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PUBLIC HEARING - 9 MAY 2005
and
PRIVATE BRIEFING - 25 MAY 2005

to

**HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON
FAMILY AND HUMAN SERVICES**

INQUIRY INTO ADOPTION OF CHILDREN FROM OVERSEAS

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**SUPPLEMENTARY INFORMATION PROVIDED BY
ATTORNEY-GENERAL'S DEPARTMENT – FOLLOWING PUBLIC HEARING
ON 9 MAY 2005 AND PRIVATE BRIEFING ON 25 MAY 2005**

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**HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON FAMILY AND HUMAN
SERVICES INQUIRY INTO ADOPTION OF CHILDREN FROM OVERSEAS
ATTORNEY-GENERAL'S DEPARTMENT**

The Committee asked the following questions at the Hearing on 9 May 2005:

- 1. Provide a list of which states are responsible for which overseas country programs (Page FHS 45).**

The answer to the Committee's question is as follows:

See attached – Table 1.

- 2. How often do States travel to the countries for which they have program responsibility? (Page FHS 45)**

The answer to the Committee's question is as follows:

See attached table – Table 1, Column 5. Note that countries may also visit Australia.

- 3. Clarify the situation in New Zealand with the New Zealand Central Authority – is it that they do not have an official adoption relationship with Russia but the number of Russian adoptions into New Zealand are in fact private adoptions? Is this process the same as the private adoptions by non-resident Australians under the laws of the overseas countries in which they are living? (Page FHS 50)**

The answer to the Committee's question is as follows:

Based on a briefing provided by the National Manager of the Adoption Information and Services Unit in the Department of Child, Youth and Family which is responsible for statutory adoption services in New Zealand, there is no official adoption relationship between New Zealand and Russia, neither by way of the Hague Convention or bilateral agreement.

It follows that adoptions of Russian children by New Zealand citizens are not Hague adoptions but independent adoptions. The process is that individuals travel to Russia and qualify under the Russian adoption program. Under the Adoption Act (New Zealand) the Adoption Information and Services Unit is obliged on request to provide a Home Study Assessment and an undertaking to provide Post Placement Reports. This satisfies the Russian legal requirements.

Under section 17 of the Adoption Act (New Zealand) if New Zealand citizens adopt overseas and the adoption is done under legislation 'compatible' with domestic adoption law recognition is to be afforded of that adoption. The child is then deemed a New Zealand citizen by descent. There were approximately 25 such adoptions from Russia in the last financial year. It is estimated that there have been some 550 such adoptions since 1992.

A report by the New Zealand Law Commission (2000), *Adoption and Its Alternatives: A Different Approach and a New Framework*, noted that section 17 was 'intended to be a conflict of laws provision to ensure that immigrants to New Zealand who had adopted children in their State of origin would have the adoption recognised in New Zealand' (para 302).

It goes on to say that section 17 is 'now being used for purposes far removed from the original intention of the 1955 [Adoption] legislation. It is primarily being used by persons habitually resident in New Zealand to adopt children habitually resident in countries that have not ratified the Hague Convention' (para 305).

The difficulties with this are stated as being the lack of 'any assessment of how well that country's legal system protects the welfare and interests of the child...Russian adoptions do not conform with the principles of the Hague Convention as there is no clear process for matching the child's needs and the abilities of the adoptive parents.' It notes that 'the lack of protection for children adopted by New Zealanders using this route is in marked contrast to the assurances that must be sought from Hague Convention countries' (para 308).

The Law Commission recommended that section 17 apply only to adoptions made overseas by persons not habitually resident in New Zealand [ie. its original intended purpose].

4. What is the status of Portugal? Has it ratified the Hague Convention? (Page FHS 50)

The answer to the Committee's question is as follows:

Portugal signed the Convention on 26 August 1999. Ratification occurred on 19 March 2004. The Convention entered into force on 1 July 2004. Portugal made a declaration under Article 22. Article 22 states:

- 1 The functions of a Central Authority under this Chapter may be performed by public authorities or by bodies accredited under Chapter III, to the extent permitted by the law of its State.
- 2 Any Contracting State may declare to the depositary of the Convention that the functions of the Central Authority under Articles 15 to 21 may be performed in that State, to the extent permitted by the law and subject to the supervision of the competent authorities of that State, also by bodies or person who—
 - a meet the requirements of integrity, professional competence, experience and accountability of that State; and
 - b are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.
- 3 A Contracting State which makes the declaration provided for in paragraph 2 shall keep the Permanent Bureau of the Hague Conference on Private International Law informed of the names and addresses of these bodies and persons.
- 4 Any Contracting State may declare to the depositary of the Convention that adoptions of children habitually resident in its territory may only take place if the functions of the Central Authorities are performed in accordance with paragraph 1.

5 Notwithstanding any declaration made under paragraph 2, the reports provide for in Articles 15 and 16 shall, in every case, be prepared under the responsibility of the Central Authority or other authorities or bodies in accordance with paragraph 1.

Portugal's declaration was in the following terms:

(...) The Portuguese Republic hereby declares that, according to paragraph 4 of Article 22 of the Convention, adoptions of children habitually resident in its territory may only take place if the functions of the Central Authorities are performed in accordance with paragraph 1 of the same Article; (...)

5. Which of the countries that have ratified the Hague Convention has Australia entered into an agreement with, aside from the countries with which it has bilateral agreements? (Page FHS 53)

The answer to the Committee's question is as follows:

Lithuania, Mexico and Turkey are the Convention countries with which the Australian States and Territories did not have a pre-existing bilateral agreement or arrangement.

Australian States and Territories have adoption arrangements with the following Convention countries:

- 1) Bolivia
- 2) Chile
- 3) Colombia
- 4) Guatemala (program currently closed)
- 5) India
- 6) Lithuania
- 7) Mexico
- 8) Poland
- 9) Philippines
- 10) Romania (program currently closed)
- 11) Sri Lanka
- 12) Thailand
- 13) Turkey

The States and Territories, assisted by the Commonwealth Central Authority have investigated the establishment of adoption arrangements with a number of other Convention countries. Those countries include: Albania; Azerbaijan; Belarus; Brazil; Bulgaria; Burkina Faso; Burundi; Costa Rica; Ecuador; El Salvador; Estonia; Guinea; Latvia; Madagascar; Mauritius; Moldova; Paraguay; Slovenia; South Africa, and Venezuela.

