

**ANALYSE STATISTIQUE DES DEMANDES DÉPOSÉES EN 2008 EN APPLICATION DE  
LA CONVENTION DE LA HAYE DU 25 OCTOBRE 1980 SUR LES ASPECTS CIVILS  
DE L'ENLÈVEMENT INTERNATIONAL D'ENFANTS**

**PARTIE II – RAPPORT RÉGIONAL**

*établie par le Professeur Nigel Lowe, Faculté de droit de l'Université de Cardiff*

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**A STATISTICAL ANALYSIS OF APPLICATIONS MADE IN 2008 UNDER THE  
HAGUE CONVENTION OF 25 OCTOBER 1980 ON THE CIVIL ASPECTS  
OF INTERNATIONAL CHILD ABDUCTION**

**PART II – REGIONAL REPORT**

*drawn up by Professor Nigel Lowe, Cardiff University Law School*

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Commission spéciale de juin 2011 sur le fonctionnement pratique de la  
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Convention Protection des enfants de 1996*

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Special Commission of June 2011 on the practical operation of the  
1980 Hague Child Abduction Convention and the  
1996 Hague Child Protection Convention*

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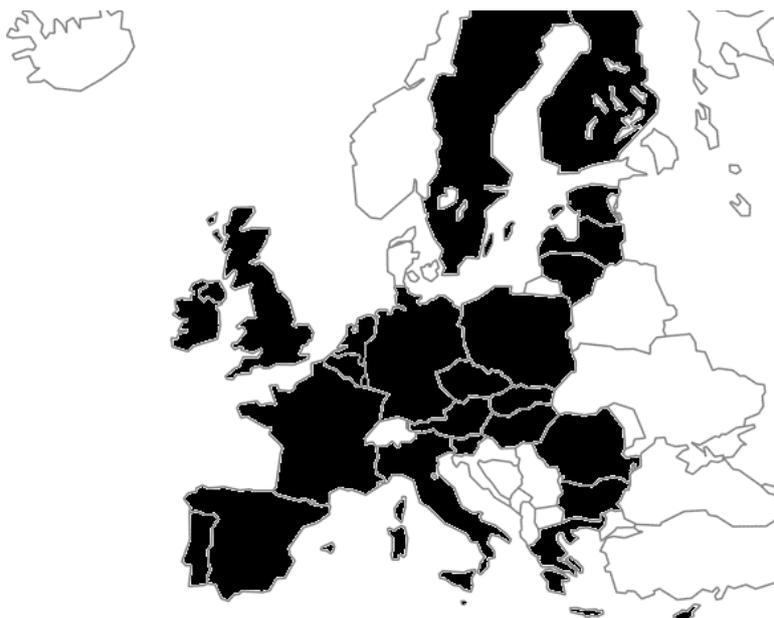
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## PART II: REGIONAL TRENDS

### 1. Brussels II a Regulation

1. The Brussels II a Regulation (Council Regulation (EC) No 2201/2003 of 27 November 2003)<sup>1</sup> is a regional instrument which is binding on all Member States of the European Union,<sup>2</sup> except Denmark (see map below; hereinafter, "Brussels II a States"). It takes precedence, as between EU Member States, over the 1980 Hague Abduction Convention. The instrument has been in force since 1 March 2005.



2. So far as parental child abduction is concerned, the basic scheme of the Regulation is:

- (a) to preserve the pre-eminence of the 1980 Convention for dealing with applications for the return of abducted children but nevertheless to give some direction on how that Convention should be applied as between Member States subject to the crucial reservation that in all cases to which the Regulation applies courts must first determine whether a "wrongful removal or retention" has taken place *in the sense of the Regulation* which means applying Article 2(11) of the Regulation rather than Article 3 of the Hague Abduction Convention; and
- (b) to govern the position in cases where a court refuses to make a return order under the Convention (which is governed by Art 11 (6)-(8)).

3. For the purpose of this report the crucial provisions are Article 11(1)-(5). Article 11(1) enjoins the authorities of Member States when dealing with applications for the return of a child "wrongfully removed in a Member State other than the Member

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<sup>1</sup> The full text of the Regulation can be found at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003R2201:EN:HTML>.

<sup>2</sup> Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom (Central Authorities of England and Wales, Scotland and Northern Ireland).

State where the child was habitually resident immediately before the wrongful removal or retention” to apply paragraphs 2–8. Paragraphs 2–5 comprise directions on how return applications should be handled under the 1980 Hague Abduction Convention. They provide as follows:

“2. When applying Articles 12 and 13 of the 1980 Hague Convention, it shall be ensured that the child is given the opportunity to be heard during the proceedings unless this appears inappropriate having regard to his or her age or degree of maturity.

3. A court to which an application for return of a child is made ... shall act expeditiously in proceedings on the application, using the most expeditious procedures available in national law.

Without prejudice to the first subparagraph, the court shall, except where exceptional circumstances make this impossible, issue its judgment no later than six weeks after the application is lodged.

4. A court cannot refuse to return a child on the basis of Article 13b of the 1980 Hague Convention if it is established that adequate arrangements have been made to secure the protection of the child after his or her return.

5. A court cannot refuse to return a child unless the person who requested the return of the child has been given an opportunity to be heard.”

4. To assess the impact of the new Brussels II a Regulation, the applications received by Brussels II a Regulation States have been analysed in an attempt to elucidate whether these States have treated applications from fellow Brussels II a States differently. The outcomes and timing of applications have been studied to ascertain whether Brussels II a States are disposing of applications to which the new Regulation applies more quickly or by applying the Convention in a different way.

### **1.1 The proportion of applications to which the Brussels II a Regulation applied**

5. In 2008, out of a global total of 1,961 return applications, 985 were received by Brussels II a States (50%). 706 of these were made by fellow Brussels II a States and so the Brussels II a Regulation applied to 36% of applications globally in 2008<sup>3</sup> and 72% of applications received by Brussels II a States. The proportion of applications received from fellow Brussels II a States varied considerably. In some States all the applications were received from fellow Brussels II a States (Hungary with 8 applications, Cyprus with 4 and Luxembourg with 2). 88% of applications to Latvia were from fellow Brussels II a States (7 out of 8 applications); 87% of those received by Czech Republic (13 out of 15); 86% of those received by United Kingdom – Scotland (6 out of 7); 85% of those received by Belgium (34 out of 40); and 84% of those received by Romania (43 out of 51), Greece (16 out of 19) and 83% of those received by Ireland (40 out of 48) and Lithuania (5 out of 6).

