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**HOUSE OF
REPRESENTATIVES**

STANDING COMMITTEE ON FAMILY AND HUMAN SERVICES

Reference: Adoption of children from overseas

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HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON FAMILY AND HUMAN SERVICES

Monday, 10 October 2005

Members: Mrs Bronwyn Bishop (*Chair*), Mrs Irwin (*Deputy Chair*), Mr Cadman, Ms Kate Ellis, Mrs Elson, Mr Fawcett, Ms George, Mrs Markus, Mr Quick and Mr Ticehurst

Members in attendance: Mrs Bronwyn Bishop, Mr Cadman, Ms Kate Ellis, Mr Fawcett, Mrs Irwin, Mrs Markus and Mr Quick

Terms of reference for the inquiry:

To inquire into and report on:

How the Australian Government can better assist Australians who are adopting or have adopted children from overseas countries (intercountry placement adoptions) with particular reference to:

1. Any inconsistencies between state and territory approval processes for overseas adoptions; and
2. Any inconsistencies between the benefits and entitlements provided to families with their own birth children and those provided to families who have adopted children from overseas.

WITNESSES

BRAIN, Ms Helen Shirley, Manager, Out of Home Care Services, Placement and Support, Child Protection and Family Services, Office for Children, Department of Human Services, Victoria	2
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Committee met at 9.12 am

CHAIR (Mrs Bronwyn Bishop)—The inquiry of the House of Representatives Standing Committee on Family and Human Services into the adoption of children from overseas has attracted considerable national attention. We have received over 240 submissions to date, the vast majority from parents and couples who wish to grow their families and help orphaned or abandoned children from overseas. The committee has already taken evidence in several states and has visited an adoptions unit while moving around the country; it expects to continue this evidence-gathering process in the immediate future. This public hearing allows the committee to meet with state and federal government representatives involved in intercountry adoptions.

Today we welcome the Victorian government and the federal Attorney-General's Department. Copies of their submissions and others are available on the committee's web site. This hearing is open to the public and a transcript of what is said will be made available via the committee's web site.

[9.14 am]

BRAIN, Ms Helen Shirley, Manager, Out of Home Care Services, Placement and Support, Child Protection and Family Services, Office for Children, Department of Human Services, Victoria

CLEMENTS, Mr David John, Manager, Placement and Support, Child Protection and Family Services, Office for Children, Department of Human Services, Victoria

Witnesses were then sworn or affirmed—

CHAIR—We have your submission, for which we thank you. Would you like to make an opening statement?

Mr Clements—I would, thank you. The Department of Human Services, Victoria, is the responsible authority in Victoria for the provision of intercountry adoption. Arrangements for overseas adoptions are made through the Intercountry Adoption Service, which is located within the Child Protection and Family Services Branch of the Office for Children. The designated central authority for the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption is the Secretary of the Department of Human Services, who has delegated these responsibilities to specific officers in the department. Adoption in Victoria is governed by the Victorian Adoption Act 1984.

Adoptions are a service for children who need families. Intercountry adoptions are a service for children who are unable to live with their family and for whom no permanent family can be found in their country of origin. The role of the Department of Human Services is to find suitable families that are able to provide a home and the care that these children need. Whilst the department deals with families wanting to adopt, this is not a service to provide children for people who are unable to have their own—and this is an important distinction.

International adoptions are complex social phenomena. There is a view that thousands of children are languishing in orphanages, waiting for families, and that there should be few or no barriers to this happening or that the standards for international adoption should be lower. The international demand for young children leaves overseas adoption open to abuse and creates significant risks for vulnerable children. The department must ensure that children involved in intercountry arrangements are safeguarded from abuse and have their rights protected. By ratifying the Hague convention, Australia has agreed to the fundamental principles central to decisions about placing children from one country into another; these principles include the best interests of the child, subsidiarity and non-discrimination. The Victorian government is committed to these principles in the management of intercountry adoption services; they are enshrined in the Victorian Adoption Act 1984.

Many children in the world live in orphanages or institutions and need families. Unfortunately, many of these children in institutions or orphanages are either not available for adoption or not able to be placed in families because they are older, are part of a large sibling group or have disabilities, special medical conditions, other special needs or difficult backgrounds. The

majority of families in Victoria who apply to adopt from overseas want very young, healthy children generally of less than two years. In 2003-04, only 13 of the 102 children placed in Victoria were over three years of age. While the department seeks families for older children, our experience is that families do not want to accept or adopt older children. On many occasions we have had to return child studies to their country of origin, advising that we are unable to place these children.

Similarly, Victoria experiences difficulties in finding families for our local adoption program. We have recently resorted to the advertising of information nights to attract families willing to accept children born in Victoria and under the age of 12 months who require adoptive families. Victoria has difficulty in recruiting families for children who require permanent care. The opposite has been the case for international adoption, where increasing numbers of families are seeking to adopt from overseas. There has been substantial growth in international adoptions and Victoria mirrors this international trend. In Victoria the number of people applying to adopt a child from overseas has almost doubled in the past five years—from 99 in 1999-2000 to 186 in 2004-05.

Although the Victorian government has previously increased staff and resources to manage the number of applications, we acknowledge that there is increasing demand. Victoria has not had a waiting list for this program for more than 10 years and we currently accept applications from everyone who applies. However, we acknowledge that the waiting time for applicants, from making their application to attending education groups, has increased by around three to four months in the past 18 months. Despite this increase in waiting time for first-time applicants, Victoria continues to place the highest number of children from overseas compared to other states and territories. It has maintained the average time for someone adopting for the first time, from an application to the placement of a child, at around 24 months, and 17 months for a subsequent application.

Additionally, the department has made a number of changes to ensure that the processes are streamlined and predictable. Currently, 11 staff are employed across 8.2 positions within our ICAS team. The department has a policy of employing very senior and experienced social workers and we have maintained a stable work force in this program for some years. The staff who work in the program are committed to the adoption of children from overseas and they work very hard to ensure that they offer a high-quality and responsive service. Additionally, the department engages, under contract, 32 social workers to undertake tasks such as the provision of education groups, assessment and post-placement support.

The Victorian government is committed to providing a high-quality service for children and has made a considerable investment in this program in terms of resources allocated to the program. The government has committed additional resources which have allowed Victoria to establish programs in Romania, China, Lithuania and Mexico on behalf of the Australian state and territory governments. The Victorian government has undertaken initial investigations of programs with countries such as Estonia, Latvia and Moldova. Whilst these investigations have not resulted in programs opening, for a number of reasons, this is an example of the level of commitment in this area.

Victoria undertakes the role of a lead state, with a number of programs in relation to policy and legal matters. The concept of a lead state was developed in the 1980s and fulfils a number of

functions. The lead state ensures that information for all states and territories is consistent and kept up to date. This is particularly important for smaller states and territories that do not have the capacity to manage a large number of programs. Some overseas governments wish to deal with one state in Australia, and they are happy with the arrangements for Australia to identify a single state to act on behalf of the other states and territories. The lead state is not responsible for the sending or management of individual applications from other states or territories.

Governments and agencies in receiving countries have an obligation to ensure that prospective adoptive parents are properly prepared for adoption. Overseas governments and programs have made it very clear that they want applicants to be thoroughly checked and well prepared for adoption. Australia has an excellent reputation internationally in this area. We are recognised as setting high standards, and we provide applicants who are well prepared for adoption.

The preparation of applicants for the adoption of a child from overseas is very important. People need to understand the issues of adoption for themselves and for the child who will be coming into their care. Many issues such as attachment, grief and loss, and identity are explored in our education groups. During these groups, people have the opportunity to hear from adoptees, birth parents and adoptive parents who talk about their experiences. We also expect prospective adoptive parents to understand and value the child's country and culture.

The Intercountry Adoption Service supports families in other ways, such as providing additional parenting courses for applicants approved for the placement of a younger child. The department has also funded visits from experts in the placement of children for adoption, including Daniel Hughes, Greg Keck, Frank Kunstal and Susan Cox. Most recently, the department provided \$5,000 to the Victorian support group, the Intercountry Adoption Resource Network, to assist in funding a recent visit from Jane Brown.

Overseas countries have indicated that they find the preparation and the information provided about prospective adoptive parents from Australia comprehensive. They comment that this makes their role in matching the children who need families easier. They have also advised that the Australian documents are properly prepared in accordance with their requirements and that Australia provides detailed post-placement follow-up reports undertaken by social workers. We make this point to the committee, as this is not always the case in other receiving countries.

Finally, we appreciate that this committee will make a number of recommendations resulting from this inquiry. In our view, it is important that any relevant benefits recommended for families adopting children from overseas are also applicable to families who choose to care for children through the domestic adoption and permanent care services. It is critical that these families are not disadvantaged because of their choice to take local children who require families.

I would also like to take this opportunity to make it clear to committee members that we were unable to attend the hearing in Melbourne on 3 August. We did advise the secretariat in advance that it was not possible for us to attend on that date.

In summary, Victoria is committed to finding families for children who are not able to live permanently with a family in their country of origin. The Victorian government is committed to

providing a high-quality and responsive service for children and for people who want to adopt from overseas.

CHAIR—Thank you, Mr Clements. We do appreciate the fact that you told us that 3 August was not suitable, and we are grateful that you have come today. Would you like to submit the document you have just read to us as a further submission?

Mr Clements—We would be happy to.