6. **“The states and territories concerned have given public explanations of their increases in those fees, which we are happy to make available to the committee.” Page FHS 55:**

The answer to the Committee’s question is as follows:

The State and Territory Central Authorities retain responsibility for all practical aspects of adoption, including the processing of intercountry adoption applications and therefore have their own adoption legislation to regulate intercountry adoption.

Therefore, the States and Territories can determine the level of fees that they will charge for undertaking the work associated with applications to adopt an overseas child.

From 1 July 2004 New South Wales significantly increased their fees. Attached please find the following information and explanations regarding the fee increase:

- Media release issued by the New South Wales Department of Community Services dated 13 April 2004 providing an explanation for the fee increases; and
- NSW Department of Community Services information sheet on fees and costs for intercountry adoptions; and
- NSW Department of Community Services fact sheet providing information to applicants on the fee relief that may be provided to applicants under a hardship policy.

7. **Could the minutes of the meetings with the states and territories be made available privately to the committee? (FHS 56)**

The answer to the Committee’s question is as follows:

Approval was sought from the States and Territories. No objections have been raised to the minutes of the bi-annual State / Commonwealth intercountry adoption meetings being made available confidentially to the committee.

The minutes from the April 2005 meeting are not yet finalised. It is current practice for a draft version of the minutes to be circulated for approval prior to the next meeting. The minutes are then settled at that meeting. Attached, are the minutes from the November 2004 meeting as settled at the April 2005 meeting as well as the previous minutes from May 1999 onwards.

8. **Check and provide the final signed document re agreement with the Commonwealth and the states. (FHS 59)**

The answer to the Committee’s question is as follows:

An electronic copy of the Agreement text, and a final signed hard copy which includes signatory sheets and the Schedule, has been provided to the Committee’s Secretariat. This includes the signature sheet for Queensland. As noted during the hearing the sheet has not been counter-signed by the then Minister, the Hon. Warwick Smith MP.

Given the agreement is in the nature and format of a memorandum of understanding, while it sets out principles, strategies, and mechanisms for dealing with the common adoption issues at hand, it is not a legally binding agreement. It possesses moral and political force only. It follows that strict compliance with contractual formalities are not a prerequisite for its commencement and operation. It is considered that the Minister's signature appearing on several of the signature sheets evidences the Commonwealth's commitment to the agreement.

9. States to legislate to implement the Hague convention? Have all the states done that? (FHS 57 and 58)

The answer to the Committee's question is as follows:

The Hague Convention is implemented in Australia by Section 111C of the *Family Law Act 1975* and the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998*. In all States and Territories that have not passed their own legislation implementing the Convention the Family Law (Hague Convention on Intercountry Adoption) Regulations 1998 continues to apply pursuant to regulation 34.

States and Territories with such implementing legislation are Victoria, Western Australia, New South Wales and Queensland. Those enactments are: Adoption Act 2000 (NSW), Adoption Act 1984 (VIC), Adoption of Children Act 1964 (QLD), and Adoption Act 1994 (WA).

Regulation 34 is in the following terms:

Application

- (1) A provision of these Regulations, except Regulations 5, 6, 7, 8, 9, 12 and 13, does not apply to a State in which there is in force a law (an *intercountry adoption law*) having the same effect as, or comparable effect to, that which the provision would, except for this regulation, have for the State.
- (2) Nothing in these Regulations affects:
 - (a) the jurisdiction of a court of the Commonwealth or a State, or the power of an authority, under an intercountry adoption law to entertain proceedings, make an order or take any other action in relation to an intercountry adoption; or
 - (b) any such order or action; or
 - (c) the operation, within a State, of an intercountry adoption law of the State.

The excluded Regulations relate to the designation of the Commonwealth Central Authority (reg 5), the functions of the Commonwealth Central Authority (reg 6), providing notice to the Hague of the designation (reg 7), designation of State Central Authorities (reg 8), providing notice to the Hague of the designation (reg 9), notice of accreditation (reg 12), and notice of revocation of accredited bodies (reg 13). The Family Law (Hague Convention on Intercountry Adoption) Regulations 1998 are attached together with the Explanatory Memorandum.

The Explanatory Memorandum states:

Sub-regulation 34(1) provides that the Regulations do not apply in a State which passes a law having the same or comparable effect as the Regulations. Sub-regulation 34(1) is made pursuant to sub-section 111C(4) of the Family Law Act 1975, which provides that the

Regulations may provide that the Regulations do not affect the operation of laws of a State that relate to adoptions. Sub-regulation 34(1) ensures that, where a State chooses to pass its own legislation to give effect to the Convention, there will be no conflict between the State law and the Regulations. Sub-regulation 34(2) provides that nothing in the Regulations affects the jurisdiction of courts in adoption proceedings, court orders in adoption proceedings or the operation of State adoption laws.

10. What follow-up steps can the Commonwealth take if it suspects that the state or territory welfare agencies might not be complying with Australia's obligations under the Hague convention. Has any action ever been taken? (FHS 59)

The answer to the Committee's question is as follows:

The Commonwealth State Agreement at clauses 15 and 16 set out the agreed procedures in the event that a State's legislation or administrative procedures may adversely affect Australia's ability to comply with the Hague Convention.

15. If the legislation or administrative procedures of a State do not enable compliance with the Convention, then:

- (a) the State may amend its legislation or administrative procedures to ensure compliance with the Hague Convention; or
- (b) the State may request the Commonwealth to enact such legislation for the duration of time and to the extent necessary to ensure compliance.

16. If it subsequently comes to notice that there is a deficiency in the legislation or administrative procedures of a State such that the State does not comply with the requirements of the Hague Convention, then the State shall forthwith notify in writing the other parties to this agreement of the deficiency, and:

- (a) the State may amend its legislation or administrative procedures to ensure compliance with the Hague Convention; or
- (b) the State may request the Commonwealth to enact such legislation for the direction of time and to the extent necessary to ensure compliance; or
- (c) if, within a reasonable time from the deficiency coming to notice, a State does not amend its legislation or administrative procedures in accordance with paragraph (a) or make a request of the kind referred to in paragraph (b), the Commonwealth will, if necessary and in consultation with the State, enact such legislation as is required to ensure compliance with the Hague Convention.

These mechanisms have not been invoked to date.