6. Conversely, some States received a relatively high proportion of applications from Non-Brussels II a States making up 40% of the applications received by Spain (35 out of 88) and by Estonia (2 out of 5).

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<sup>3</sup> Slovakia did not respond to the questionnaire but, by looking at our outgoing database, we found that the Slovakian Central Authority received 23 applications in 2008 and that 20 of these came from fellow Brussels II a States. If these figures are included then 726 applications out of a total of 1,984 came from Brussels II a States (37%).

7. With the exception of Slovenia which received one application (from The former Yugoslav Republic of Macedonia), no Brussels II a State received a majority of its applications from States outside Brussels II a.

#### The applications received by Brussels II a States in 2008<sup>4</sup>

	From fellow Brussels IIa States		From non- Brussels IIa States		Total
Cyprus	4	100%	0	0%	<b>4</b>
Hungary	8	100%	0	0%	<b>8</b>
Luxembourg	2	100%	0	0%	<b>2</b>
Latvia	7	88%	1	13%	<b>8</b>
Czech Republic	13	87%	2	13%	<b>15</b>
UK - Scotland	6	86%	1	14%	<b>7</b>
Belgium	34	85%	6	15%	<b>40</b>
Romania	43	84%	8	16%	<b>51</b>
Greece	16	84%	3	16%	<b>19</b>
Ireland	40	83%	8	17%	<b>48</b>
Lithuania <sup>5</sup>	5	83%	1	17%	<b>6</b>
Poland	54	81%	13	19%	<b>67</b>
Netherlands	32	80%	8	20%	<b>40</b>
Portugal	25	78%	7	22%	<b>32</b>
Finland	6	75%	2	25%	<b>8</b>
Austria	20	71%	8	29%	<b>28</b>
Italy	37	70%	16	30%	<b>53</b>
UK - Northern Ireland	9	69%	4	31%	<b>13</b>
Germany	76	66%	39	34%	<b>115</b>
France	50	66%	26	34%	<b>76</b>
Sweden	19	66%	10	34%	<b>29</b>
UK - England and Wales	131	66%	69	35%	<b>200</b>
Bulgaria	13	62%	8	38%	<b>21</b>
Estonia	3	60%	2	40%	<b>5</b>
Spain	53	60%	35	40%	<b>88</b>
Slovenia	0	0%	1	100%	<b>1</b>
<b>Total</b>	<b>706</b>	<b>72%</b>	<b>278</b>	<b>28%</b>	<b>984</b>

<sup>4</sup> Malta received no return applications in 2008.

<sup>5</sup> Lithuania received 7 applications in total but the requesting State was unknown in one.

## 1.2 The Brussels II a Regulation and outcomes<sup>6</sup>

8. As mentioned previously, 985 return applications were made to Brussels II a States, 72% of which came from fellow Brussels II a States. The table below shows the applications received by Brussels II a States and the differences in the outcome when the requesting State was a fellow Brussels II a State and where it was not a Brussels II a State (hereinafter a "non-Brussels II a State").

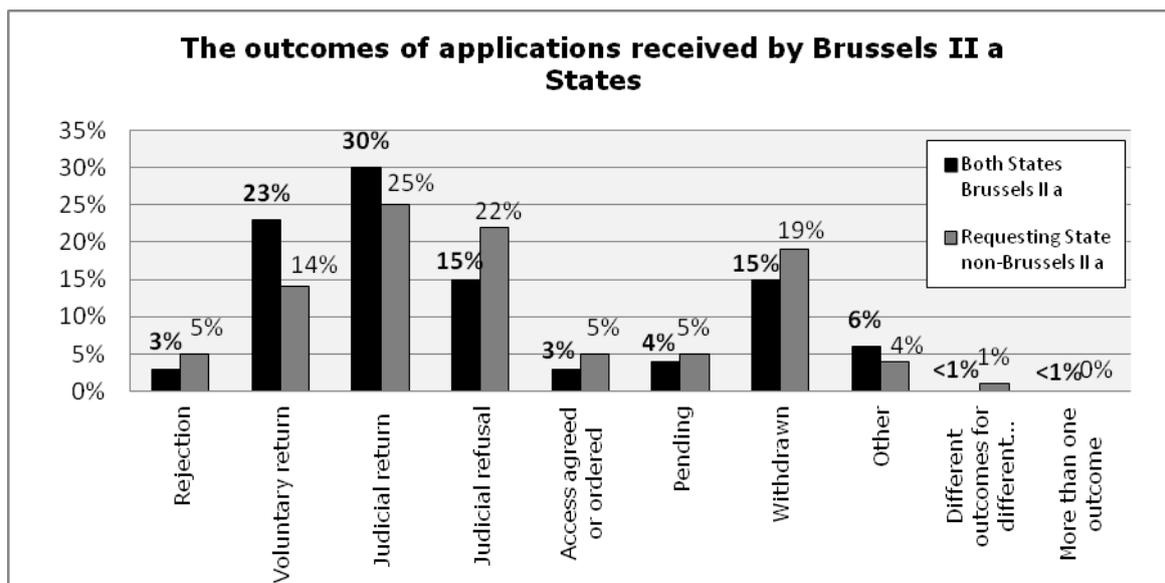
	Applications received by Brussels II a States			
	Both States Brussels IIa		Requesting State non-Brussels IIa	
	Frequency	Percentage	Frequency	Percentage
Rejection	21	3%	14	5%
Voluntary return	152	23%	35	14%
Judicial return	201	30%	65	25%
Judicial refusal	103	15%	57	22%
Access agreed or ordered	23	3%	13	5%
Pending	28	4%	12	5%
Withdrawn	102	15%	48	19%
Other	39	6%	10	4%
Different outcomes for different children	1	<1%	2	1%
More than one outcome	3	<1%	0	0%
<b>Total</b>	<b>673</b>	<b>100%</b>	<b>256</b>	<b>100%</b>

9. As can be seen in the table above and the graph below, when a Brussels II a State received an application from another Brussels II a State a lower proportion were rejected by the Central Authority, refused, withdrawn or pending compared with applications received from non-Brussels II a States. The overall return rate was 52%<sup>7</sup> compared with 39% where the requesting State was a non-Brussels II a State. This can be compared with the overall global return rate of 46%.