CHAIR—There being no objection, it is so ordered. I was very interested in what you had to say about advertising for adoptive parents for Victorian children under 12 months of age. Are these children with disabilities or children without disabilities?

Mr Clements—Both, but often they are children without disabilities.

CHAIR—How many are there?

Ms Brain—We place about 20 children a year in Victoria. It is not a large number, but the fact is that we do not have sufficient families within that pool of approved adoptive families who can take those children. Over the last 12 months we have started to advertise information on local adoption to try to attract people who would consider taking on a child locally.

CHAIR—That runs against all that we hear. People say they would love to adopt locally but they think it is hopeless.

Mr Clements—There is certainly a small number of children placed for adoption each year but increasingly there is a view that the open adoption process in place now and the requirements around open access and often contact with the relinquishing family are sometimes problematic for people who wish to adopt a child. Certainly, the numbers of local adoptions have dropped off Australia-wide quite dramatically in recent years, and Victoria is no exception.

Mr FAWCETT—That confirms the feedback we have had from several other people that the open adoption process is the key contributor to that reduction.

Mr Clements—Yes.

CHAIR—I have asked quite a lot of the witnesses who appeared before us whether they had considered fostering. They all say that they considered it but could not face having to return a child they had grown to love.

Mr Clements—Foster care is really quite a different order. The nature of a foster carer role is obviously very different from that of an adoptive parent or even a permanent care parent. Victoria is somewhat unique—although I think New South Wales has started a similar type of program—in having what we call a permanent care order, which is typically for children who have entered state care due to issues of abuse or neglect and for whom there has been a determination that reunification with their family is not going to happen. Those children are sometimes placed in permanent care, which is a form of care where the permanent carers become the child's legal guardian. It is not the same as adoption.

CHAIR—The biological parents still get access.

Mr Clements—Yes, that is the case.

CHAIR—They can be highly inappropriate people.

Mr Clements—It certainly can be stressful and difficult at times. There is no question about that.

CHAIR—We have found that an anti-adoption sort of culture exists. How many children do you have in foster care in Victoria?

Mr Clements—We certainly do not believe there is an anti-adoption culture in Victoria at all. At any one time there are approximately 1,500 to 1,800 children in foster care. We are talking about a different group of children here. We are talking about children who come to the attention of the state through a child protection authority. The 1,500 to 1,800 children in foster care type places range from very young to teenage children. We have about 400 children in residential care, who are typically older adolescents. There are around 1,000 to 1,200 children in what we call kinship care, which is children placed through the child protection authorities with aunts, uncles or grandmothers. We have around 1,200 children in Victoria who are under permanent care orders. They have been placed via the state's child protection services with permanent carers.

CHAIR—When I say 'anti-adoption', I think it is to do with the definition of adoption and the way the adoption has been reconfigured, shall we say, by legislation so that it stresses that the biological tie must always be predominant. We saw the terrible outcome of that recently in New South Wales. When parents are adopting from overseas, as one witness in Tasmania said to us, they become the only parents.

Mr Clements—That is right; absolutely.

CHAIR—That does not happen in Australia with Australian children. So when you say you want the same sort of culture for both domestic and overseas adoption, fundamentally it is not the same.

Ms Brain—I would like to say a couple of things about that. Even though we have open adoption in Victoria, not all the birth families maintain contact with their children, so it is not necessarily something that happens in every single case.

CHAIR—But they can come back at any stage.

Ms Brain—Some birth mothers relinquish their child and then do not have any contact or any ongoing contact with that child. That has been very difficult for some of those children when they do not have that contact and they would like it. I understand why whomever you heard from in Tasmania said that the child only has one set of parents but the reality is that these children do have birth parents; they are just not in Australia. Our experience is that when children reach adolescence they often want to know much more about who their birth family is, and in many

cases want to search and make contact. It is not just that you have one set of parents and that is it. There are a lot of complex issues.

CHAIR—No. It was in a different context. It was in the context that if you are bringing up a child with a set of rules and whatever for the child to be part of your family, you do not want interference, as it were. These parents of adoptive children make every great effort to go back to the country of origin. They will find relatives for them. They are very supportive of the children knowing their origins and making contacts. The concept of an international day where they bring the children together and they wear their national costumes and all of that is a strong movement and very responsible. The problems seem to arise because they feel there is no permanency, and it is hopeless to try to get a child in Australia anyway because the policy is that the department would rather foster them.

Mr Clements—No, I think we are talking about a different group of children, in many ways. We do make quite a clear distinction between those children. Children who are in foster care placements are typically children who also have come to our attention through the child protection system. They have been abused or neglected in their families and child protection have investigated those matters and a decision by the Children's Court has placed those children away from the care of their families. Our first effort is to try to reunify children in those cases—to provide support to the family and to return the children to the care of their family. However, as I said, sometimes that does not occur. For some of those children for whom that cannot occur, they do enter into permanent care. Adoption, though, typically predates any involvement from child protection authorities. There are obviously a number of reasons why people may choose to relinquish a child for adoption, but it is typically not due to issues of abuse or neglect. It is because they have made a decision that they do not wish to care for a child, and they make an approach to have the child adopted formally through an adoption program, which is distinct from the child protection avenue. I think we are talking about different groups here.

CHAIR—Do you have the incidence of how many people relinquish a child? They really do not want to bear the responsibility, but they do not want to relinquish it either. It cannot be adopted; it can only go into care.

Mr Clements—So they want to place a child just in a care system?

CHAIR—Yes.

Mr Clements—That would be very rare. Obviously, some people would be quite ambivalent about the decision. It is a very difficult decision for any parent to make. I am not aware of instances like that at all.

CHAIR—I am. Of the 1,800 children in foster care, how many of those would be under two?

Mr Clements—I would have to take that one on notice, if that is okay. We can certainly give you quite a detailed break-up of the whole range of children in out-of-home care, if you would like to look at those figures.

Mr QUICK—According to some of the submissions, the adoption service fee is \$6,250 for the first adoption.

Mr Clements—Yes.

Mr QUICK—It is \$4,950 for subsequent adoptions.

Mr Clements—Yes, I believe that is right.

Mr QUICK—There is no fee for local adoption. Is that true?

Ms Brain—That is correct.

Mr Clements—Yes.

Mr QUICK—What is the difference between intercountry adoption and local adoption when it comes to the assessment of the suitability of parents? We understand that there is a 270-page workbook. There is a requirement that you familiarise yourself with the background or the culture of the country. As part of the assessment also, they go through your cupboards and there is a six-visit assessment by social workers. One would think that, if the department is interested in families, there would be consistency when it comes to fee for service.

I find it rather strange that you are going to charge \$6,250 in Victoria's case, and probably double that in New South Wales, yet only one state so far has given us a breakdown of the fee structure. I find it a bit hard to understand why, if you adopt someone locally, there are no fees at all. Can you explain why that is? I can understand \$6,200 to \$4,950. You have gone through the rigmarole and proved yourself, but there is no fee for local adoption.

Ms Brain—It is an issue that has been raised. The ministers that it has been raised with have made the decision that they will not charge fees for children who need families in Victoria.

Mr QUICK—Can you give us a breakdown of why it costs \$6,250 and \$4,950? Tasmania can. I understand that in attachment 1 on page 5 of submission 220 it explains it in dollar details down to the last cent—administration, legal processing fees, medical expenses, reception expenses, courier, affidavits, DIMIA expenses, legalisation and so on. Can you provide the committee with a breakdown of the \$6,250 versus \$4,950?

Ms Brain—When the fees were set in Victoria in 1992, and then again in 1994 and again in 2002, one of the things that we have to go through is the regulatory impact statement. We have to provide that and have public consultation on it. In that, there is a breakdown. Certainly in the first one, the 1994 one, there was a breakdown of what the costs were. It took into account things like salaries, the amount of hours that were spent by staff on particular functions, the on-costs of running the service. I can give you some more details.

Mr QUICK—I would appreciate it because Tasmania, when we were there a couple of weeks ago, provided us with a breakdown to justify that it only cost \$2,250, and one would assume that they had probably nearly as many people. You have 8.2 full-time staff. I think they had about six. You process more, obviously, than they do, but I would appreciate it if you could give me that. Once again, I would like to put on the public record that I find it difficult to understand how if you adopt locally it does not cost you anything. The department must be very generous with their time. The other question is: why has the Victorian government not sorted out the problem

with the difference between the certificate of abandonment and the subsequent adoption in China and the provision of a birth certificate? The Australian government will give a child a passport, but the Victorian government discriminates against a child because they do not have a birth certificate when that child has to go through to schooling.

Ms Brain—When we set up the program with China, the Chinese government was adamant that they wanted their adoptions fully recognised from the date the adoption agreement was made in China. So there were family law regulations made to ensure that that happens. So the adoptions are recognised in Victoria as if they have been made in Victoria. So there is no capacity for someone to come back from China and then get an additional adoption agreement or have a recognition because we just automatically recognise those. So in Victoria, and I think it is the same for other states and territories, unless you have a local adoption order made by the Victorian courts you cannot go off and get an Australian birth certificate. Those children who are adopted from China and other countries—not just China—have their birth certificates from the country of origin, they have Australian citizenship and they have access to an Australian passport.

Mr QUICK—But if you have a certificate of abandonment from your child and they are recognised in China as being adopted by an Australian citizen and the Australian government will give that child an Australian passport, why can't the Victorian government give that child a Victorian birth certificate?

