportunity to express [their] views' (para 5.3) are not linked. The ICL must generally meet with the child and must *also* seek to ensure that the child is provided with an opportunity to express their views. However, the meeting does not necessarily, and does not need to, discharge that duty. The Guidelines, combined with s 68LA(5)(b), suggest that the ICL must find ways to ensure that the child's voice is heard, which would not be limited to a meeting with the child.

The parenthetical phrase in the proposed s 68LA(5A) – 'not necessarily at the same time' – merely adds a temporal dimension to the ICL's duties. This provision does not reflect the position of the Guidelines, namely, that the duty to meet with the child and the duty to give the child an opportunity to express their views are independent of one another.

The Guidelines also set out circumstances in which an ICL is *not* expected to meet with a child: if the child is under school age; if there are 'exceptional circumstances'; or if there are 'significant practical limitations' such as geographic remoteness (para 6.2). Importantly, the Guidelines provide as an example of 'exceptional circumstances' that would counter the expectation to meet with the child, 'where there is an ongoing investigation of sexual abuse allegations *and* in the particular circumstances there is a risk of systems abuse for the child' (para 6.2, emphasis added).

The 'exceptional circumstances' set out in the proposed s 68LA(5B) are phrased in much broader terms. No examples are offered of circumstances in which the child may be exposed to 'the risk of physical or psychological harm' or experience a 'significant adverse effect' on their wellbeing from meeting with the ICL or expressing their views to the ICL. We are concerned that this new subsection creates an unduly low threshold for excusing the ICL from performance of their duty, with the consequence that children are denied their right to participate in proceedings.

The ALRC in its Final Report recommended that s 68LA(5) be amended to include a specific duty for ICLs to comply with the Guidelines in their entirety (recommendation 44). The Guidelines set out the role and duties of the ICL in a more nuanced and practical way, including an ICL's duties to a child if

the child's views are considered to conflict with their best interests (para 5.4). In our view, isolating and changing some requirements from the Guidelines makes the status of the Guidelines unclear. We suggest that the ALRC's recommendation 44 be implemented, rather than the much more limited approach proposed in the exposure draft.

Proposed repeal of s 68L(3) (consultation questions 24 and 26)

We applaud the proposal to repeal s 68L(3), which allows the court to appoint an ICL in Hague Child Abduction Convention matters only in 'exceptional circumstances'. It is important that the court is able to consider whether it would be desirable to appoint an ICL in the circumstances of each case, and not only when those circumstances are 'exceptional'.

Independent representation for children is particularly significant when the taking parent raises an 'exception' under reg 16(3) of the Family Law (Child Abduction Convention) Regulations 1986 (Cth) which, if established, would enliven the court's discretion to refuse to make a return order. These exceptions include where a child objects to being returned, or where there is a grave risk that returning the child would expose the child to harm or otherwise place them in an intolerable situation. The High Court in *RCB v The Honourable Justice Forrest* noted that where an exception is raised, the interests and views of a child are relevant to the existence of Australia's obligation to return a child.³⁸ The 1980 Child Abduction Convention Guide to Good Practice on the 'grave risk of harm' exception recommended that a judge should consider, where available and appropriate, the appointment of a separate representative for the child.³⁹

In any decision where a child's interests and views are relevant, the court should have the power to appoint an ICL. Otherwise, the nature of Hague Child Abduction cases is such that parents are unlikely to be able to represent the children's views and interests adequately.⁴⁰ The proposed new s 68L(1) appropriately recognises that children's right to participate should not be curtailed or prohibited by the nature of the proceedings. The proposed sub-section is in keeping with the view that hearing from children is not necessarily inconsistent with Australia's obligations under the Hague Convention.⁴¹

³⁸ *RCB v The Honourable Justice Forrest* (2012) 247 CLR 304, 315-316 [22]-[23].

³⁹ *Guide to Good Practice under the Convention of 25 October 1980 on the Civil Aspects of International Child Abduction Part VI Article 13(1)(b)*, Permanent Bureau, Hague Conference on Private International Law, 2020 [88].

⁴⁰ Rhona Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing, 2013) 399.

⁴¹ Michelle Fernando, 'The Child's Voice in International Child Abduction Cases in Australia' (2020) 14 *Court of Conscience* 35, 35.

Thank you for considering our submission. If you have any questions, please contact us on the details below. We are happy for this submission to be made public.

Kind regards

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