10. A lower proportion of applications received by Brussels II a States were refused when the application came from a fellow Brussels II a State (15%) compared with applications from non-Brussels II a States (22%).

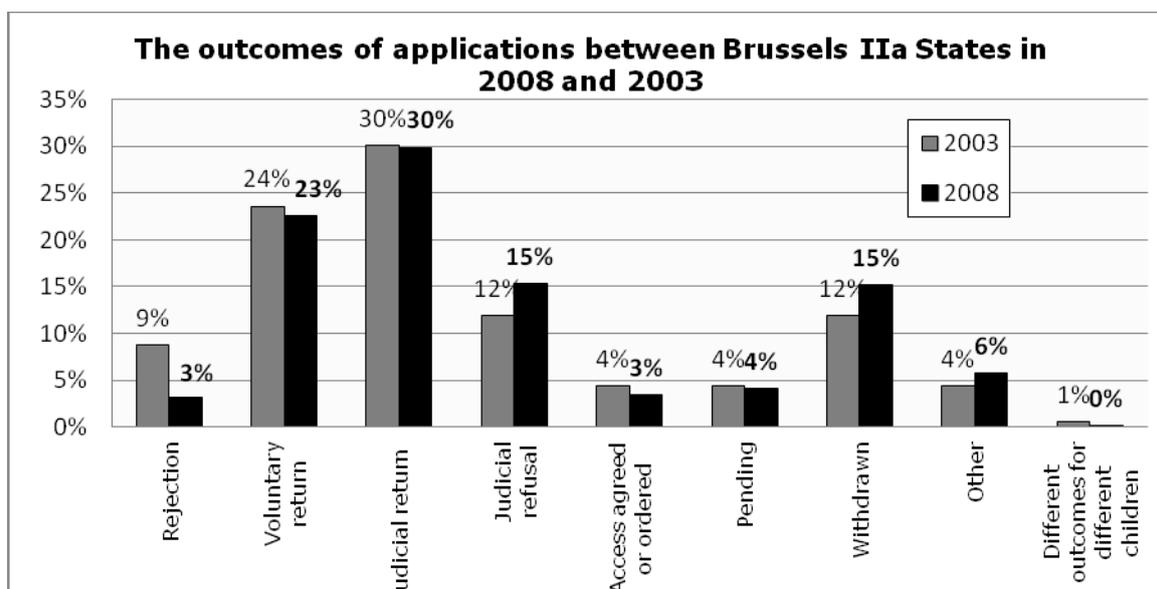
<sup>6</sup> Information on the outcomes of applications was unavailable for 33 applications between two Brussels II a States, 22 applications received by Brussels II a States from non-Brussels II a States and in 6 applications received by non-Brussels II a States. Additionally, in 1 application received by Lithuania the requesting State was unknown. In fact, this application was rejected by the Lithuanian Central Authority as the child was located in Poland.

<sup>7</sup> The figures for voluntary and judicial returns in the table above have been rounded up.



11. 334 of the 706 applications between two Brussels II a States were decided in court. 60% of these ended in a return, 31% in a refusal, 6% in an order for access and 3% in other outcomes. This can be compared with 135 of the 278 applications received by Brussels II a States from non-Brussels II a States that were decided in court. 48% of these ended in a return, 42% in a refusal, 7% in an order for access and 2% in other outcomes.

12. To assess the effect of the Brussels II a Regulation, the 2008 findings can be compared with those of 2003, when the Brussels II a Regulation was not yet in force. In 2003, 1,259 return applications were made. 644 of these (51%) were received by what would now be Brussels II a States and 398 (32%) were between two such States. The graph below compares the outcomes of applications between Brussels II a States in 2008 and 2003.



13. In 2008 there were fewer rejections, voluntary returns and agreements or orders for access between Brussels II a States than in 2003. The rate of judicial returns remained constant but there were more judicial refusals.

### 1.3 Judicial refusals and the reasons for refusal

14. In 2008 there were proportionally fewer refusals of applications received by Brussels II a States when the application came from a fellow Brussels II a State (15%) compared with applications received from non-Brussels II a States (22%). However, looking only at applications between Brussels II a States, a higher proportion of applications were judicially refused in 2008 than in 2003. Furthermore, as the table below shows, the reasons for refusal between Brussels II a States are not as one might have expected.

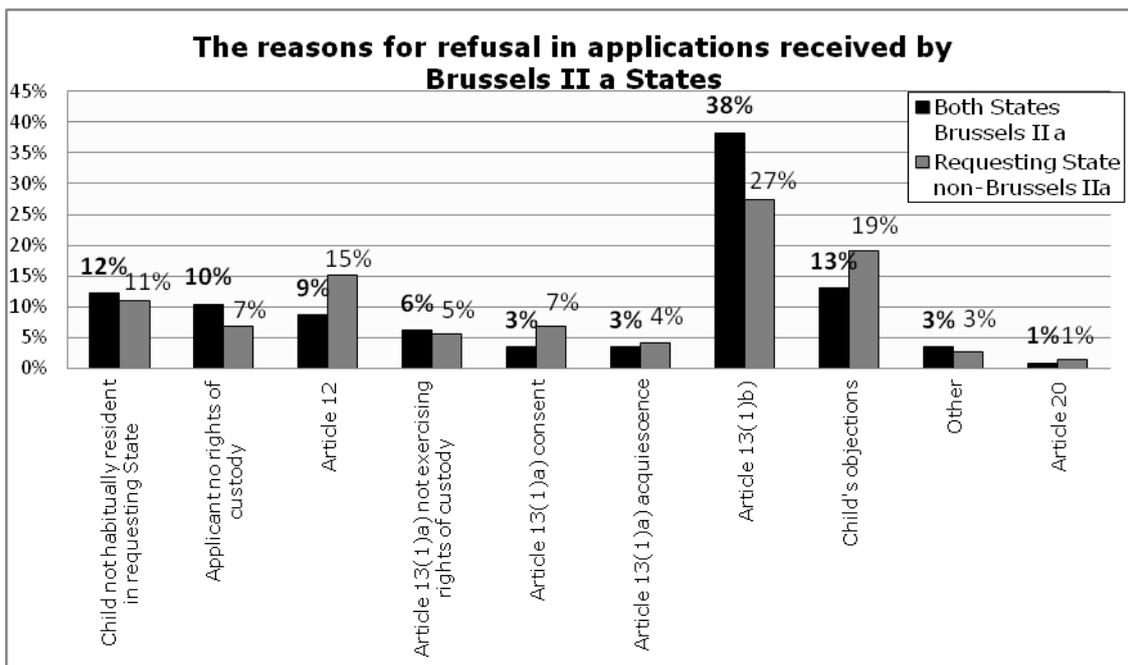
15. Article 11(4) of the Brussels II a Regulation states that a court cannot refuse the return of a child on the basis of Article 13(1) *b*) of the 1980 Hague Convention if it is established that adequate arrangements have been made to secure the protection of the child or after his or her return. It is perhaps surprising, therefore, that more applications were refused under Article 13(1) *b*) (34%) when the Brussels II a Regulation applied than when it did not because only the requested State was a Brussels II a State (20%).