Ms Brain—Because the order is not made in Victoria. The agreement is made in China. But that was part of what the Chinese government wanted—to have their adoptions automatically—

Mr QUICK—I understand that, but if the Australian government can give probably one of the most official documents obtainable by an Australian which opens lots and lots of doors and is a proof of you as a citizen—and with new passports they are the latest whiz-bang technology—why can't you, in discussion with A-G's and the other states, come up with some system of recognising the child? Can you imagine being the parent of that child going along to Hampton Primary School in Victoria and registering your child for first-year prep and the first question is, 'Can you give me the child's birth certificate?' 'I do not have one. I have a certificate of abandonment.' How would you feel as a parent? Why can't the Victorian government move into the 21st century and give a birth certificate? It is no big deal. It is a matter of changing legislation. I find it farcical.

Ms Brain—As I said, the problem is that it was a Chinese requirement. The Chinese government required that their adoptions were automatically recognised as if the adoption had already been made.

Mr QUICK—I understand that. The child is adopted in China, it is brought to Australia—I am labouring the point here—and it can get an Australian passport. Why can't it get a Victorian birth certificate? Why can't you change the legislation?

CHAIR—It should not be very hard.

Mr QUICK—Surely the matter must have been raised, because it is mentioned quite a few times in our submissions that the Victorian government has not moved on that position.

Ms Brain—No, it is an Australia-wide position; it is not just that of the Victorian government. The family law regulations—

Mr QUICK—I cannot understand why the states cannot do it when the Australian government can give you a passport and they can recognise the certificate of abandonment as a de facto birth certificate.

Ms Brain—Children have a birth certificate as well.

Mr QUICK—No, they do not. If you are in China and you do not have a birth certificate, you have a certificate of abandonment. There are 100,000 girls a year abandoned in China. They do not have anything apart from a document saying, ‘This is to certify that whatever her name is, female, was born in December. Birthplace and biological parents are unidentified.’ End of story. Here is the piece of paper. You can take that along to any Australian government passport office and say, ‘Here are my adoption papers. Here is the certificate of abandonment. I would like a passport.’ But you guys will not give them a birth certificate.

Okay, another question: I am interested in the issue of social workers. You stated that you have 32?

Ms Brain—Yes.

Mr QUICK—How many of them are specifically involved in intercountry adoption? I am trying to focus on the fact that your department was set up prior to intercountry adoption, which is a phenomenon of the last 30 years, principally to deal with dysfunctional families and social workers were trained in the mindset of responding to dysfunctional families in all their manifestations. Now we have intercountry adoption and, as I said before, it costs you an arm and a leg to justify that you are excellent parents, whereas there is no justification for local parentage, really, for local adoption. As you stated, there are 1,800 or more children from dysfunctional families and there is no requirement on any Australian couple to justify the fact that they can have children. Yet when it comes to wanting to adopt from overseas, you have to jump through more hoops than you can shake a stick at. How many social workers are trained specifically to deal with intercountry adoption and is there anything in the training of social workers in Victorian universities to deal with the manifestation of social workers? In one of our submissions it was stated that there does not appear to be any formal feedback process at any milestones except for the education sessions as a training event. They go on to state:

It would be useful to be able to provide feedback on the social worker assigned to you, the country liaison social worker, the allocation process in terms of being advised and paperwork associated. That part is tricky, as some of the paperwork is DIMIA, some is Intercountry Adoption Service, some is from the country from which you have been allocated.

Can you explain what sort of follow-up there is?

Mr Clements—Sure. I will just correct you, though, on a couple of things you have said there. There is certainly an assessment process for local adoption that is undertaken.

Mr QUICK—But is it as stringent as intercountry adoption? I do not think it is.

Mr Clements—It is stringent. It is different in that intercountry adoption obviously has that added layer of complexity around adopting a child from another culture. So it has a different—

Mr QUICK—If I am adopting a child locally, do I have to do the 270-page workbook?

Ms Brain—I am not sure where that comes from, because that is not something that happens in Victoria.

Mr QUICK—You do not have a workbook that you have to work through for intercountry adoption? There is no workbook at all?

Ms Brain—No, once people have attended groups we ask them to provide some additional documents, like their life stories and a project about the country they want to adopt from, but I am not sure where the 270-page workbook comes from.

Mr QUICK—Can you provide us with what you require from those people apart from going to—

Ms Brain—I have actually brought along some information kits, which outline that process. I thought the committee might like to have those; they are very useful.

CHAIR—Thank you.

Mr QUICK—Do they relate to intercountry adoption?

Ms Brain—Yes.

Mr QUICK—Can you also provide us with an example of the local adoption paperwork you have to do?

Mr Clements—Yes. We do not have that with us, but we can certainly provide it. Also, on the issue of foster care, foster carers must be assessed and accredited in order to become foster carers. In fact, there is a current legislative review under way in Victoria dealing with the Children and Young Persons Act and the Community Services Act. One part of that review is going to the issue of registered and approved foster carers, so there is certainly an assessment process for foster carers.

CHAIR—I ask that a committee member move that we accept these information kits as exhibits.

Mr QUICK—I so move.

CHAIR—Thank you.

Mr QUICK—We have heard evidence that sometimes if you are assigned a social worker there might be bad vibes. People go to the department and say, ‘I can’t work with this person,’ and so they get another one.

Mr Clements—Yes, you have touched on several subjects.

Mr QUICK—Some people have had up to half a dozen different social workers. We talk about case managers. Do people manage more than one case? Do people move from case manager to case manager?

Mr Clements—The 8.2 positions that we have within intercountry adoption are permanent intercountry staff. That is where they work and that is their area of expertise—they are specialists in those areas. Many of them have worked there for many years, so they have a special expertise in intercountry adoption. There are 32 contracted social workers, who conduct the range of items that I mentioned in the opening statement. Without providing CVs of all of those 32, the vast majority if not all of them have, again, long and extensive histories in dealing with the intercountry process.

Mr QUICK—As well as dysfunctional families.

Mr Clements—At some point some may have worked in those areas in the past, but it is difficult to say. Some might do other contract work. We do not ban people from doing other than working exclusively with the intercountry clients, but a number of them have special expertise in dealing with intercountry assessments.

Mr QUICK—So you have 32 social workers dealing with intercountry adoption and the 1,800 children in foster care?

Mr Clements—No, that is a completely different program.

Mr QUICK—So these 32 social workers just deal with intercountry adoption?

Ms Brain—They may have other jobs, and they may be—

Mr QUICK—How many contracted social workers do you have dealing with the 1,800 children?

Mr Clements—In a totally different program, there are hundreds. There are approximately 1,000 child protection staff within Victoria.

Mr QUICK—I am talking about social workers.

Mr Clements—A great number of those are social workers. In addition to that, for the out of home care program in Victoria there are around 40 organisations that provide out of home care—the Salvation Army, Anglicare and those sorts of organisations.

Mr QUICK—I am just talking about departmental responsibilities. You have 32 contracted social workers who are dealing with intercountry adoption, but they also deal with other things.

Mr Clements—No—

Mr QUICK—Are they contracted to you just to deal with intercountry adoption?

Mr Clements—That is certainly the way we use them—unless Helen is aware of some who might also have other roles somewhere within the welfare system.

Ms Brain—Some do. They are independent of us. We do not employ them; we engage them under individual contracts to do an assessment, to do a post-placement follow-up or to conduct education groups. They are all women at this stage, though we have had some men in the past. They are often women who are raising families, so they want to keep working, and the intercountry—

Mr QUICK—Where are they based? Right across Victoria?

Ms Brain—Across Victoria, yes.

Mr QUICK—So if you have a family in Mildura—

Ms Brain—We have social workers who will work in that area.

Mr QUICK—You contract that work?

Ms Brain—Yes. We try to keep our services, particularly for assessment and post-placement support, as local as we can.

Mr Clements—Those children in foster care are case managed. There are many hundreds of people employed in those areas by the various organisations. The Department of Human Services funds those organisations to provide those services.

Mr QUICK—So you do not have any social workers, as such, working for the department in Victoria?

Mr Clements—Yes.

Mr QUICK—You contract all your social work out?

Mr Clements—No. As I say, there are around 1,000 child protection staff who work with, amongst other things, children in care—foster care, residential care; those types of things.

Mr QUICK—Employed by the Victorian department.

Mr Clements—Employed by the department; that is right.

Ms Brain—And then there are the 40 agencies who employ their own staff.

Mr Clements—We fund those organisations and they employ those staff.

CHAIR—What are those organisations?

Mr Clements—They are community service organisations, such as the Salvation Army and Anglicare.

CHAIR—What do they do in this process?

Mr Clements—In the foster care program, for example, they are the ones that are responsible for the recruitment, training and support of foster carers. Sometimes they case manage the children in care as well. Sometimes children are case managed by departmental staff. There are formal contracting arrangements around that. The vast majority of residential care services in Victoria are provided by those community service organisations. Again, those services are funded by the department. Some agencies provide specialist case management services, typically for complex, high-risk adolescent clients in particular. The department funds those services as well.

Mr QUICK—In Victoria, can you put your name down for adoption if you are a resident and not a citizen?

Ms Brain—For the intercountry adoption program, we require one of the applicants, if they are a couple, to be an Australian citizen, because that way we can ensure that when children come to Australia they will be able to access Australian citizenship. That arose from a case in the past where that did not happen.

Mr QUICK—What evidence is there to prove or show that, if you have been a long-term resident in Australia and have not applied for citizenship, as is the case with many British people, you have any less potential as a parent to adopt a child?