11. What other ways does reporting take place? Are there any other reporting requirements, apart from the six-monthly meetings? (FHS 60)

The answer to the Committee's question is as follows:

The key reporting mechanism is the six-monthly Commonwealth/ State meeting. The Commonwealth State Agreement at clause 8 sets out the functions that a State may give its Central Authority.

8. The functions that a State may give its State Central Authority include:
 - (a) processing the day-to-day casework involved in a particular adoption; and
 - (b) approving an application for the adoption of a child; and
 - (c) giving consent to the adoption of a child; and
 - (d) accrediting a body for the purposes of the Hague Convention; and
 - (e) revoking the accreditation of a body; and
 - (f) recommending to the Commonwealth Central Authority the preparation of legislation to ensure that Australia meets its obligations under the Hague Convention; and
 - (g) advising the Commonwealth Central Authority that:
 - (i) a provision of the Hague Convention has not been respected; or
 - (ii) there is a serious risk that a provision of the Convention may not be respected.

All State Central Authorities operate subject to State legislation and relevant State accountability mechanisms operating in each jurisdiction.

12. Explain what the Hague Convention compliance letter is that parents require (FHS 60)

The answer to the Committee's question is as follows:

An adoption compliance certificate means a certificate issued in accordance with article 23 of the Convention:

Article 23

1 An adoption certified by the competent authority of the State of the adoption as having been made in accordance with the Convention shall be recognised by operation of law in the other Contracting States. The certificate shall specify when and by whom the agreements under Article 17, sub-paragraph *c*, were given.

2 Each Contracting State shall, at the time of signature, ratification, acceptance, approval or accession, notify the depositary of the Convention of the identity and the functions of the authority or the authorities which, in that State, are competent to make the certification. It shall also notify the depositary of any modification in the designation of these authorities.

This is reflected in regulations 16 and 19 of the Family Law (Hague Convention on Intercountry Adoption) Regulations 1998 (emphasis added):

16 Adoption of a child from a Convention country to Australia

- (1) This regulation applies if:
 - (a) an adoption, by a person who is habitually resident in Australia, of a child who is habitually resident in a Convention country is granted in that country; and
 - (b) an **adoption compliance certificate** issued in that country is in force for the adoption.
- (2) Subject to regulation 22, the adoption is recognised and effective, for the laws of the Commonwealth and each State, on and from the day the certificate becomes effective.

Note This regulation does not necessarily apply to all States — see regulation 34.

19 Evidential value of adoption compliance certificate

Subject to regulation 22, an **adoption compliance certificate** is evidence, for the laws of the Commonwealth and each State, that the adoption to which the certificate relates:

- (a) was agreed to by the Central Authorities of the countries mentioned in the certificate; and
- (b) was carried out in accordance with the Convention and the laws of the countries mentioned in the certificate.

13. Bilaterals have to be renegotiated three years after being ratified, but original bilaterals seem to be between the states – not the Commonwealth? Do we have the power to enter into new agreements? (FHS 61)

The answer to the Committee's question is as follows:

At the time of ratification of the Convention by Australia a number of intercountry adoption programs were operating pursuant to bilateral arrangements made between the Australian States and Territories and certain overseas countries. It is understood that the majority of such bilateral arrangements were negotiated subject to a 1991 State and Territory Community Services Ministers agreement which set out the procedures for developing such adoption arrangements.

The negotiations with China commenced and were finalised under this protocol. The agreement with China came into force on 28 December 1999. This process included the making of the Family Law (Bilateral Arrangements – Intercountry Adoption) Regulations 1998 under the *Family Law Act* 1975 providing for the automatic recognition of an adoption registered in China.

On Australia's ratification four countries which had bilateral arrangements in operation and which were also Convention countries automatically switched to operate under the Convention. This applied to Poland, Romania, Sri Lanka, and the Philippines. Bolivia, Chile, Colombia, Guatemala, India and Thailand are other bilateral agreement countries which subsequently joined the Convention.

As a practical matter it was recognised that after ratification of the Convention a dual system of intercountry adoptions would operate throughout Australia: one system under the Hague Convention and one system under bilateral agreements. However, clause 17 of the Commonwealth-State Agreement provides that where an existing bilateral agreement country has not become a party to the Convention within three years from Australia's ratification of the Convention, that agreement is to be renegotiated (by the Commonwealth in conjunction with the States) to obtain conformity with the provisions of the Convention. Those renegotiations are not required to occur in a three year time period.

There is no legal constraint on the Commonwealth entering into new bilateral agreements. However, where a country is not a party to the Hague Convention, and there is no existing bilateral agreement, clause 18 of the Commonwealth-State Agreement provides that any proposals for a bilateral agreement should be on the basis of compliance with the requirements of the Hague Convention and shall be negotiated in accordance with the State Protocols and Procedures for Developing New Programs with New Countries 1991 with Commonwealth involvement.

14. Reason why there are comparatively few adoptions in New South Wales? (FHS 51)

The answer to the Committee's question is as follows:

After consultation, the New South Wales Department of Community Services has indicated that they are not aware of any specific reason why there are comparatively few adoptions in New South Wales. However, the New South Wales Department of Community Services advises that:

- New South Wales processes all expressions of interest in adoption and adoption applications that are lodged with the Department of Community Services.
- New South Wales does not limit people lodging expressions of interest and only does not accept/approve an adoption application where the applicants have been thoroughly assessed and deemed as not being "suitable" to be adoptive parents.
- New South Wales does not have any control over the number of children from overseas needing families- whose countries decide to place them in New South Wales rather than somewhere else.
- There could be a range of factors that may affect numbers of adoptions in any state eg. families choosing to foster or permanently care for a child rather than adopt, families choosing not to have children at all, infertility rates, number of people choosing to adopt internationally, quotas (where these apply in particular intercountry adoption arrangements) are not equitably split on population basis so result in less adoptions for New South Wales.

15. How many years have the six monthly Commonwealth-State meetings been taking place? (FHS 60)

The answer to the Committee's question is as follows:

Regular six monthly meetings commenced in April 1999.