#### The reasons for refusal and the Brussels II a Regulation<sup>8</sup>

	Applications received by Brussels II a States			
	Both States Brussels II a		Requesting State non-Brussels II a	
	Frequency	Percentage	Frequency	Percentage
Child not habitually resident in requesting State	13	13%	7	13%
Applicant had no rights of custody	8	8%	5	9%
Article 12	6	6%	5	9%
Article 13(1) a) not exercising rights of custody	3	3%	2	4%
Article 13(1) a) consent	4	4%	2	4%
Article 13(1) a) acquiescence	4	4%	1	2%
Article 13(1) b)	33	34%	11	20%
Child's objections	11	11%	5	9%
More than one reason	12	12%	15	28%
Other	4	4%	1	2%
Article 20	0	0%	0	0%
<b>Total</b>	<b>98</b>	<b>100%</b>	<b>54</b>	<b>100%</b>

16. 27 applications refused by Brussels II a States (18%) were decided for more than one reason and, in total, these applications were refused for 67 reasons. The graph below combines the sole reasons for refusal in the table above with these 67 reasons to give a clearer picture of how often each exception was successfully argued. The most common reason for refusal was by far Article 13(1) *b*) which was relied upon in 39% of all refusals compared with 27% if the requesting State was a non-Brussels II a State.

<sup>8</sup> The reasons for refusal were not known in 5 applications between two Brussels II a States, 3 applications received by Brussels II a States from non-Brussels II a States and in 2 applications received by non-Brussels II a States.



#### 1.4 Timing

17. Article 11(3) of the Brussels II a Regulation states that, in applying Articles 12 and 13 of the Hague Convention, the courts must use the most expeditious procedures available in national law and that, barring exceptional circumstances, issue judgment within 6 weeks.

#### The average number of days taken to conclude an application<sup>9</sup>

	Applications received by Brussels II a States	
	Both States Brussels II a	Requesting State non-Brussels II a
<b>Mean</b>	<b>165</b>	<b>169</b>
Median	121	106
Minimum	2	2
Maximum	705	880

18. The table above shows the overall average number of days taken to resolve an application received by Brussels II a States when the requesting State was a Brussels II a State and when it was not, compared with applications received by non-Brussels II a States. The times are recorded from the date the Central Authority received the application until the date the application was concluded, including those applications that were concluded on appeal. As can be seen, on average, cases were resolved quicker where both were Brussels II a States (165 days) than where only the receiving State was a Brussels II a State (169 days). However, this picture becomes more confused when timing is analysed by outcome. Indeed, the time taken to reach a conclusion varied considerably depending on the outcome that was reached.

<sup>9</sup> These figures are calculated from the dates provided in 445 applications between Brussels II a States, 173 applications received by a Brussels II a States from non-Brussels II a States and 512 applications received by States which were not Brussels II a States.

19. The table below shows the average number of days taken to reach each outcome from the date the Central Authority received the application until the date it was concluded. Perhaps surprisingly, returns (whether voluntary or by court order) were concluded more quickly where a Brussels II a State received an application from a non-Brussels II a State. On the other hand, refusals were resolved more quickly in applications between two Brussels II a States.

#### The number of days taken to reach a final outcome

	Applications received by Brussels II a States	
	Both States Brussels II a	Requesting State non-Brussels II a
Voluntary return	79	60
Judicial return by consent	189	162
Judicial return not by consent	200	195
Judicial refusal	252	285

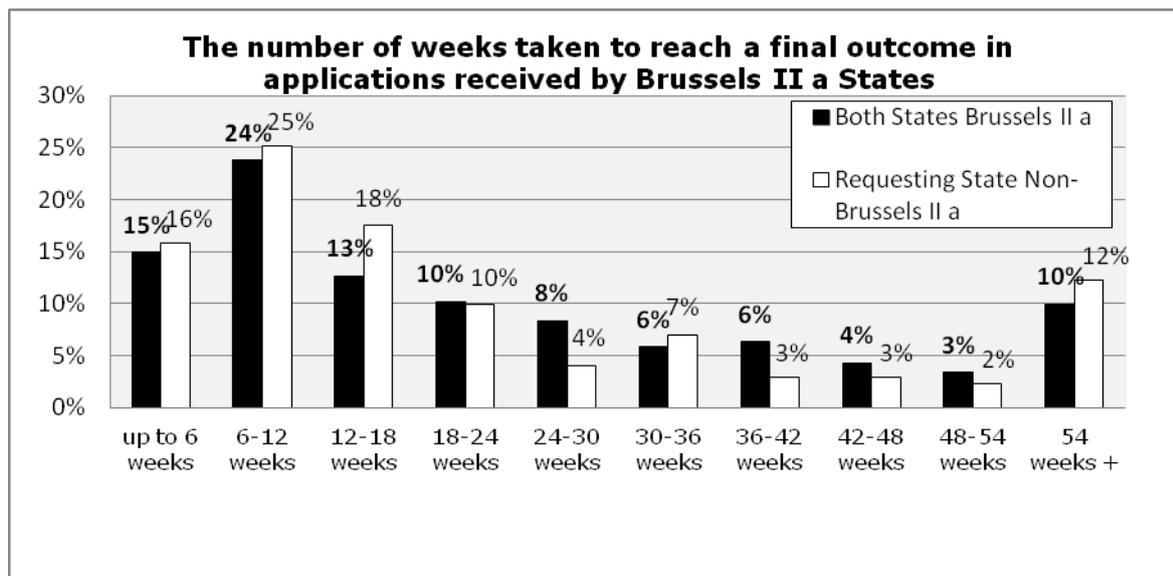
20. These figures can be compared with the global averages of 121 days to conclude a voluntary return, 163 days for a judicial return by consent, 204 days for a judicial return without consent and 286 days for a judicial refusal.