Ms Brain—It is not about that; it is about ensuring that children have access to Australian citizenship once they are adopted. We think that is very important. In the case of British people and New Zealanders, we ask that one of the parents takes out Australian citizenship. I understand in the case of both those countries you can maintain dual citizenship, so it does not seem to be an issue.

Mr QUICK—It is raised in our submissions. Why should you be discriminated against if you are a permanent resident here and have not taken out citizenship? I think there are about 500,000 Australians in that situation.

Ms Brain—It is about the child having access to Australian citizenship. If you are a permanent resident and adopt a child, you cannot access Australian citizenship.

Mr QUICK—Is it an issue that has been discussed amongst the states and with A-G's?

Ms Brain—It has from time to time.

CHAIR—I do not think it is too much to ask them to take out Australian citizenship, though.

Mr QUICK—We have 500,000 Australians who do not think it is important enough to take out Australian citizenship.

CHAIR—I do not think that is good. Sometimes they will make citizens of people who have been here for 57 years. It is a great celebration.

Mr QUICK—I know.

Mr Clements—The other thing you mentioned, Mr Quick, was an opportunity to provide feedback. We have been collating feedback from the intercountry applicants. I think we have received 60-odd feedback sheets back, which provide an opportunity for the people who go through the process to provide feedback on their experience of the process. That is something we have had in place for the last year.

CHAIR—It would be very good if we could be privy to the outcome of that survey.

Mr Clements—We have not done a complete and detailed analysis of all of the pieces of work, although from time to time there are certain things said that we do follow up with staff involved et cetera.

CHAIR—Can somebody move that we formally accept it as an exhibit?

Mr QUICK—I so move.

CHAIR—Thank you.

Mr Clements—We did an initial examination of 56 feedback sheets. One question asks people to make comment about their experience of being with the contract worker—those 32 people that we mentioned before who typically do the assessment work. We also ask about the intercountry adoption staff, who are the 8.2 core staff who are employed by the department. In the 56 feedback sheets that we received back, 89 per cent of the assessing social workers—the contract workers—and 91 per cent of the intercountry staff were rated either excellent or good. They are the broad figures from that feedback. We are happy to provide you with those broad results if they are of use to you.

CHAIR—I think it would be useful because we have people who submit to our committee who have had unhappy experiences with the process.

Mrs MARKUS—I have a couple of questions. You mentioned earlier—and we have all heard this many times before—that there are not enough parents. What are you doing to find out from the parents the reasons? Have you done research? We have heard from parents what their reasons might be, but what is your understanding of why parents are not coming forward for both local and overseas adoptions?

Mr Clements—We have a lot coming forward for overseas adoptions. I think we mentioned that the growth in our applications has almost doubled over the last four or five years.

CHAIR—You want to know why they are not coming forward for the domestic ones.

Mrs MARKUS—Yes.

Ms Brain—I think the reasons are probably complex. David has touched on some of that. Certainly there are some issues around having ongoing access or contact and information exchange with the birth family. I think some families, particularly when they are at the start of the process of thinking about adoption, find it really daunting. I speak to a lot of families who have adopted domestically in Victoria. Once they are in there, generally, they find it quite a positive thing in most cases to have that sort of contact. But when people are first starting out they do find it quite a difficult concept that they might have to have that sort of contact. We know from some of the research that it makes a great deal of difference for children to know the identity of their birth parents. That is one of the reasons Victoria changed, in 1984, from having a very closed and probably quite secretive system to something that was much more open because adoptees came back as adults and said that was one of the things that was really important for them.

Mrs MARKUS—With regard to the children who are in permanent care, how many, if any, would you recommend for adoption? Is there such a process in place?

Ms Brain—The permanent care orders transfer guardianship from the department to the permanent care parents. Occasionally, it is appropriate to seek an adoption order but it is on a case-by-case basis. It has been done in the past.

Mrs MARKUS—How regularly would that happen?

Ms Brain—Not very regularly. The permanent care order gives the permanent care parents all the legal responsibilities and decision making that they require to parent a child.

Mrs MARKUS—Parents we have had before us would probably disagree with you there.

Ms Brain—About the effects of a—

Mrs MARKUS—From their perspective, many parents want to know that the child is theirs.

CHAIR—Within their jurisdiction. Nobody wants to go back to the closed shop and great secrecy—‘Let’s pretend it didn’t happen.’

Mrs MARKUS—Definitely not.

CHAIR—But we seem to have swung the pendulum the other way.

Mrs MARKUS—You said that 32 social workers are employed on contract. I assume that is mainly for assessment.

Ms Brain—That is correct. We use our contract workers to run our education groups, assessment of applicants and also for their post-placement follow-ups—so when a child arrives in a family, they will do the required number of visits. Our contract work force is quite stable so, if someone has had a social worker the first time round, we try and keep the same social workers so that they have some continuity.

Mrs MARKUS—What is the model or methodological approach utilised for the assessment of families?

Ms Brain—It covers a number of things. We are required to cover the requirements of the legislation, the regulations set out as prescribed requirements for applicants to meet. That is to do with their health and their relationships. I think we can give you a copy of what the actual regulations say. We must comply with that in our assessments. Then we look at someone's capacity to parent, their motivation, their understanding of a child's culture. So it is a psychosocial dynamic assessment.

We also cover what the overseas countries require. Different countries want to know different things about applicants, so we tailor the assessment to meet those needs as well. We would also cover things like what sort of child the applicants could realistically parent, so we consider things like their medical conditions, the child's background, their age—we cover all of those things. You raised the issue of visits before. We do three or four visits for an assessment; that is about the norm in Victoria, because applicants provide quite a lot of that information through their life stories.

Mrs MARKUS—I suppose one of my concerns is that if an assessment approach is taken which is more pathology based than strength based it can focus more on what families do not have or on their dysfunction rather than on their strengths and what they can have, which can, I think, influence the impact—

Ms Brain—I would say we have a strengths based assessment. For example, we would ask: 'How was that person parented? What are the strengths that they got from their own parenting, and what will they take forward when they actually parent a child?' If there are issues in an assessment, we would follow those up with the people concerned. We might suggest that people do certain things to address those issues. We have tried to be very inclusive and very active in encouraging people to address those things, and we have tried to keep people in the process.

Mrs IRWIN—I have just been given a copy of the New South Wales government's submission. A section of it states:

The NSW position is that it would be more appropriate and efficient for the Commonwealth to assume responsibility for management of the intercountry adoption program. There would be better outcomes for adoptive parents, a more coherent approach to negotiation of bilateral agreements and an ability for child protection agencies to focus on child welfare issues to the extent that they arise.

What would the views of the Victorian government be? Would they support the New South Wales government on this?

Ms Brain—David might want to comment on this as well. I think there is a very strong role for the federal government in intercountry adoption, but I think the management of it is better located within the state. You need to have local services, and we have a lot of experience in placing children, as we have already outlined.

Mrs IRWIN—The Commonwealth could take that role on.

Ms Brain—We would need to see what was being proposed in some detail, I think, before we could make—

Mr FAWCETT—Julia, wasn't the proposal for the Commonwealth to manage the overseas interaction but, once the children come into Australia, for the states to manage the actual—

Mrs IRWIN—DOCS would have to get involved in New South Wales, but you are correct, David: the Commonwealth would have to take over virtually the whole of the management of overseas adoptions.

Mr FAWCETT—In negotiating with the overseas countries—setting standards, if you like—the day-to-day management within the state would be the responsibility of the relevant state or territory department. What we are talking about, essentially, is that there would be a common framework across the whole country, administered by the states.

CHAIR—The problem we see is that we have countries who are virtually dealing with eight separate little countries in Australia—that is, it is as though the states and territories are eight separate little countries. We think it is a bit strange that it is run by state and territory jurisdictions when it is a question of citizenship and of people becoming Australians.

Ms Brain—There are probably several responses that we can make to that. First of all, that issue of dealing with states within a country does not seem to pose a problem for the USA or Canada. When I have met with the overseas authorities we have talked very carefully about how they want us to manage the program to make it easier for them. That is one of the reasons why we have a lead state set-up which is—

Mrs IRWIN—What we are reading in the submissions and what we have been hearing from the parents that have come before our inquiry so far is about the frustration. We have had parents that have actually moved across the border from Queensland into Tweed Heads because they feel it is a bit easier to get an overseas child adopted in New South Wales—and people are moving down to Tasmania. They are talking about the frustration of having each state and territory being completely different. These people are desperate for a child and they want to bring that child into a loving environment, so they are looking to go to the states where there is an easier process. What we are hearing from parents who have adopted or who want to adopt is that we should just have one program. This brings us to what the New South Wales government has come up with: that the federal government should have full responsibility for the management of the overseas adoption program.

Ms Brain—I am not quite clear if you mean everything or just the overseas part of it—

CHAIR—It is the negotiation of new programs. It is negotiations with overseas authorities, as distinct from state governments. I am not quite sure what 'lead state' means, I have to say. I would like you to explain it. It must mean that if Victoria is the lead state and the resident of any other state wants to adopt, they have to go through Victoria to see what has been going on. Tasmania now say they just ignore you and send their files direct.