RESPONSIBILITY OF STATE AND TERRITORY CENTRAL AUTHORITIES FOR ADOPTION PROGRAMS

COUNTRY	PROGRAM TYPE	STATE/ TERRITORY	STATUS OF PROGRAM	LIAISON VISITS BY AUSTRALIAN STATE CENTRAL AUTHORITIES ¹ - FREQUENCY
BOLIVIA	Hague	NSW	Negotiations being finalised	Visit by NSW Department of Community Services in February 2004 to facilitate recommencement of program and in September 1987
BRAZIL	Hague	WA	Under negotiation	A visit by the NSW Department of Community Services in September 1987
BURKINO FASO	Hague	WA	Not active – Burkina Faso have advised that they wish to work with France	Not applicable
CHILE	Hague	NSW	Active	Visits by NSW Department of Community Services in February 2004 and September 1987
CHINA	Bi-lateral	VIC	Active	Visits by the Department of Human Services, Vic, in May 2005, August 2002, August 2000, September 1999, August 1997 and Sept 1995. A visit by the NSW Department of Community Services in August 2002
COLOMBIA	Hague	NSW	Active	Visits by the NSW Department of Community Services in February 2004 and September 1987
COSTA RICA	Hague	NSW	Under negotiation	A visit by the NSW Department of Community Services in February 2004
ESTONIA	Hague	VIC	Estonia have advised that they want to work with countries that are close to them geographically due to small	A visit by the Department of Human Services, Victoria, in May 2002

¹ Note that Australian Central Authorities may also have discussions with representatives visiting from the relevant countries.

			number of children being placed overseas. Do not want a program with Australia	
ETHIOPIA	Bi-lateral	QLD	Active	Visited by a delegation from the Queensland, Victorian and South Australian State Central Authorities in May 2003
FIJI	Bi-lateral	QLD	Active	Visit by Queensland (now known as the Department of Child Safety) in 1996.
GUATEMALA	Hague	VIC	Closed until Guatemala establishes Central Authority and passes their adoption bill	Visit by the Department of Human Services, Vic, in 1997
HONG KONG	Bi-lateral	VIC	Active	Visits by the Department of Human Services, Vic, in May 2005, October 2003, August 2002, August 2000, September 1999, March 1998, July 1996 and September 1996
INDIA	Hague	SA	Active	Visits by the Department of Human Services, Vic, in December 2003, October 2002, November 2001, September 1996 and October 1995. Department for Families and Communities, SA, travelled in December 2003 and April 2005 and plan to travel at least every two years
KOREA	Bi-lateral	NSW	Active	Visits by the Department of Human Services, Vic, in April 2001 and September 1995. Visits by NSW

				Department of Community Services in September 2002 and a visit in the late 1980's (precise date unknown)
LATVIA	Hague	VIC	Latvian families only	Visited by the Department of Human Services, Vic, in August 2003
LITHUANIA	Hague	VIC	Active	Visits by the Department of Human Services, Vic, in August 2003 and May 2002
MOLDOVA	Hague	VIC	Not intended to progress at this stage	A visit by the Department of Human Services, Vic, in August 2003
MAURITIUS	Hague	VIC	Mauritian families only	A visit by a delegation from the Victoria, South Australia and Queensland Central Authorities in May 2003
MEXICO	Hague	VIC	ACTIVE	Visit by the Department of Human Services, Vic, in 2001. A visit by NSW Department of Community Services in September 1987
PHILIPPINES	Hague	VIC	Active	Visits by the Department of Human Services, Vic, in September 2004, October 2003, August 2001, October 1999, August 1997 and September 1995. A visit by NSW Department of Community Services in September 2002
POLAND	Hague	ACT	Older children only	No travel to Poland as this is a very small program
ROMANIA	Hague	VIC	Closed – Romanian Government passed legislation in Jan 05 which	Visits by the Department of Human Services, Vic, in August 2003, May 2002, November 2000, March 1998

			restricts international adoptions to grandparents living overseas	and August 1996
SOUTH AFRICA	Hague	TAS	In development	Not applicable
SRI LANKA	Hague	VIC	Active – Non resident Sri Lankan Applicants only	Visit by the Department of Human Services, Vic, in October 2003
TAIWAN	Bi-lateral	NSW	Active	Have not travelled.
THAILAND	Bi-lateral	VIC	Active	Visits by the Department of Human Services, Vic, September 2004, August 2003, May 2002, July 2002, August 2001, November 2000, July 1999, March 1998, August 1996 and October 1995
TURKEY	Hague	SA	Turkish families only	Have not travelled, small program (one application only)

IFLS, Family Law Branch, AGD 2 June 2005.

13 April 2004

Proposed Reforms for Intercountry Adoptions in NSW

Intercountry adoption services in NSW will be reformed under a proposal by the NSW Department of Community Services (DoCS) to streamline processes, revise fees, and to allow accreditation of organisations to provide intercountry adoption services.

DoCS Director, Adoptions and Permanent Care Services, Mary Griffin, said part of the proposed reforms would allow non-government organisations to provide intercountry adoptions services in NSW.

"While the number of children available for adoption from overseas countries has been diminishing, the demand for intercountry adoption has been increasing", Ms Griffin said.

"This has resulted in fewer adoptions and longer waiting times for applicants and to date DoCS is the sole provider of intercountry adoption services in NSW".

Under the accreditation proposal, any organisation interested in providing intercountry adoptions services would need to receive accreditation by the Office of the Children's Guardian, under the *Adoption Act 2000*.

"Under the proposal, DoCS will work with current adoption service providers to develop draft standards for adoptions services which would be the basis for assessing eligibility for accreditation", Ms Griffin said.

"It is envisaged that accreditation would be for a minimum of five years. During this period performance assessments and audits would be conducted to ensure standards of service provision are being met".

Ms Griffin said DoCS is also putting in place initiatives to streamline the application, assessment and approvals processes for intercountry adoptions.

"In the near future, people interested in intercountry adoption will be able to access more information on the internet, including Expression of Interest forms", she said.

"We are also looking at ways to make training for prospective adoptive parents more flexible with a mix of preparation material being available on the internet and face-to-face training. Duplication of assessment work previously undertaken by both DoCS and private social workers will also be removed.

"Assessment and training requirements for parents embarking on second and later adoptions will be minimised, in recognition of the experience they have gained in being adoptive parents already".

In recognition that fees for intercountry adoptions have not changed for the

past decade, it is proposed fees for these services will increase.

They are currently \$2,900 for each adoption but the true cost is \$10,799 per adoption.

The proposed fees are \$9,700 for a first adoption and \$6,900 for any further adoptions.

"While the costs of intercountry adoptions have been increasing, fees in NSW have remained fixed for about 10 years", Ms Griffin said.

"DoCS has been subsidising the costs of intercountry adoptions and will be moving to cost recovery of these services".