21. The overall average for *judicial* return orders with or without consent for applications received by Brussels II a States was 151 days where the Brussels II a Regulation applied and 131 days where only the requested State was Brussels II a.<sup>10</sup> This can be compared with the global average of 166 days.

22. The large majority of applications were not resolved within the 6 week timescale prescribed by the Brussels II a Regulation. The graph below shows that, in 2008, only 15% of applications between Brussels II a States were resolved within 6 weeks compared with 16% of applications received by Brussels II a States from States outside Brussels II a. 51% of applications where the Brussels II a Regulation applied were resolved in 18 weeks and 82% in 42 weeks compared with 58% and 82%, respectively, of applications received by Brussels II a States from non-Brussels II a States.

23. Some jurisdictions concluded applications more quickly than others. 67% of Brussels II a applications to Sweden were resolved in 6 weeks (2 out of 3 applications), 33% of those to Cyprus (1 out of 3), 28% of those to the United Kingdom - England and Wales (37 out of 130) and 28% of those to Austria (5 out of 18). By contrast, the following States did not resolve any applications within 6 weeks: Bulgaria (which received 12 applications), Estonia (3 applications) Hungary (7 applications), Ireland (18 applications), Spain (18 applications) and United Kingdom - Northern Ireland (5 applications).

<sup>10</sup> Some States could not provide information as to whether the judicial return had been made by consent order or without consent. The timings given by these States have been used to calculate these overall averages but are not included in the table above.



24. The timing of the applications can be broken down into two periods: the time taken for the Central Authority to send the application to court and, subsequently, the time taken for the court to dispose of it.<sup>11</sup> As can be seen from the table below, where the application was between two Brussels II a States it was both sent to court and, once there, disposed of, more quickly compared with applications where the Regulation did not apply. When the Central Authority of a Brussels II a State received an application from a non-Brussels II a State it took longer on average to send the application to court and the court took longer to conclude the application.

	Applications received by Brussels II a States	
	Both States Brussels II a	Requesting State non-Brussels II a
Average number of days before application sent to court	62	76
Average number of days between application arriving at court and being concluded	142	184

<sup>11</sup> Not all States were able to provide dates for when the applications were sent to court. The number of days taken do not add up to the overall average as in some applications the time taken to send the application to court was available but not the date at which the application was concluded (for example, if the application was still pending or the date was missing). The figures have been calculated from 283 applications between Brussels II a States, 79 applications received by Brussels II a States from non-Brussels II a States and 438 applications received by non-Brussels II a States.

## 2. Latin America and the Caribbean Islands



### 2.1 The proportion of applications made between Latin American States

25. The 15 Latin American and Caribbean Island States ("Latin American States") that responded<sup>12</sup> received a total of 315 return applications. This amounts to 16% of all applications received globally in 2008. Of the 315 applications received, 61 of these came from fellow Latin American States (19%). Excluding Mexico, which received 86% of its applications from the USA, the proportion of applications from fellow Latin American States rose to 32%. However, this survey does not include applications under the *Inter-American Convention on the International Return of Children*.<sup>13</sup>

26. As shown in the table below, the proportion of applications coming from fellow Latin American States varied considerably from State to State. All 3 applications received by Paraguay were from Latin American States, 71% of applications received by Chile (10 out of 14 applications), 71% of those received by Uruguay (5 out of 7) and 67% of the applications received by Panama (6 out of 9). By contrast, all of the applications received by Brazil (27 applications), Costa Rica (3 applications), Guatemala (2 applications) and Honduras (5 applications) came from outside Latin America. Only 8% of the applications received by Mexico were from Latin American States (14 applications out of 168) with 144 applications coming from USA) and 13% of those received by Dominican Republic (1 out of 8<sup>14</sup>).

27. Belize, Peru and Venezuela did not respond to the questionnaire but by looking out our outgoing database we can estimate the number of applications that they received in

<sup>12</sup>The States that responded were: Argentina, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay and Uruguay. El Salvador and Nicaragua received no return applications in 2008.

<sup>13</sup> Signed in Montevideo, Uruguay, in 1989. The Convention has been in force since 1994. Where a State is party to both the 1980 Hague Convention and the Inter-American Convention, the latter is given priority by Art. 34 of the Inter American Convention unless otherwise agreed between the States concerned.

<sup>14</sup> Of the remaining 7 applications to the Dominican Republic, 4 came from Italy, 2 from the USA and 1 from Spain.

2008. Belize received 2 applications (both from the USA), Peru received 22 (12 of which were from Latin American States and 10 from non-Latin American States) and Venezuela received 23 (17 from Latin American States and 6 from non-Latin American States).