Ms Brain—The lead state structure was constructed in the 1980s. It just meant that one state or territory took on some responsibility for managing the legal and policy issues to do with an

overseas program, so they were the ones that stayed in contact or provided information from the particular country to the other states and territories. Initially with China—and I think this may be where the confusion is—because the ACT, WA and Tasmania had such tiny numbers of people wanting to go to China and because we did not want to disadvantage people in that territory and those states, we—like Victoria and on behalf of Tasmania—sent some of the Tasmanian applications with our batches to China but now there are sufficient applicants in those states and that territory for them to run their own programs. That is the only time that has happened. Generally, all the states and territories have been responsible for managing their own cases. Victoria, which is the lead state for China, do not take on everybody's cases. We just deal with the issues around the legal and policy matters and we make sure that all the states and territories are informed. China was happy to have a lead state because in that case they dealt with one person and one authority in Australia, but other countries will deal with it in a different way. We try to make it as easy as we can for them.

Mr QUICK—Can I add to the dilemma about inconsistency. Is it true that the Victorian department has a policy that no single applicant can apply for the adoption of more than one child?

Ms Brain—No.

Mr QUICK—How many sibling adoptions have there been over the last five years in Victoria?

Ms Brain—I cannot tell you off the top of my head. We have certainly had a number of single people come back for at least a second and sometimes a third.

Mr QUICK—No, I mean adopting two children at once.

Ms Brain—No, we do not.

Mr QUICK—You do not have a policy against that?

Ms Brain—No.

Mr QUICK—You don't?

Ms Brain—No.

Mr QUICK—Another thing is flexibility about the obligation for one parent to be with a child for 12 months in light of the development of a child. I can understand that if the child is someone who is three or four months old. I would like to read something onto the record about a 4½-year-old child. The person says:

We had a fantastic time together.

This is the mother talking about her and the child—

During this time we had two visits from our social worker, who agreed that our bonding was progressing very well and made comments to this effect in her regular reports to the department. I decided to send my son to kindergarten. Five months at home with me was great but in my estimation as his mum but not yet his legal parent he needed to socialise with children of his own age. I ended up sending him up to a local creche which had an integrated kindergarten program.

I was told by the department to attend a meeting to explain my son's attendance at kindergarten while he was attending the creche-kinder program three times a week from half past nine till one o'clock, which later extended to 2.30. While initially showing reluctance to attend—primarily because I wasn't there—after a short period he loved going and I could see positive benefits in his language development, his growing confidence, his independence, his knowledge that mummy would always come back for him. However, my decision was challenged by the department.

I attended a meeting with my case worker—different to my social worker—to explain my decision to send my son to kindergarten. I was met by a representative whom I had never met, whom had never met me or my son, nor ever visited our home. She and I had differing views on parenting. She held the position that she was the expert in intercountry parenting. I was very much made to feel like the novice parent who did not know what I was doing, even though I was the one living this experience.

I naively thought that I had already been assessed as a fit and suitable person to be a parent. However, when my views of parenting and those of the department were not aligned, I was instructed how to raise my son. I was told that he was only to attend kindergarten occasionally. When I protested that this was not sufficient preparation to attend school the following year, I was reminded by the department that attending kindergarten was not a prerequisite to attend school and that many children did not attend kinder before starting at school.

I find that a bit hard.

Ms Brain—Clearly, I cannot comment on that particular case.

Mr QUICK—But do you get feedback?

Ms Brain—We have a requirement that one parent stays at home for the first 12 months if the child is under the age of five years. That is mostly about the children. Most of these children have been in institutional care or foster care or—

Mr QUICK—But what about flexibility?

Ms Brain—I wish to finish, Mr Quick.

Mr QUICK—I can understand a general thing if you have a young baby of two or three months. But what if you have a child who is 4½ and about to go to school who comes from a strange country and who has problems with socialisation and language development? As an ex-schoolteacher, I would have thought that the department, if they are interested in the best interests of the children, would see that as a positive step in parenting—

Ms Brain—That is what I was going to say.

Mr QUICK—and not give them a hard time.

Ms Brain—In that 12 months, particularly if children are of an age to go to kindergarten, that would be very appropriate. But I must say that we have had some cases where people have come back and put their child into full-time child care. That is a very different thing from preschool. Some of those preprimary things are very good. Similarly, for children who are over the age of five, we do not require parents to stay at home for 12 months but we ask them to be available after school and during school holidays. It is about children forming a bond with a family. It is not about being inflexible. If a kindergarten program is appropriate—and it is for some children—then that is a discussion that the parent would have with their social worker, and there is usually no problem with that. I am not quite sure where that comes from.

Mr QUICK—Is there the same requirement that you have to stay home for 12 months if you adopt the child locally?

Ms Brain—I do not think so. I would have to check. But you are talking about children—

Mr QUICK—So one rule for—

Mr Clements—You are talking about different scenarios here. Typically, local adoption is of infants below 12 months of age—often significantly below 12 months of age. The example that you gave there was of a child of 4½ or something like that.

Mr QUICK—Yes.

Mr Clements—A child has had a very different experience by the time they are 4½ living in a foreign country and maybe in a large institution than a child who is adopted at three months or six months.

Mr QUICK—But, once again, there is one rule for intercountry adoption and one rule for local adoption in the department.

Mr Clements—It is actually around the assessment of a child's needs. There is a difference there. What is certainly assessed is that there is a difference between a 4½-year-old coming from possibly quite a disadvantaged institution in another culture and a child born in Victoria and adopted in Victoria at the age of six months. They are very different developmental stages, as you are aware.

Mr QUICK—Yes. But it could be a 4½-year-old child from a dysfunctional family adopted in Victoria who has just as many social problems.

Mr Clements—No. We are blurring adoption and the welfare stream—the child protection stream around permanent care and foster care. They are quite different programs. There seems to be a—

CHAIR—Can I ask you about that program of permanent care. How many children who go into permanent care come back for your attention?

Mr Clements—Some do. Again, I could not give you a definitive number of those but certainly some do.

CHAIR—Of the fostered children, how many come back for your attention?

Mr Clements—A child who is in foster care—under, say a custody or a guardianship order to the secretary—is constantly under our attention. They are in the care of the state, so they are constantly under the attention of the department.

CHAIR—Are they in and out of care of their—

Mr Clements—Yes, certainly. Once a decision is made by the court to remove a child from the care of their family, efforts are made to reunite the child with their biological family. A number of children do move placement within the foster care system, and it is a problem with foster care worldwide.

CHAIR—Do you follow up what happens to those children? Has any study been done that shows how children progress from either having been adopted into a stable home or being moved around in foster care between biological parents?

Mr Clements—There is a lot of research worldwide—

CHAIR—What about Australian research?

Mr Clements—Yes, certainly. And without being too simplistic around that, certainly for children who have had a long involvement in the out of home care system, the welfare type system, often the outcomes for them are not as positive as for a child brought up in a stable environment by their parents.

CHAIR—Could you refer us to some research that you are aware of?

Mr Clements—I cannot today.

CHAIR—Not today, but if you would not mind coming back to us on that. I believe I heard an interview on ABC radio about the difficulty in Victoria of placing children. I saw subsequently a story that New South Wales—I think it was New South Wales—was planning to advertise for same-sex couples to foster children. That stunned me. I wondered what the Victorian policy is.

Mr Clements—We have not gone out and actively recruited same-sex couples or whatever the case might be.

CHAIR—Do you foster children with same-sex couples?

Mr Clements—Yes, some are. As I said before, there are about 40 out of home care agencies. There are 33 or 34 foster care agencies. Some provide just residential care. Some foster carers certainly would be in same-sex relationships, that is right. Some agencies might have slightly different policies on that than others.

CHAIR—But surely it is the government's policy, though—it is not the agency's policy. What is the government's policy?

Mr Clements—I don't think the Victorian government has a clearly stated specific policy on that issue, but certainly it is something that does occur in Victoria. But again we are blurring, I think, foster care and adoption. Foster care is temporary care for children.

CHAIR—I don't think so. I think it all spills over because of this dominant question of keeping the biological contact always open, so that the question of whether the child is better off with an adoption placement under that policy does not arise. In some places—I think in America—they have a cut-off period. If the biological parents have not got their act together by the time the child is two then there is no more—that is it, cut off. The child can be adopted without those parents having intervention. How would you view that?

Mr Clements—Again, we are not talking about adoption here; we are talking about the child protection system. Victoria has undergone a major review of the legislative base for the child protection system. One of the issues that it is touching on, one of the aims of that review, is to provide greater stability for children in out of home care. By out of home care, again I am talking about those children who come to the attention of the state due to child protection issues, not through adoption, intercountry or local adoption. So certainly the provisions of the draft bill—Minister Garbutt gave a second reading speech on that to the Victorian parliament last week—are to put in place provision for greater stability for children within the child protection out of home care system—

CHAIR—But what is your definition of 'stability'?

Mr Clements—The bill's basic principle is that a child's wellbeing and their developmental needs require a stable environment, a stable home life.

CHAIR—But what is 'stable'? How do you define 'stable'?

Mr Clements—Again, could I provide to you on notice the exact provisions of how it is defined in the bill? But, ultimately, you want to provide a child with a stable home environment.

CHAIR—We come back to it. Unless you have a definition of what is stable, it does not mean much.

Mr Clements—Our preferred vision in Victoria is that children are reared by their families, by their mother and/or father.

CHAIR—But—never mind the child—what if the parents are totally dysfunctional?

Ms Brain—In that case we look for a stable permanent placement.

Mr Clements—Yes, but there are—

CHAIR—We are back to this word 'stable'.