"Cost recovery is already the approach that is being used in other Australian states such as Victoria and South Australia", she said.

"It would not be viable for other organisations to provide intercountry adoption services under the accreditation proposal if DoCS continued to provide these services at a fraction of the true cost".

Improvements to intercountry adoptions services are part of the raft of reforms being undertaken by DoCS to improve efficiency and to provide better services for children, young people, families and communities in NSW.

Media enquiries: 9716 2804 or pager 9214 0653.



INFORMATION SHEET ON FEES AND COSTS FOR INTERCOUNTRY ADOPTIONS

ADOPTION ACT 2000

Payments for fees for intercountry adoptions are made in accordance with Section 200 of the Adoption Act 2000 and Clause 76 of the Adoption Regulation 2003.

This schedule amends Part 1 and replaces Part 3 of Schedule 3 to the Adoption Regulation 1995 which is in force by virtue of Clause 10 of Schedule 3 to the Adoption Act 2000.

In accordance with Section 200(2) of the Adoption Act 2000, I prescribe the fees set out below to apply on and from 1 July 2004.

For a first intercountry adoption :

Adoption Service	Fee
Information and Training	\$ 640
Assessment	\$ 4260
Allocation and Post Placement	\$ 4800

For a second and subsequent adoption :

Adoption Service	Fee
Information and Training	Nil
Assessment	\$ 2100
Allocation and Post Placement	\$ 4800

Neil Shepherd
DIRECTOR-GENERAL
Department of Community Services



HARDSHIP POLICY – INTERCOUNTRY ADOPTIONS

A new pricing structure for fees for intercountry adoptions was gazetted under Section 200 (2) of the *Adoption Act 2000* for introduction from 1 July 2004. (Please refer to the Information Sheet on Fees and Costs for Intercountry Adoptions for further information on the fees.)

The Department of Community Services acknowledges that there are circumstances where the fee structure may disadvantage applicants with lower incomes. It has developed this policy based on average earnings and median household income to assist lower income households.

The policy offers fee relief to applicants with household incomes comparable to the lower half of all Australian households. It combines two income thresholds, with a 50% discount applying up to the first threshold and a 25% discount applying up to the second.

Fee relief may be applied for at the three stages of the process.

It will also be offered to applicants who experience an unexpected decrease in income that would have made them eligible for fee relief had it occurred before an application was lodged.

The Hardship Policy and fee relief provisions relate only to DoCS fees and charges. Adoption and Permanent Care Services (APCS) cannot waive or reduce overseas country costs or any other costs, for example travel, that are associated with the adoption of children from overseas. Applicants will be required to provide full details of their financial circumstances and to demonstrate an ability to save for the overseas costs if they do not have the required savings. This Policy should be read in conjunction with the Information Booklet 'Considering Adoption' in relation to anticipated financial requirements for intercountry adoptions.

How it works:

Under the two-stage hardship policy, applicants will currently be eligible to receive 50% fee relief if their household income is less than \$39,100. Applicants with a household income of less than \$46,400 would be eligible for 25% fee relief. The table below explains this further:

Fee Structure for 1st Time Applicants

Stage	Information Stage	Assessment	Allocation Stage	Total
Unit Cost/Fee	\$640	\$4,260	\$4,800	\$9,700
25% discount	\$480	\$3,195	\$3,600	\$7,275
50% discount	\$320	\$2,130	\$2,400	\$4,850

Fee Structure for 2nd and subsequent applicants

Stage	Information Stage	Assessment	Allocation Stage	Total
Unit Cost/Fee	\$0	\$2,100	\$4,800	\$6,900
25% discount	\$0	\$1,575	\$3,600	\$5,175
50% discount	\$0	\$1,050	\$2,400	\$3,450

❖ For a 1st time applicant, this means:

If your household income is less than \$39,100 you would be eligible for 50% fee relief. The total fee of \$9,700 for a first time adoption would be reduced by 50% to \$4,850.

If your household income is less than \$46,400 you would be eligible for 25% fee relief. The total fee of \$9,700 for a first time adoption would be reduced by 25% to \$7,275.

❖ For a 2nd or subsequent adoption applicant, this means:

If your household income is less than \$39,100 you would be eligible for 50% fee relief. The total fee of \$6,900 would be reduced by 50% to \$3,450.

If your household income is less than \$46,400 you would be eligible for 25% fee relief. The total fee of \$6,900 would be reduced by 25% to \$5,175.

What is 'household income':

For the purposes of this policy, household income is the taxable income of the applicant/s in the last financial year.

Applying for assessment for fee relief:

You can apply for assessment for fee relief at any of the three stages of the adoption process.

It will also be offered to applicants who experience an unexpected decrease in income that would have made them eligible for fee relief had it occurred before an application was lodged.

Approval for fee relief cannot be back-dated or applied to stages of the adoption process which have already commenced.

If you consider you may be eligible for fee relief:

1. Send a letter to the Director, Adoption and Permanent Care Services explaining how you are eligible for fee relief and requesting assessment under the hardship policy. The letter is to be signed by the applicant/s.
2. Include a copy of the Australian Taxation Office 'Notice of Assessment' which shows the taxable income for each applicant. Provide this information for the most recent financial year available.

Assessing eligibility for fee relief:

Adoption and Permanent Care Services will assess eligibility for fee relief based on the financial information you have provided against the threshold levels for fee relief detailed in this policy.

A caseworker will assess your application for fee relief. After assessment the caseworker will make a recommendation to the Director, Adoption & Permanent Care Services.

The Director, APCS will inform you of the outcome of the application.

Note: The information provided for assessment for fee relief may be reviewed against financial information provided at later stages of the adoption process, including assessment and allocation and placement stages. This includes:

- the general financial information provided in the adoption application
- Adoption Assessment Reports, which provide a comprehensive evaluation of the applicants' financial circumstances.

Families are invited to ring 8855 4900 and speak to a caseworker to clarify any aspects of the Inter-country Adoptions Hardship Policy.