### The applications received by Latin American States in 2008

	From Latin American States		From non-Latin American States		Total
	Frequency	Percentage	Frequency	Percentage	
Paraguay	3	100%	0	0%	<b>3</b>
Chile	10	71%	4	29%	<b>14</b>
Uruguay	5	71%	2	29%	<b>7</b>
Panama	6	67%	3	33%	<b>9</b>
Colombia	12	36%	21	64%	<b>33</b>
Ecuador	5	36%	9	64%	<b>14</b>
Argentina	5	24%	17	76%	<b>22</b>
Dominican Republic	1	13%	7	88%	<b>8</b>
Mexico	14	8%	154	92%	<b>168</b>
Brazil	0	0%	27	100%	<b>27</b>
Costa Rica	0	0%	3	100%	<b>3</b>
Guatemala <sup>15</sup>	0	0%	1	100%	<b>1</b>
Honduras	0	0%	5	100%	<b>5</b>
<b>Total</b>	<b>61</b>	<b>19%</b>	<b>253</b>	<b>71%</b>	<b>314</b>

## 2.2 The outcomes of applications received by Latin American States<sup>16</sup>

28. The table below shows the applications received by Latin American States in 2008 and the differences in the outcome when the requesting State was a fellow Latin American State and where it was not.

	Applications received by Latin American States			
	Both States Latin American		Requesting State non-Latin American	
	Frequency	Percentage	Frequency	Percentage
Rejection	2	3%	9	4%
Voluntary return	15	25%	54	22%
Judicial return	12	20%	51	20%
Judicial refusal	9	15%	45	18%
Access agreed or ordered	4	7%	3	1%
Pending	5	8%	48	20%
Withdrawn	7	12%	29	12%
Other	4	7%	12	5%
More than one outcome	0	0%	0	0%
Different outcomes for different children	1	2%	0	0%
<b>Total</b>	<b>59</b>	<b>100%</b>	<b>251</b>	<b>100%</b>

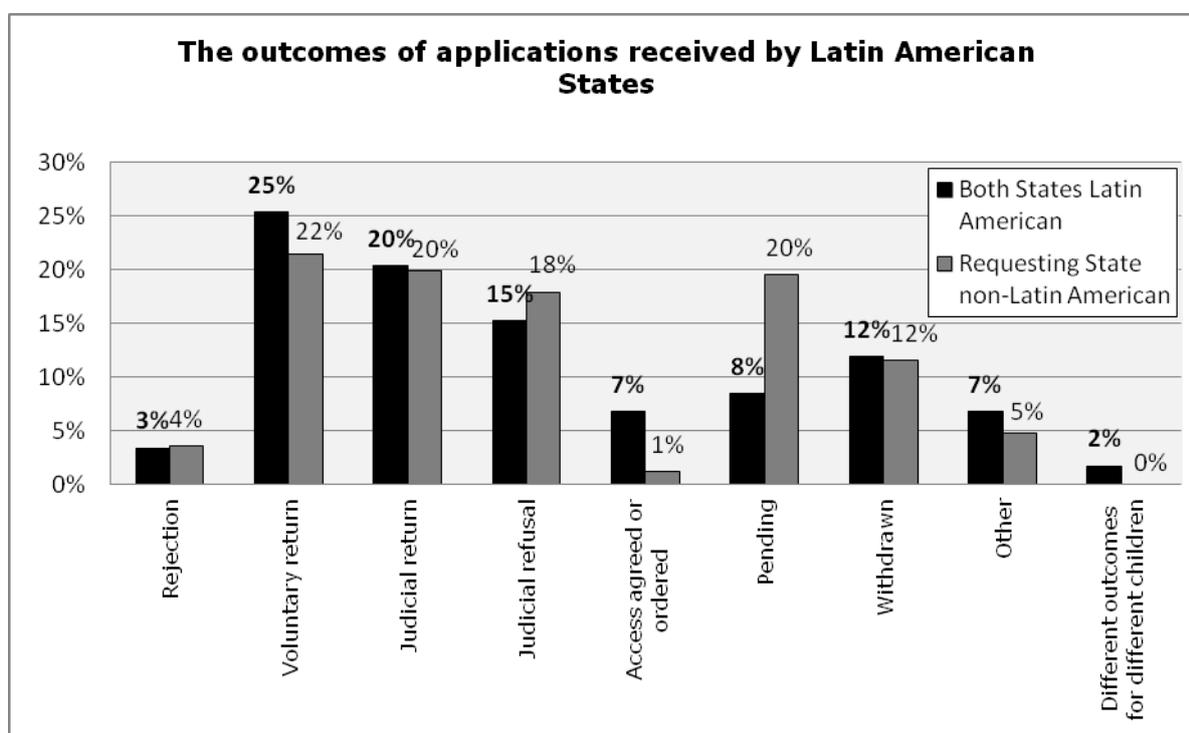
<sup>15</sup> An additional application was received by Guatemala but the requesting State was unknown.

<sup>16</sup> Information on outcomes was unavailable for 2 applications between two Latin American States, 2 applications received by Latin American States from non-Latin American States and for 57 applications received by non-Latin American States. Additionally, information on the requesting State was unavailable for 1 application received by Guatemala. This application was pending but is not included in the table above.

29. As can be seen in the table above and the graph below, in applications received by Latin American States there was a higher rate of voluntary returns if the requesting State was also Latin American (25%) than if the application was from a non-Latin American State (22%).

30. The overall return rate was also higher at 46%<sup>17</sup> compared with 42% if the application came from a non-Latin American State. If the application was between two Latin American States a higher proportion of applications ended with an agreement for access and a lower proportion of applications were judicially refused or pending compared with applications from non-Latin American States.

31. These figures can also be compared with the global findings. Globally, 46% of applications ended in a return, 15% were judicially refused, 5% rejected by the Central Authority, 8% pending and 18% withdrawn. A further 3% ended in an agreement or order for access.