Mr Clements—It is quite a complex—

CHAIR—But I asked you specifically about that proposition where there is a blanket cut-off. They have not got their act together; they cannot do it. It might be two years, it might be three years; I do not know, but there is a cut-off period and they cannot thereafter—

Mr Clements—In the current legislation—leaving aside the new legislation, which is not in place at all yet—if the child has been out of the care of their family for two years or two of the last three years, we are permitted to then go through the process of seeking a permanent care order with the Children’s Court.

CHAIR—No, that is not what I am asking. In other parts of the world, with a permanent care order there is still intervention by the biological parents.

Mr Clements—There can be access arrangements, certainly, yes.

CHAIR—That is right. This is a proposal which is in place in other parts of the world, where, after a given period of time—it can be two, it can be three years—if the biological parents are still dysfunctional then they may not again intervene in that child’s life.

Mr Clements—No, Victoria does not have those provisions.

CHAIR—I did not ask you that. I asked: what is your view of it?

Mr Clements—The Victorian government’s view is that that is not—

CHAIR—No, I asked your view. What do you think about it?

Mr Clements—My personal view is that, like many things, it might be suitable in some instances and not suitable in others. I cannot make a judgment on it.

CHAIR—Okay, that is fair enough. I refer to that paragraph in your supplementary submission where you state:

... Victoria experiences difficulties in finding families for our local adoption program and have resorted to advertising the information nights to attract families willing to accept children born in Victoria under the age of 12 months who require adoptive families. Victoria has great difficulty in recruiting families for children who require permanent care. The opposite has been the case for international adoption where there are increasing numbers of families seeking to adopt from overseas.

Mr Clements—That is right.

CHAIR—On the evidence we hear, it hinges on that question of their providing stability for the child they adopt.

Mr Clements—Sorry; who is providing stability for the child they adopt?

CHAIR—The adopting parents, without intervention.

Mr Clements—There is a great deal of complexity around the whole issue of permanent care, even—

CHAIR—But the figures, on your own evidence, seem to be saying the same as the people who have been talking to us.

Mr Clements—Yes, certainly permanent care—

CHAIR—The other thing is that although you have said the number of parents wishing to adopt overseas has doubled—in fact, you said you placed more children than anyone else, but per capita you certainly do not. You place one per 57,823. The best is the ACT, where they place one for every 12,462. You are right up there. New South Wales is the worst, Queensland is second worst and you are third worst. So why is that so?

Mr Clements—As I say, we place the highest number, and I think it is about a quarter of all children placed. I am not quite sure what that breaks down to per capita.

CHAIR—No, you placed 86 children in 2003-04.

Ms Brain—No, sorry; I think there has been a bit of a misunderstanding. They were the number of adoption orders that were made in the year, not the number—

CHAIR—But this is what I am talking about.

Ms Brain—That year there were 86 adoption orders made—

CHAIR—So that does not count those from mainland China?

Ms Brain—and we placed a hundred children. This is a difference. In the Australian institute's stats, they count adoption orders and they also count the number of children placed each year.

CHAIR—How do they count children from China?

Ms Brain—They are counted as the adoption orders, because the orders are automatically recognised in that year.

CHAIR—That is what I am talking about: the number of adoptions.

Mr Clements—The statistic I was referring to, again from the AIHW, was the number of children placed for adoption, not necessarily with the final order going through, which is the legal process or what have you.

CHAIR—Yes, but that would be caught up in the next year's figures.

Mr Clements—Yes, but the stats I have—I have 2004-05 here in front of me here as well—are that Victoria placed for adoption, not necessarily with the final order through but placed for adoption, 105; 100 the year before; 86; and then 72.

CHAIR—We have 86.

Mr Clements—So you have 2002-03. Is that the latest data you have?

CHAIR—Yes.

Mr Clements—Okay. I am talking about 2003-04 and 2004-05 as well.

CHAIR—We are talking about 2003-04.

Ms Brain—In 2003-04 we had 86 adoption orders made—

CHAIR—That is right.

Ms Brain—but we placed a hundred children.

CHAIR—But the difference will show up in the figures for 2004-05, presumably when the adoption orders were made; right?

Ms Brain—I just wanted to—

CHAIR—You cannot count it both ways. You have to have one set of counting. Either you count the adoption orders or you count the placements. The figures will show up in the next financial year.

Mr Clements—Yes, they should, depending on the timing of the process to go through to placement and to get the final order.

CHAIR—So why are you so low compared with others?

Mr Clements—We are not low in the number of children placed, for a start.

CHAIR—No, we are talking about adoptions. That is all we can measure.

Mr Clements—Yes, but are you referring to numbers or a per capita basis?

CHAIR—A per capita basis.

Mr Clements—I think our numbers reflect our applications. The applications and those that were approved—

CHAIR—You have said that they have doubled but your numbers have not doubled.

Mr Clements—The numbers have gone from where?

CHAIR—The number of adoptions from overseas have practically been static for the last 10 years.

Mr Clements—Not according to my figures for Victoria. Again I am talking about the number of children who have arrived in Australia and been placed with people who have been approved to adopt them; it has risen from 72 to 105 in the last four years.

CHAIR—Seventy-two is for what year? They are placements.

Mr Clements—The year 2001-02, which is followed by 86, 100 and 105 in the most recently completed financial year. These children have arrived in the country and been placed for adoption through the Victorian program.

CHAIR—I do not mind the way that we count them, as long as we are consistent.

Mr Clements—Sure. In that sense, those numbers have certainly grown. The per capita analysis I do not have in front of me. I believe that the process is a lengthy process, but we respond to the applications and place accordingly.

Mrs IRWIN—Your intercountry adoption service information kit—I think it is on page 2 or 3—under the heading ‘Allocation’, states:

Further family formation undertakings to be signed, a pregnancy test is required and applicants are given a letter plus sponsorship papers to lodge with Department of Immigration and Multicultural and Indigenous Affairs.

That is No. 11 and then there are the procedures. No. 12 is:

The acceptance of child is conveyed to the overseas country ...

No. 13 is:

Procedures in overseas country are completed ...

Then we have No. 14:

Applicants are notified by ICAS when the child is ready to travel and they advise ICAS of travel plans prior to departure. A pregnancy test is required at that time.

Why?

Ms Brain—Are you asking why it is required twice or why it is required at all?

Mrs IRWIN—Do you have to be infertile to adopt a child from overseas?

Mr Clements—It is not a fertility test; it is a pregnancy test.

Mrs IRWIN—Why does a woman have to go through a pregnancy test when adopting a child?

Ms Brain—Because they are adopting a child at that point and often the gap between when they accept the child to when they travel is quite long—and, again, it is not in the best interests of a child coming into a family through adoption to be competing at the same time with a biological child.

CHAIR—Who says that?

Mrs IRWIN—No. 14 states:

Applicants are notified by ICAS when the child is ready to travel ...

Ms Brain—That is right.

Mrs IRWIN—So they would get their air tickets and everything else. Then it states:

... and they advise ICAS of travel plans prior to departure. A pregnancy test is required at that time.

What happens if that pregnancy test shows that the woman who is adopting is six weeks pregnant?

Ms Brain—We defer their application.

Mr Clements—I am quite surprised that that has caused you such consternation, because again we are talking about a service for children; it is not a service for adults.

CHAIR—Who says that it is bad for children?

Mr Clements—I would imagine that having a newborn child—

CHAIR—But where is the evidence?

Mr Clements—and then perhaps adopting a young difficult child from another country—

CHAIR—But where is the evidence that can back up a policy like that? Where is the proof?

Mrs MARKUS—I have to say that I think that is regulating life too much. You have a family that have gone through the entire process; they have paid a lot of money and put a lot of time and emotional and psychological energy into the assessment process. To get to that stage and have the door slammed shut, I think is very wrong.

Mr Clements—The door is not being slammed shut.

Mrs IRWIN—It is not the same for other states though, is it?

CHAIR—It is, if she is found pregnant.

Mrs IRWIN—I will give you an example. I am going back many moons ago because this young boy is now 30 years of age. My friend went through the adoption process in Australia. She was in and out of hospitals to find out why she could not fall pregnant and no reason was given. She knew that she was getting Paul and, maybe just the week before that, she had a pregnancy test because she thought, ‘I might be pregnant’, and she was pregnant. She still went ahead with that adoption, and she loves her adoptive son just as much as she loves that son who was born nine months later. You are saying that, if someone who has gone through the trauma of adopting from overseas and all the interviews and the paperwork, and has finally been given a photo of the child—and a lot are given a photo—

CHAIR—Yes, they really attach to them.

Mrs IRWIN—and they attach to that child—and has her travel documents, visas and everything in place and, all of a sudden, the Victorian government requires a pregnancy test, and if that mother is proven to be pregnant, she cannot adopt that child from overseas.

Ms Brain—We actually ask people once they enter into the adoption process to focus on adoption.

CHAIR—For heaven’s sake, we are dealing with humans beings—their lives and their intimacies.

Ms Brain—I understand that, but we are also dealing with children.

CHAIR—Correct, but where is the proof that says it is bad for the child who is being adopted? Where is it? Somebody dreamt it up and said, ‘We think that’s bad, so we’ll ban it.’ Where is the evidence?

Ms Brain—I can tell you from experience that—

Mr CADMAN—This is discrimination on the basis of pregnancy. No employer could apply that and nobody in government could apply that, but you are applying it. I do not how you would stand in the human rights commission.

