**International Social Service Australia - Lawyer**

**Scenario**

On a Monday morning, you receive a call from Robert in Queensland.

Robert and his partner, Amber, have 2 children, who are 8 months old and 5 years old. They were both born in New Zealand. Robert was born 1 February 1983. Amber was born 3 March 1983.

Robert is listed on the children’s birth certificate as their father. There are no parenting orders varying parental responsibility. Robert has always participated in the care of the children. He assists with their care in the evenings and takes the children on outings on the weekend.

Robert and Amber moved from New Zealand to Australia 3 years ago. They both quit their respective jobs in New Zealand and shipped their furniture and belongings to Australia.

Robert works full time as a mechanic, and Amber is the full-time carer for both children. They jointly own their family home but were struggling to make repayments. Most of Robert’s family members live in Queensland; Amber’s family members all live in New Zealand. They have travelled to New Zealand at least twice each year to spend time with the children’s maternal relatives. The mother’s sister has visited the family in Australia on 2 occasions. In January this year, their eldest child started attending the local primary school. Their eldest child also attends soccer classes once per week. The youngest child does not attend child care but the mother attends a fortnightly mother’s group.

Robert instructs that last Thursday night, he and Amber had a fight. Amber told him that she wanted to move their family to New Zealand, where the living expenses would be lower. Robert argued against the move. He says that they were both screaming at each other, and that Amber stood in front of the doorway and would not let him leave. He says he pushed her out of the way so that he could leave the situation. Amber called the police, and they applied for an ADVO to protect Amber and the children from Robert. Robert left to stay with a cousin in the neighbouring suburb.

On Friday morning, Robert received a Facebook message from Amber saying that she and the children were now in New Zealand, and they would not be coming back to Australia.

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**Written Exercise**

The key requirements for an application under the Hague Convention are:

* The children must be under 16 years old
* The left behind parent must have ‘rights of custody’ in relation to the children, which generally arises from holding parental responsibility
* The left behind parent must have been exercising these rights of custody at the time the children were wrongfully removed from, or retained outside Australia
* The children must have been habitually resident in Australia immediately before the children were wrongfully removed from, or retained outside Australia
* The children must have been taken to, or retained in, a country which is a party to the Hague Convention; and
* The children must have been taken from Australia or kept in another Convention country without the left behind parent’s consent

Draft a brief affidavit which supports Robert’s application for the children to be returned to Australia. You may use the beginning of the affidavit below.

You are not assumed to have prior knowledge/experience in preparing Hague documentation. Where you need to, you can make details up.

**COMMONWEALTH OF AUSTRALIA**

**Family Law (Child Abduction Convention) Regulations 1986**

**Affidavit in Support of Application for Return of a Child in**

**Accordance with the Hague Convention on the Civil Aspects of**

**International Child Abduction 1980 (the Convention)**

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**I,** *(insert name), (insert occupation), of (insert address)*, Australia, swear/solemnly and sincerely affirm as follows:

1. I make this affidavit in support of my Application to obtain the return of my child/children, (INSERT CHILD’S NAME), (the child)from *(insert country)*, a signatory state to the Convention.
2. Save where otherwise indicated, I make this affidavit from my own knowledge. Where I depose to matters from information or belief, I verily believe those matters to be true and correct.
3. Where I have quoted conversations, I have done so to the best of my recollection.