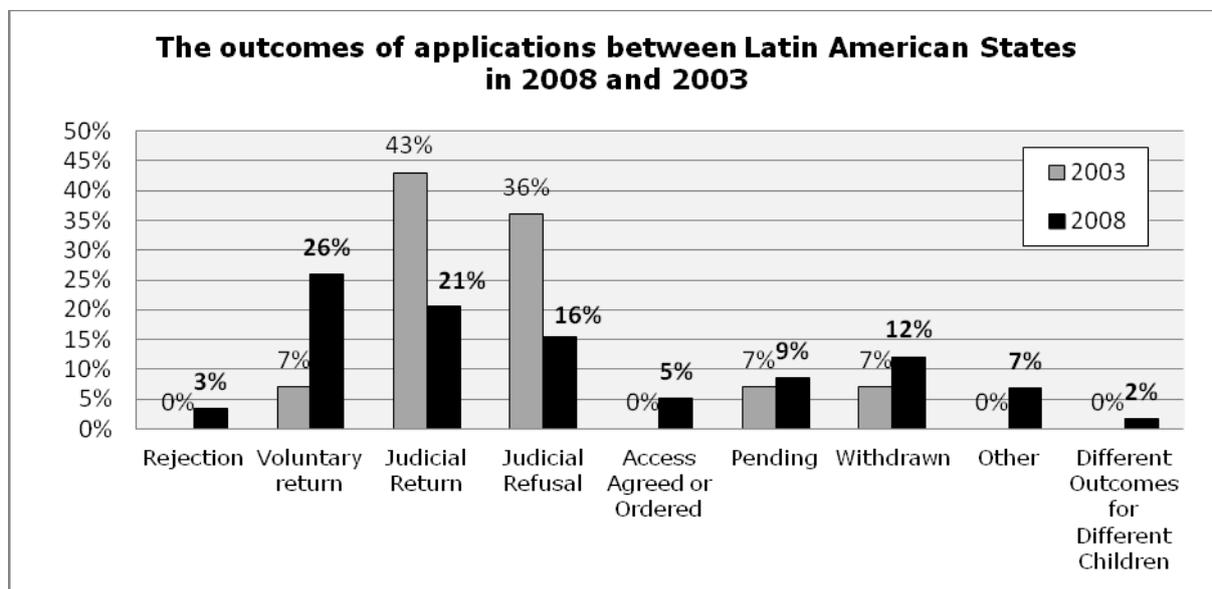
32. These findings for 2008 can be compared with those of the 2003 survey to establish whether they reveal a trend. 1,259 return applications were made in 2003, 64 of these (5%) were received by Latin American States.<sup>18</sup> Of these 64 applications, 22% (14 applications) came from fellow Latin American States, slightly higher than the 17% in 2008.

33. The graph below compares the outcomes of applications between Latin American States in 2003 with those in 2008. In 2003 the return rate was 50% compared with 47% in 2008 but an additional 5% of applications received in 2008 ended with an agreement or order for access. In both years the return rate was higher for applications received from Latin American states than from non-Latin American States (47% of Latin American applications compared with 42% of non-Latin American applications in 2008 and 50% compared with 48% in 2003)

<sup>17</sup> The figures for voluntary and judicial returns in the table above and graph below have been rounded down.

<sup>18</sup> The Latin American States that responded in 2003 were Argentina, Belize, Chile, Honduras, Mexico and Panama. The Bahamas, El Salvador, Guatemala and Nicaragua responded to the survey but received no return applications.

34. There was a higher rate of refusal between Latin American States in 2003 (36%) compared with 2008 (16%) and the return rate comprised of fewer voluntary returns and more judicial returns. Proportionally more applications were rejected, pending and withdrawn in 2008 compared with 2003.



### 2.3 Timing

35. Applications received by Latin American States were resolved in an average of 275 days if they came from fellow Latin American States and 249 days if they came from non-Latin American States. As can be seen in the table below, applications between two Latin American States took longer to reach each outcome compared with an application from a non-Latin American State.

#### The average number of days taken to reach a final outcome

	Applications received by Latin American States	
	Both States Latin American	Requesting State non-Latin American
Voluntary return	223	201
Judicial return by consent	334	233
Judicial return not by consent	217	185
Judicial refusal	294	322

### 3. Australasia

36. The following section analyses the workings of the Convention between Australia, Fiji and New Zealand.



#### 3.1 The proportion of applications made between Australasian States

37. In 2008, Australia received 75 incoming return applications and New Zealand received 37, making a total of 112 incoming return applications. Fiji did not respond to the questionnaire but by looking at our outgoing database we found that they received 2 applications in 2008.<sup>19</sup> Of these 114 applications 69 (61%) came from Australia, Fiji or New Zealand and 45 (39%) came from the rest of the World.

#### 3.2 Outcomes of applications received by Australasian States

38. The table and graph below compare the outcomes of return applications to Australasian States from fellow Australasian States with those that came from outside Australasia and those that were received by non-Australasian States.

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<sup>19</sup> One application came from Canada and one from Australia.

### Outcomes of applications received by Australasian States and globally<sup>20</sup>

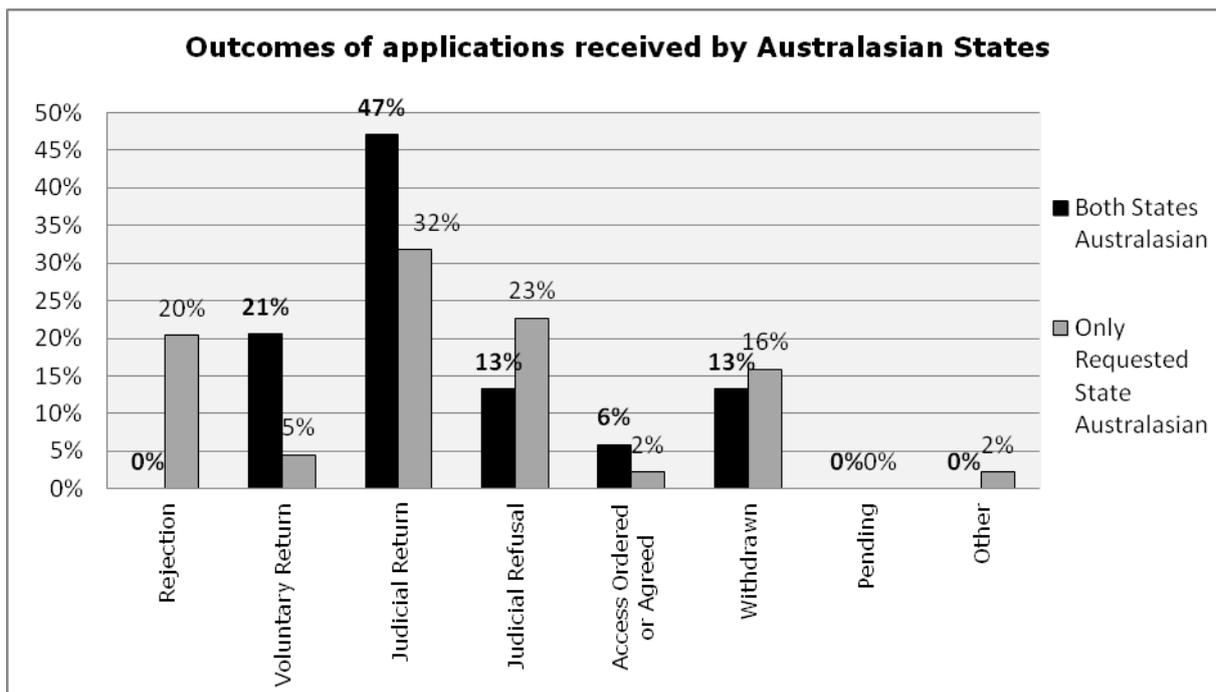
	Applications received by Australasian States			
	Both States Australasian		Requesting State non-Australasian	
	Frequency	Percentage	Frequency	Percentage
Rejection	0	0%	9	20%
Voluntary return no court orders	14	21%	2	5%
Judicial return	32	47%	14	32%
Judicial refusal	9	13%	10	23%
Order or agreement for access	4	6%	1	2%
Withdrawn	9	13%	7	16%
Pending	0	0%	0	0%
Other	0	0%	1	2%
<b>Total</b>	<b>68</b>	<b>100%</b>	<b>44</b>	<b>100%</b>