Mrs IRWIN—Do you know what happens in other states?

Ms Brain—I do know if they ask for a pregnancy test.

Mrs IRWIN—No, because I think we heard at our public hearings in Queensland that someone had fallen pregnant.

Ms Brain—We want people to think about the adoption and to focus on the child.

CHAIR—Of course they are thinking about the adoption.

Ms Brain—We know from our experience—

CHAIR—How do you know?

Ms Brain—It is practice experience, in the same way—

CHAIR—Where is the evidence?

Ms Brain—that anecdotal evidence has just been given here, that people cannot often do both. Often people—

CHAIR—What happens if they find out that they have twins? Do they say: ‘I’m only going to have half of them. I can’t cope.’

Mr Clements—It is a different order.

Mr FAWCETT—Do you have documented case studies to back up the view that you have just put that there is evidence to support the fact that people cannot simultaneously—

Ms Brain—I said it is anecdotal evidence. It is the same sort of thing that has been presented here: someone knows—we know from our experience. It does not happen. I cannot even think now—

CHAIR—I think it is outside your right to ask for a pregnancy test. I think that is absolutely outrageous.

Mr QUICK—Do you have the same requirement with local adoption?

Ms Brain—Yes. We do ask for a pregnancy test.

Mrs IRWIN—I am glad my friend who adopted 30 years ago was not in Victoria.

Mrs MARKUS—You talk about focusing on the child. What about the child who knows they are going to be adopted? That child could be of an age where they would be aware. They would have looked forward to it and then the rug is pulled out from under them. Could that be the case?

CHAIR—Good point.

Ms Brain—It depends on the age of the child—

Mrs MARKUS—Could there be a child in another country who knows that they are being adopted and then the rug is pulled out from under them and they are not adopted? Could that be the case? I just want a yes or a no.

Ms Brain—It could be the case, but also families pull out at different points in the adoption process.

CHAIR—That is not the bureaucracy’s fault.

Mrs IRWIN—We are talking about towards the end of the process. I can think of one woman who said in her submission that it was lovely that she had received a photo of her adoptive four-year-old. She also sent a photo of herself over there, and when she went to pick up her child the photo was near his little bed. I am thinking: ‘What would have happened if she had been pregnant and she could not have adopted?’

Ms Brain—We have had families who have travelled overseas to collect a child and then changed their minds.

CHAIR—That is different from bureaucratic behaviour.

Ms Brain—I understand that. You are asking about the impact on a child; it is the same impact.

CHAIR—You did not have an answer for Mr Fawcett’s question. There is no documented evidence.

Mr Clements—Referring to anecdotal experience—

CHAIR—I am not talking about anecdotes; I am talking about—

Mr Clements—Sometimes you have to make decisions in forming—

CHAIR—Not for government policy, you don’t.

Mr Clements—I think you are guided by the practical experience of people—

CHAIR—Then there should be documented case studies done. To have something as invasive as that really does shock me. I am sorry. You may as well take her in and hold her down and demand the proof—tell her that you are going to stick the needle in to get the proof.

Mrs IRWIN—It will be interesting when our recommendations come down.

CHAIR—We have a problem with time. We have got witnesses from the Attorney-General’s Department waiting and we have got people who want to ask you more questions. Though we get fired up over some issues, we are nonetheless very grateful that you came. Does anybody else have a burning question that they would like to ask our people from Victoria?

Ms Brain—I know that you want to finish, but I would like to say just one thing. Intercountry adoption is a solution for a very small number of children each year. About 46,000 children were adopted internationally last year. I think one of the things that would be really helpful is to think about what happens to the children who are not adopted, and what this government can do to assist those children—either to stop them from coming into care or what happens when they get into care—

CHAIR—That is a separate question and is not within our portfolio. We have had some people say that we should just send money over there and let them stay in their own country. But we had a young lady give testimony in Tasmania who was originally from Ethiopia. She said: ‘In

this country, I can live. In Ethiopia, my life expectancy as a young woman was 39 years.' So if we bring one child in, it is a plus.

Ms Brain—It is always a solution for a very small number—

CHAIR—And we hear from other people who, when they have gone to pick up their child from Ethiopia, have walked through masses of others, saying, 'Pick me, pick me.'

Ms Brain—Yes, I have been in that situation.

Mr QUICK—Now we have what is happening in Pakistan—God knows how many young children that will affect.

CHAIR—I think we really do have to start hearing from Attorney-General's. As I said, it is an emotional subject and we have all got a bit heated this morning, but we do thank you very much for coming, nonetheless, and we appreciate the work that you do as well.

Ms Brain—Can we just clarify that the secretariat will send us the list of questions on which they want us to give additional information?

CHAIR—Yes. Thank you very much.

[10.37 am]

DUGGAN, Mr Kym Francis, Assistant Secretary, Family Law Branch, Attorney-General's Department

OSBORNE, Mr Matthew John, Director, International Family Law Section, Family Law Branch, Attorney-General's Department

CHAIR—I welcome the witnesses from the Attorney-General's Department.

Mr Duggan—I might just indicate to you, Madam Chair, that we are obviously at the disposal of the committee, since we are here in Canberra, so if you need to call us back we would be very happy to oblige.

CHAIR—We are very grateful for that. Thank you very much.

Witnesses were then sworn or affirmed—

CHAIR—We do have limited time; do you want to make a very quick opening statement?

Mr Duggan—Perhaps I will provide you with some information about the special commission that I just attended, with Ms Brain in fact. That was the special commission to consider the operation of the Hague convention, which was held in The Hague from 17 to 23 September. Given the time constraints today, I will provide a report to the committee about it, including the conclusions of the commission, which are now available.

CHAIR—That would be very helpful.

Mr Duggan—But I will just indicate that 230 delegates attended the commission. They were from all countries in the world that either receive or send adoptees. China ratified the convention on the Friday before the commission, so it is now a convention country. The US was represented at a very senior level and is likely to ratify the convention in the very near future. We had a range of meetings with other countries, which I am hopeful will lead to other outcomes for Australian families. In particular, we had a very positive discussion with representatives from Vietnam, and we will be writing to them shortly. They are also likely to join the convention during the next calendar year, and we are hopeful of a positive response after writing to them.

CHAIR—Are you saying that Vietnam might become a new program?

Mr Duggan—Obviously, I cannot promise that, but they were very positive about us writing to them and they see a link between Australia and Vietnam. They were quite keen for us to write to them and to explore that possibility. One thing I should report, however, is that almost all sending countries indicated that there were more applications for children than there were children available. I know that is difficult for some parents to understand, because they see thousands of children who are not available, but it is a question of the children being adoptable and of the infrastructure existing to ensure they are adoptable. In some countries that simply

does not exist in large amounts. As I have said, I will provide the committee with the conclusions of the special commission.

CHAIR—There are a couple of things I would like to ask you about very quickly. Firstly, Mr Quick was very keen to follow up on evidence, which you have just heard, about children coming from China not being able to get birth certificates. Is there a possibility of the Commonwealth government giving them Australian birth certificates?

Mr Duggan—I will need to take that question on notice. I suspect there are constitutional questions in relation to that. My suspicion, and it is simply a suspicion, is that there would be constitutional questions in relation to the Commonwealth's power to do that. However, I will have to get back to the committee on that.

CHAIR—Thank you. You might also look at the question of whether or not there would be provision in the agreement which was negotiated between Australia and China—not the states and China—for the states to give a state birth certificate in addition to the relinquishing certificate, which Mr Quick has described.

Mr Duggan—One of the reasons why countries are so concerned about citizenship, as opposed to other matters, is that there is a situation in some receiving countries where children enter the country and for some time do not have a right to citizenship.

CHAIR—Yes. I have no problem with that requirement.

Mr Duggan—It is just that those children occasionally become stateless because couples decide not to proceed.

CHAIR—Yes, I know. I think the citizenship requirement is quite acceptable. Do the family law regulations pertain to the question of birth certificates?

Mr Duggan—Not that I am aware of, but we will check. Obviously, if we have not provided them to you we will do so.

Mrs IRWIN—You would have heard me put a question to representatives from the Victorian government on a statement in the New South Wales government submission that they feel it would be more appropriate and efficient for the Commonwealth to assume responsibility for management of the intercountry adoption program. Do you have any views or suggestions on that?

Mr Duggan—It will perhaps come as no surprise to the committee to learn that that is not a submission which was discussed with the Commonwealth prior to it being sent. However, that issue is obviously a matter that is raised on a regular basis, particularly by this committee. The situation with Australia is not unusual internationally. For example, in the special commission we were seated next to Austria—in fact, we were regularly confused with Austria, but I will not go there. Austria has a similar federal system to Australia. Individual states in Austria deal with individual applications.

From the Commonwealth's point of view, the experience in intercountry adoption has rested principally with the states and territories for a long period of time. As you have heard from the Victorian representatives today, they have a long history of being involved in these matters. Traditionally, states and territories have undertaken that work and have a long history and experience in doing that. The Commonwealth's involvement really only stretches back to the signing of the Hague convention where we took on a substantive role—

CHAIR—But, surely, that is what makes the difference, because it is now a country-to-country treaty obligation with questions of citizenship.