If you wish to apply for fee relief please write to:

Inter-country Adoption Program
Adoption and Permanent Care Services
NSW Department of Community Services
P O BOX 3485
PARRAMATTA NSW 2124

**COMMONWEALTH-STATE AGREEMENT FOR THE
IMPLEMENTATION OF THE HAGUE CONVENTION ON
PROTECTION OF CHILDREN AND COOPERATION IN RESPECT OF
INTERCOUNTRY ADOPTION**

..... This agreement (to be known as the "Commonwealth-State Agreement for the Implementation of the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption") is made between—

THE COMMONWEALTH OF AUSTRALIA; and

THE STATE OF NEW SOUTH WALES; and

..... THE STATE OF VICTORIA; and

THE STATE OF QUEENSLAND; and

THE STATE OF WESTERN AUSTRALIA; and

THE STATE OF SOUTH AUSTRALIA; and

THE STATE OF TASMANIA; and

THE AUSTRALIAN CAPITAL TERRITORY; and

THE NORTHERN TERRITORY.

(A) The Ministers of the respective governments in Australia who are responsible for intercountry adoption have agreed that it is in the interests of Australia to recommend to the Commonwealth Government that it ratify the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption ["the Hague Convention"].

(B) The Ministers have agreed that in order to enable the Commonwealth Government to ratify the Hague Convention, Australia as the Contracting State, must be able to demonstrate its ability to carry out the obligations of the Convention.

(C) The Ministers have also agreed that the existing standards applicable to intercountry adoption, found in the legislation and administrative procedures of each of the States, are sufficient to comply with the standards and procedures of the Hague Convention.

PART I—INTERPRETATION

1. In this agreement, unless the contrary intention appears:

“**Hague Convention**” means the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption done at The Hague on 29 May 1993;

“**Minister**” means the Minister for Family Services of the Commonwealth, or a State Minister for the time being responsible for the administration of the laws of the State relating to adoption of children, and includes a Minister who is for the time being acting for or on behalf of that Minister;

“**reasonable time**” in clause 16 (c) means such period of time, not exceeding twelve months, as is determined by the Community Service Ministers’ Council;

“**State**” includes the Australian Capital Territory and the Northern Territory.

PART II—OBJECTIVES OF AGREEMENT

2. An objective of this agreement is to produce a statement of compliance that guarantees that existing State legislation and administrative procedures relating to intercountry adoption are sufficient to ensure compliance with the obligations of the Hague Convention.

3. A further objective of this agreement is that, in conjunction with the relevant Commonwealth legislation and the relevant State legislation and practices, it shall provide a cooperative scheme for the implementation and administration of the Hague Convention in Australia, and that it shall do so with a minimum of disruption or alteration to existing State legislation and administrative procedures.

4. Another objective of this agreement is that questions of policy which affect the implementation, operation or administration of the Hague Convention in Australia shall be determined through consultation between the Commonwealth and the States while the operation and administration of intercountry adoption casework and adoption policy shall remain the responsibility of the States unless the intervention of the Commonwealth is requested by a State or another Contracting State.

PART III—GENERAL PROVISIONS

5. The Commonwealth will as soon as practicable after the conclusion of this agreement submit to the Federal Executive Council for making by the Governor-General regulations under section 111C of the *Family Law Act 1975*.

6. The regulations shall provide for the establishment of the Commonwealth Central Authority and shall, subject to this agreement, include such other provisions as would enable the Commonwealth to do all things necessary to fulfil its obligations under the Hague Convention.

7. The regulations, and an intercountry adoption law mentioned in clause 20, shall provide for the appointment by the States of State Central Authorities and require the States to inform the Commonwealth of such appointment and of any changes in those appointments.
8. The functions that a State may give its State Central Authority include:
- (a) processing the day-to-day casework involved in a particular adoption; and
 - (b) approving an application for the adoption of a child; and
 - (c) giving consent to the adoption of a child; and
 - (d) accrediting a body for the purposes of the Hague Convention; and
 - (e) revoking the accreditation of a body; and
 - (f) recommending to the Commonwealth Central Authority the preparation of legislation to ensure that Australia meets its obligations under the Hague Convention; and
 - (g) advising the Commonwealth Central Authority that:
 - (i) a provision of the Hague Convention has not been respected; or
 - (ii) there is a serious risk that a provision of the Convention may not be respected.
9. The functions that a State may give its State Central Authority do not include any functions of the Commonwealth Central Authority under the regulations.
10. If the regulations are made after the commencement of the *Legislative Instruments Act 1997*, the regulations will be registered in the Federal Register of Legislative Instruments. In accordance with section 111C of the *Family Law Act 1975*, the regulations will enter into force when the Hague Convention enters into force for Australia.
11. The signature of a State Minister to this agreement indicates that at the time when this agreement commences operation the legislation (other than an intercountry adoption law mentioned in clause 20) and administrative procedures of the State which that Minister represents comply with the requirements of the Hague Convention.
12. If a State determines that its State Central Authority should exercise its function to accredit bodies for the purposes of Article 9 of the Hague Convention, the State agrees to ensure that the Authority will only accredit a body that satisfies the criteria set out in Part II of the Accreditation Criteria agreed by the Community Service Ministers' Council, the terms of which are set out in the Schedule to this agreement.
13. If a State Central Authority proposes to revoke the accreditation of a body, the State of the Authority agrees to ensure that the Authority will only revoke the accreditation if the body does not comply with the criteria set out in Part IV of the Accreditation Criteria agreed by the Community Service Ministers' Council, the terms of which are set out in the Schedule to this agreement.

14. Each State agrees not to introduce amendments to its legislation or change its administrative procedures in relation to intercountry adoption in such a way as may adversely affect Australia's ability to comply with the Hague Convention.

15. If the legislation or administrative procedures of a State do not enable compliance with the Convention, then:

- (a) the State may amend its legislation or administrative procedures to ensure compliance with the Hague Convention; or
- (b) the State may request the Commonwealth to enact such legislation for the duration of time and to the extent necessary to ensure compliance.

16. If it subsequently comes to notice that there is a deficiency in the legislation or administrative procedures of a State such that the State does not comply with the requirements of the Hague Convention, then the State shall forthwith notify in writing the other parties to this agreement of the deficiency, and:

- (a) the State may amend its legislation or administrative procedures to ensure compliance with the Hague Convention; or
- (b) the State may request the Commonwealth to enact such legislation for the duration of time and to the extent necessary to ensure compliance; or
- (c) if, within a reasonable time from the deficiency coming to notice, a State does not amend its legislation or administrative procedures in accordance with paragraph (a) or make a request of the kind referred to in paragraph (b), the Commonwealth will, if necessary and in consultation with the State, enact such legislation as is required to ensure compliance with the Hague Convention.