39. Where the application was between two Australasian States the results are strikingly different. No applications between two Australasian States were rejected compared with 20% of applications to Australasian States from outside Australasia.

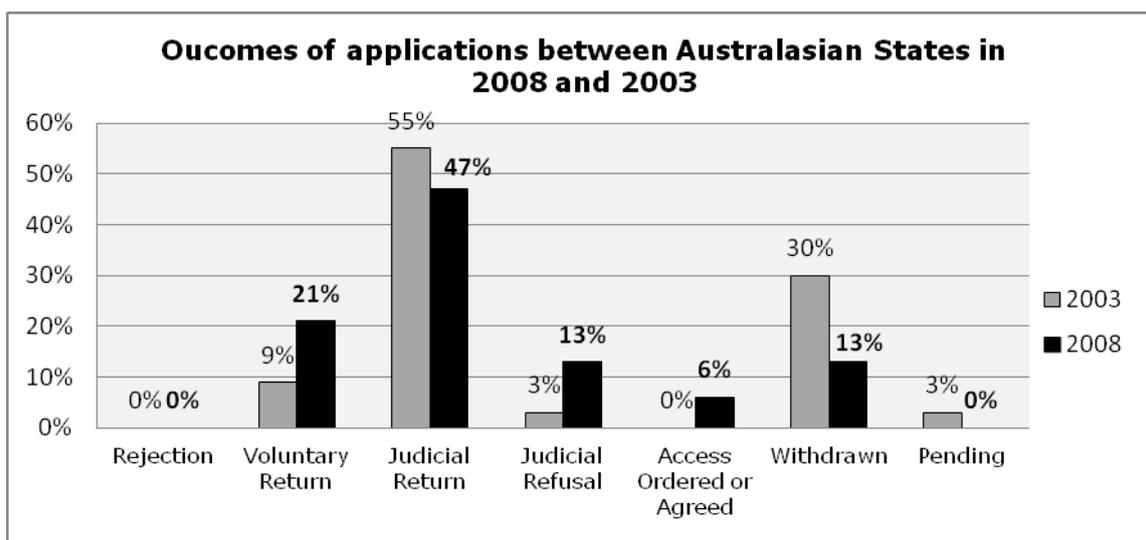
40. The overall return rate of applications between two Australasian States was 68% comprising 21% voluntary returns and 47% judicial returns compared with 37% of applications from outside Australasia comprising 5% voluntary returns and 32% judicial returns.

41. Fewer applications between Australasian States were refused (13% compared with 23% of applications coming from outside Australasia). Access was agreed or ordered in more applications (6% compared with 2% of applications coming from outside Australasia) and fewer applications were withdrawn (13% compared with 16% of applications coming from outside Australasia). No applications received by Australia and New Zealand were still pending at the cut off date of 30<sup>th</sup> June 2010.

<sup>20</sup> The information from our outgoing database for applications received by Fiji has not been included in the table. These 2 applications were received from Australia and Canada and both ended in a voluntary return.



42. In 2003, 68 applications were received by Australia and New Zealand and 33 (49%) of these came from Australasian States. The graph below compares the outcomes of the applications between Australasian States in 2008 and 2003. No applications were rejected between the two States in 2008 or 2003 and there was a high return rate in both surveys at 64% in 2003 and 68% in 2008. The proportion of applications judicially refused rose from 3% in 2003 to 13% in 2008. The number of agreements or orders for access rose from none in 2003 to 4 in 2008 (6% of all applications). The proportion of pending and withdrawn cases was also lower in 2008 than in 2003 with no cases pending and 13% withdrawn in 2008 compared with 3% and 30%, respectively, in 2003.



### 3.3 Timing

43. Overall, applications received by Australasian States were concluded more quickly, in an average of 101 days, if they came from fellow Australasian States, compared with

161 days when the application came from a non-Australasian State. The table below analyses average timing according to the final outcome that was reached. Looking at the applications that were received by Australia and New Zealand, applications ending with a voluntary return, judicial return by consent order or a judicial refusal were, perhaps surprisingly, resolved more quickly if the application came from a non-Australasian State.

44. The time taken to reach all outcomes was shorter in applications received by Australia and New Zealand compared with the global averages of 121 days to conclude a voluntary return, 163 days for a judicial return by consent, 204 days for a judicial return without consent and 286 days for a judicial refusal.

**The average number of days taken to reach an outcome in applications received by Australasian States and non-Australasian States.**

	<b>Applications received by Australasian States</b>	
	<b>Both States Australasian</b>	<b>Requesting State non-Australasian</b>
Voluntary return	23	13
Judicial return by consent	83	69
Judicial return not by consent	106	186
Judicial refusal	221	187