Mr Duggan—There certainly are national issues involved, that is true. It would clearly be a matter for government to consider whether the Commonwealth will take a more active role than it currently does. At the moment, you have seen the agreement that operates between the states and territories and, leaving aside questions about its execution, that agreement still binds the way we operate. I have had no indication from my minister that he is interested in making changes to that at this stage. It will be a matter entirely for government as to whether we change that arrangement,

Mrs IRWIN—Why are we not adopting from Russia? This has been said in a number of submissions we have received and by people who have come before the public hearings. In New Zealand they are adopting children from Russia, but in Australia we are not.

Mr Duggan—In the answers we gave to your questions, we took that on notice from the committee and gave you an indication of the situation as we understand it, that effectively those adoptions are private adoptions and are not undertaken through the New Zealand central authority. Leaving that to one side, Russia has signed the Hague convention. We are not certain about when it is likely to ratify, but the view has been taken that, because of the checks and balances that the Hague convention offers, it would be appropriate for us to wait until Russia does ratify the convention. There is a central authority involved which has the accountability, for example, for ensuring children are adoptable, that there is appropriate matching between children and adoptive parents and that there is a properly run program in Russia. I am aware of the concerns of adopting parents and I think Mr Cornall has indicated some differing views to those put forward in the submission. I do not want to get into the pros and cons of that. The situation at the moment, at least from the bureaucrats' point of view, if I may put it that way, is that the checks and balances that are provided by the Hague convention offer significant safeguards for children, so it would be appropriate for us to wait until Russia ratifies the convention.

CHAIR—But we did not do that with China.

Mr Duggan—No.

CHAIR—Indeed, the majority of children from overseas who are adopted into this country are from non-Hague countries.

Mr Duggan—In fact, that that will not be the case as of next year.

CHAIR—It will change a little bit.

Mr Duggan—It will change significantly, in fact.

CHAIR—Yes.

Mr Duggan—That is true, but those were, in the main, pre-Hague programs.

CHAIR—But not China. The agreement with China was a new one signed after we ratified.

Mr Duggan—That is true. I think that is right.

CHAIR—Yes, it is. It was in 1999.

Mr Duggan—Mine is the typical bureaucrat's answer of, 'Excuse me, I was not there at the time.' In our view, there are significant doubts about what we know of the Russian situation, so there is value in us waiting until Russia sees itself able to ratify the convention. That is the answer I would give to that.

CHAIR—So you do not know why we make a distinction between China and Russia?

Mr Duggan—In relation to China, certainly we can say that, in our view, the regulatory process for adoption is rigorous. I think that we provided you with the reviews that were undertaken of each of the programs.

CHAIR—But surely if we could establish that there was similar rigour in Russia's programs and that they are basically following the Hague convention guidelines, there should not be any impediment.

Mr Duggan—Again, that would be a matter for government, but there is potentially something in what you say.

CHAIR—That, again, brings up the problem of federal responsibility. Tasmania had the responsibility of developing a new program with South Africa, I think. They have said, 'Quite frankly, it costs too much money and we cannot do it,' so is just not getting done. I would have thought that in every instance it ought to be the responsibility of the federal government to negotiate new programs and then delegate to states subsequently.

Mr Duggan—Ms Brain, in particular, had significant consultations with the South Africans at the recent special commission and we are hopeful of following that up in the very near future. The South Africans are in a situation at the moment where they are developing their programs. They are not actually looking for additional countries as we speak, but clearly there is an interest in dealing with Australia in the future.

In terms of countries which join the convention obviously the Commonwealth is involved in establishing new programs with those countries, or ascertaining whether they are likely to be doing that. I can see a role for the Commonwealth in relation to that.

CHAIR—We hear from our witnesses that they are frustrated when their files leave left Australia and go to the country from which the adopted child is to come, and then they stall.

Because it is state government or territory government to nation, there is no real proper way of following anything up. We are told that in China the embassy is particularly helpful in tracking what is happening to a file, but that seems to be more of an informal arrangement rather than a formal arrangement. For instance, we heard evidence from someone who has had a file in the Philippines for 2½ years that it has just stalled, and nobody knows why. There does not seem to be any real impetus from the state or territory bureaucracy to follow it up, and there does not seem to be any mechanism that you could involve our embassy in that follow-up process. It seems to me there needs to be some bridging link to allow that to happen.

Mr QUICK—Yet, when I was in Beijing recently, the issue of people adopting within country was resolved between China, the Australian embassy and the ACT, who are the sponsoring body. That was just finalised a couple of weeks ago. With more and more workers living in China for longer periods of time and wishing to adopt a child within country, there were even more problems. The embassy, in discussions with CCAA and the ACT government, have come up with a memorandum of understanding that solved the problem.

Mr Duggan—We were involved in those discussions. There was some difficulty in relation to that, particularly because the Chinese authorities were requiring the Australian authorities to effectively certify that the couple were appropriate to adopt. Of course, in many cases the couple is out of Australia for a long period of time. It is difficult for that to happen. We are hopeful that the matter has resolved itself, although there are still some issues to be resolved. I am pleased to say that at least one couple have managed to return, I think, with their child, which was a satisfactory outcome. China is particularly concerned in those matters about the issues we have discussed before, whereby in some countries where those domestic adoptions are not necessarily recognised immediately those children can come back into other countries and become stateless. That is a real concern for them.

CHAIR—Why did we introduce that visa requirement recently, which made no sense to us at all? We were told that a child who has been adopted internationally could usually move straight to citizenship, but now—it was McGauran who brought it in—you have to get a visa for the child. We were told that it was an anti-paedophilia initiative and yet to investigate the child seems ridiculous. It is the parents whom you want to investigate.

Mr Duggan—We were not involved in those regulations.

CHAIR—If you would not mind taking a look at it, because it really did not seem to make any sense at all.

Mr Duggan—Of course. We will provide the committee with a response from DIMIA.

Mr FAWCETT—You said that a lot of the delegates at the recent conference made the comment that there were more applications than children available. We have had a number of submissions highlighting the fact that many countries only have one agency that is the nominated agency. There is one in this most recent bout that highlights, shows photographs of, orphanages in China that are outside of the official network. They are saying that there are literally, in that case—I know in Kenya the same case exists—thousands of kids with a range of ages and disabilities who are deserted, with no future. Yet because we have limited through the way the thing is currently set up all interaction with one agency, if that agency says, ‘We have no

more kids to adopt' then that is where it stops. So we have people here who are willing to take on kids. There are kids outside that system. Was there any discussion at the conference about the potential to expand the network within the donor countries?

Mr Duggan—It is an interesting question. Perhaps the dynamics of the special commission did not really lend it to such discussion, given that virtually all the representatives were government representatives and were representative of, if you like, the system which operated in their country. I will just explain. Whilst there were non-government bodies represented in their own right at the special commission, the governments had government representatives, so it was not an appropriate forum, I suspect, for the discussion that you are talking about. Certainly our agreement with the People's Republic of China is quite specific about the organisation we must deal with and, given the number of children who are now coming through that program, I think Australia would be unlikely to jeopardise, if you like, that relationship. I take on board what you say, but it did not happen. I am not entirely certain what the appropriate venue is for such a discussion to take place.

Mr FAWCETT—It strikes me that this is where there is possibly a role for the Commonwealth to take a more proactive stance at a national level. If we are really concerned about the welfare of children who have no option but institutionalisation in their home country then we should surely be seeking to maximise the opportunity for those children to come to Australia if there are families here wanting to take them, as opposed to saying, 'That's it; the one agency we have dealt with have said that they have run out, so we'll forget about it.' That is almost the approach that seems to be taken at the moment.

Mr Duggan—I think we have to strike a balance. Compare China with a country like Guatemala. Guatemala joined the convention almost certainly far too soon without the benefit of central authorities or anything of that nature—this is a sweeping generalisation—but there were limited checks and balances in relation to children becoming, if you like, adoptable. There were significant questions about where some of those children were coming from and the potential for those children and their parents to be exploited was significant. That is the difficulty when you start talking about working outside. I understand the point people make.

Mr FAWCETT—I am not saying 'working outside'. What I am saying is taking a more proactive role to expand it so that we are actually working with countries to encourage them to expand. I do not expect an answer from you; I am just making that comment.

CHAIR—We are getting very close to 11 am, when we will lose our quorum.

Mr QUICK—One of the submissions contained the statement that Australia does not allow for the adoption of adoptable refugee children: 'The only party to the Hague convention to refuse to accept the recommendation of the 1994 UN special commission on the implementation of the Hague ICA convention to include these children under the protective umbrella of this convention. The Australian government imposed restrictions on which countries could be adopted from and the adoption of relative and refugee children seemed to make a mockery of the highly promoted principles of cultural and ethnic continuity included in the adoption legislation.' I just want to know whether or not that was a true statement.

Mr Duggan—I am reminded by my colleague that we did give an answer to a similar question that you put on notice.

Mr QUICK—I have not had a chance to read through your voluminous—

Mr Duggan—I will take that on notice and we will come back to you and highlight where we have done that, if that is appropriate.

Mr QUICK—Thank you for the response.

Mr Duggan—If we have an answer, we will provide it.

CHAIR—We very much appreciate that you can come back to us. We will make a special time when we can do that rather than try to rush anymore. We are very anxious to hear about the convention and the meeting which you attended and to test a few other thoughts.

Mr Duggan—The conclusions from the special commission were available, I think, over the weekend, so I will undertake during this week to get them to the committee as soon as we can.

CHAIR—Thank you.

Resolved (on motion by **Mrs Irwin**):

That this committee authorises publication, including publication on the parliamentary database, of the transcript of the evidence given before it at public hearing this day.

Committee adjourned at 10.59 am