17. Where a country which has an existing bilateral agreement with Australian States does not become a party to the Hague Convention within three years from the date of Australia's ratification of the Convention, that bilateral agreement is to be renegotiated by the Commonwealth (in conjunction with the States) to obtain conformity with the provisions of the Hague Convention.

18. For a country that is not a party to the Hague Convention, and where there is no existing bilateral arrangement or agreement between a State and the country, any proposals for a bilateral agreement between the State and the country shall be on the basis of compliance with the requirements of the Hague Convention and shall be negotiated in accordance with the State *Protocols and Procedures for Developing New Programs with New Countries 1991* with Commonwealth involvement because of Australia's ratification of the Hague Convention and the entering into of this agreement.

19. This agreement does not give rise to any legally enforceable right, privilege, obligation or liability in respect of:

- (a) anything done under the agreement; or
- (b) anything omitted to be done under the agreement.

PART IV—STATE LAWS TO GIVE EFFECT TO THE HAGUE CONVENTION

20. If a State proposes to make an intercountry adoption law to give effect to the Hague Convention, the responsible State Minister will inform the responsible Commonwealth Minister of the proposal in sufficient time to allow the Commonwealth to make regulations that disapply to the State the Commonwealth regulations made for the purpose of section 111C of the *Family Law Act 1975*.

21. If the Commonwealth proposes to make regulations that will amend regulations made for section 111C of the *Family Law Act 1975*, the Commonwealth Central Authority will consult the State Central Authority of each State regarding the proposal.

22. If a State proposes to amend an intercountry adoption law to give effect to the Hague Convention, the State Central Authority of the State will consult the Commonwealth Central Authority and the State Central Authority of each other State regarding the proposal.

PART V—OPERATION OF AGREEMENT

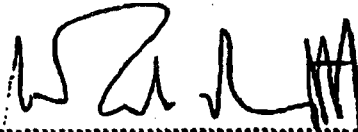
23. This agreement shall commence operation and shall have effect on and from the date on which the agreement is signed by all the parties to the agreement.

24. This agreement may be amended by the parties to it for the time being only in accordance with a resolution of the Community Service Ministers' Council passed by a unanimous vote of all the members of that Council with a right to vote in its proceedings.

25. If a State no longer wishes to be a party to this agreement, it may give a notice to that effect to the Community Service Ministers' Council. The State will cease to be a party to the agreement 12 months after the State gives the notice unless the State withdraws the notice before the expiration of those 12 months.

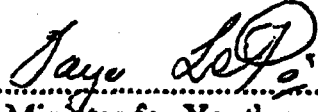
26. If a State ceases to be a party to this agreement under clause 25, and the State wishes to again be a party to the agreement, the State may give a notice to that effect to the Community Service Ministers' Council. If the Council is satisfied that at the time of giving the notice the State complied with the requirements of this agreement, the State will again become a party to the agreement 3 months after giving the notice.

Signed by the Honourable
Warwick Smith MP on the
day of 1998



Minister for Family Services,
Commonwealth of Australia

Signed by the Honourable
Faye Lopo MP on the
day of 1998



Minister for Youth and
Community Services,
New South Wales

Signed by the Honourable
Dr Denis Napthine MLA on the
day of 1998

Minister for Youth and
Community Services, Victoria

Signed by the Honourable
Dean Brown MP on the
day of 1998

Minister for Human Services,
South Australia

Signed by the Honourable
Kev Lingard MLA on the
day of 1998

Minister for Families, Youth and
Community Care, Queensland

Signed by the Honourable
Peter McKay MLC on the
day of 1998

Minister for Community and
Health Services, Tasmania

Signed by the Honourable
R K Parker MLA on the
day of 1998

Minister for Family and
Children's Services, Western
Australia

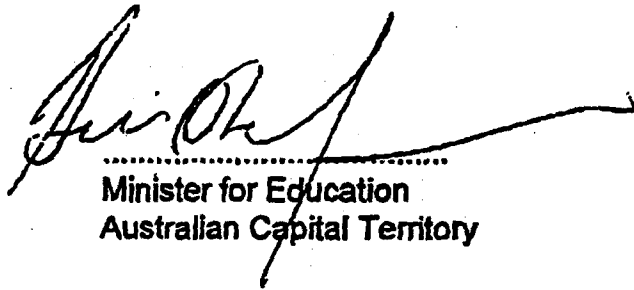
Signed by the Honourable
Denis Burke MLA on the

day of 1998

.....
Minister for Health Services,
Northern Territory

Signed by Bill Stefaniak MLA
on the

9th day of April 1998


.....
Minister for Education
Australian Capital Territory

SCHEDULE

CRITERIA IN RELATION TO THE ACCREDITATION OF BODIES UNDER THE HAGUE CONVENTION ON THE PROTECTION OF CHILDREN AND COOPERATION IN RESPECT OF INTERCOUNTRY ADOPTION

PART I—BACKGROUND

1. States and internal Territories may enter into arrangements with a body for the accreditation of that body to provide State or Territory intercountry adoption services or across border services consistent with the terms of accreditation.
2. A body applying for accreditation is required to satisfy the criteria set out in Part II.
3. Accreditation of a body is subject to annual review and may be revoked at any time by the State Central Authority issuing accreditation if the body does not comply with the criteria set out in Part IV.
4. A State Central Authority that accredits a body or revokes the accreditation of a body is required to provide notice of that accreditation or revocation to the Commonwealth Central Authority who will advise the Permanent Bureau of the Hague Conference on Private International Law of the terms of accreditation.

PART II—ACCREDITATION CRITERIA

Eligibility

5. The body must be an incorporated non profit body.
6. The body must not be, and must not be likely to be, a party to negotiations or an agreement for the establishment of adoption arrangements with overseas countries.
7. The body must give an undertaking that during any period of accreditation the body will not enter negotiations for the establishment of an adoption agreement with an overseas country.

The Body

8. The body must employ a principal officer with social science qualifications and experience in adoption, substitute care or family services to supervise the adoption arrangements undertaken by the body.
9. The body must be financially viable.
10. The body must employ professional staff with appropriate qualifications to undertake training, assessment and placement tasks.

SCHEDULE—continued

11. The body must have accommodation available for its use that:
- (a) is suitable for the conduct of assessment, interviews, training and support to adoption arrangements; and
 - (b) does not form part of, and is not adjacent to, accommodation that is used by an aid organisation or an organisation that represents adoptive parents.

Conduct of the Body

12. The body must comply with the practice that applies, in the State or Territory in which the body is seeking accreditation, relating to the approval or contracting of bodies to undertake arrangements with a view to the adoption of a child.

13. The body must comply with:
- (a) the laws of the Commonwealth and the State or Territory in which it is seeking accreditation; and
 - (b) the requirements of the Convention.

14. The body must not be associated with, and must not be likely to be associated with, the collection and disbursement of aid to an overseas country.

15. A body must have suitable facilities for the confidential storage of records, and must give an undertaking to maintain those records.

16. The body must give an undertaking that during any period of accreditation the body:

- (a) will only undertake the functions approved at the time of accreditation; and
- (b) will only offer adoption services in respect of the countries specified in its accreditation; and
- (c) will not destroy any records maintained by the body; and
- (d) will not issue publications promoting adoption, or offer preparation courses for adoption applicants, unless the content of the publication or the course has been approved by the State Central Authority to which the body has applied for accreditation.

17. The body must give an undertaking that on its winding up it will lodge any records, that it has maintained during any period of accreditation, with the State Central Authority to which it has applied for accreditation.

PART III—FUNCTIONS OF AN ACCREDITED BODY

18. A body may be accredited to undertake any of the following functions in relation to the adoption process:

- (a) Initial Enquiries—respond to initial enquires for intercountry adoption;

SCHEDULE—continued

- (b) Information Sessions—conduct regular information sessions to inform potential applicants;
- (c) Expressions of Interest—receive and process expressions of interest;
- (d) Applications—receive and process applications to adopt (Article 14);
- (e) Assessments—undertake assessments of suitability (including relevant medical, referee and police reports, and preparation of the Home Study);
- (f) Decision to approve or not approve—determine the suitability of applicants;
- (g) Forwarding of file—forward a report including all relevant information required to the country of origin (Article 15);
- (h) Allocation of children—receive allocation of children, confirm suitability of match (Article 17b) and advise applicants;
- (i) Supervision of placement—provide support and advice to applicants following placement;
- (j) Placement Breakdown—in case of placement breakdown prior to adoption orders being made, consult with the State Central Authority regarding appropriate arrangements, but the body is not to make decisions on alternative arrangements;
- (k) Adoption Information—collect and preserve relevant information about the child and the applicants (Article 9a), and respond to requests for adoption information until the child attains the age of 18 years;
- (l) Evaluation Reports—prepare general evaluation report for the State Central Authority (Article 9d);
- (m) Post Adoption Services—provide a referral and support service post granting of the adoption order;
- (n) administrative arrangements—undertake approved administrative arrangements between already established programs.

PART IV—REVOCATION CRITERIA***Division 1—Review and assessment of the body***

19. A body must submit to the supervision of the State Central Authority that accredited the body, and must provide the State Central Authority with access to the records and reports of the body in accordance with the requirements of the State Central Authority.

20. The body must provide biannual reports to the State Central Authority as required in the accreditation of the body.

21. The accommodation at which the body performs its functions as an accredited body:

- (a) must be suitable for the conduct of assessment, interviews, training and support to adoption arrangements; and

SCHEDULE—continued

- (b) must not form part of, or be adjacent to, accommodation that is used by an aid organisation or an organisation that represents adoptive parents.

22. Except in accordance with an arrangement between States and internal Territories, the functions approved in the accreditation must only be provided by the body within the State or internal Territory of the State Central Authority that accredited the body.

23. The body must comply with any undertakings given for the purpose of accreditation.

24. The body must continue to satisfy the criteria set out in Part II and any conditions set out in the instrument of accreditation.

25. A body must comply with, and must ensure that its staff members comply with, the code of conduct for bodies accredited to conduct adoption arrangements set out in Division 2.

Division 2—Code of Conduct

[NOTE: This code exists to recognise and give effect to the right of the public to expect that accredited intercountry adoption bodies are of the highest integrity and competence and treat all clients fairly, reasonably and equitably and are accountable to the State Central Authority that accredited the body.]

Conflict of interest

26. A member of staff of an accredited body must not hold any financial or other interest, and must not give an undertaking, that could directly or indirectly compromise the performance of his or her functions. Conflict of interest must be assessed by taking into account, amongst other things, the likelihood that a member of staff possessing a particular interest could be influenced, or might appear to be influenced, in the performance of his or her responsibilities on a particular matter. A member of staff must notify the State Central Authority that accredited the body if a potential or actual conflict of interest arises.

Acceptance of gifts or benefits

27. An accredited body or member of staff must not accept a gift, donation or benefit if it could be seen by a client as intended or likely to cause the member to undertake his or her responsibilities in a particular way, or deviate from the proper course of action.

SCHEDULE—continued**Personal and professional behaviour**

28. A member of staff of an accredited body must perform any duties associated with his or her position diligently, impartially and conscientiously, to the best of his or her ability.

29. In the performance of duties, a member of staff of an accredited body:

- (a) must keep up to date with any changes in practice or procedure relating to intercountry adoption; and
- (b) must comply with the laws, and any relevant administrative requirements of the Commonwealth and the State or internal Territory of accreditation; and
- (c) must maintain and preserve record information systems in accordance with the requirements of the State Central Authority that accredited the body; and
- (d) must treat all clients with courtesy, sensitivity and in confidence; and
- (e) must not take any improper advantage of any information gained in the carrying out of his or her duties; and
- (f) must report to the State Central Authority that accredited the body any unethical behaviour or wrong doing by other members of staff of which he or she is aware.

Fairness and equity

30. The manner in which an accredited body deals with issues or clients must be consistent, prompt and fair. This includes:

- (a) dealing with matters in accordance with approved procedures; and
- (b) dealing with matters without discrimination on any grounds; and
- (c) providing appropriate review and appeal mechanisms.

31. If an accredited body proposes to exercise a discretionary power in relation to a particular case, the body must ensure that all relevant considerations are taken into account in regard to the particular merits of the case.

Public comment and the use of information

32. While staff members of an accredited body have the right to make public comment and to enter into public debate on political and social issues, the accredited body must refrain from public comment where that comment is sufficiently strong to undermine the accredited body, the State Central Authority that accredited the body or the Commonwealth Central Authority.

33. An accredited body must not disclose official information or documents acquired in the course of carrying out its functions as an accredited body unless the proper authority has been sought and given.
