

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE  
ATTORNEY-GENERAL'S DEPARTMENT

**Output 1.3**

**Question No. 25**

**Senator Bolkus asked the following questions at the hearing on 24 May 2004:**

Has there been any discussion on who will in the future provide community education on legal issues to Indigenous communities?

**The answer to the honourable senator's question is as follows:**

Please see the answer to question on notice 23.

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**Output 2.1**

**Questions No. 26**

**Senator Bolkus asked the following questions at the hearing on 24 May 2004:**

Indigenous Justice Discussion Paper:

Provide the Committee with a copy of those 14 submissions.

**The answers to the honourable senator's questions are as follows:**

Organisations which have provided submissions have been approached to seek their agreement to a copy of their submission being provided to the Committee. We are still awaiting responses. Subject to their approval, copies of the submissions will be provided to the Committee.

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**Output 2.1**

**Questions No. 27**

**Senator Bolkus asked the following questions at the hearing on 24 May 2004:**

Indigenous Justice Discussion Paper:

Was the discussion paper sent to VALS, and on what date?

**The answers to the honourable senator's questions are as follows:**

The discussion paper was sent to the Victorian Aboriginal Legal Service on 2 March 2004.

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**Question No. 28**

**Senator Harradine asked the following question:**

Can the Department confirm that the NSW Department of Community Services (DoCS) is proposing to increase adoption fees by 250% from July 1?

**The answer to the honourable senator's question is as follows:**

This matter is primarily a matter for the NSW Government. NSW DoCs has advised that the new fees for intercountry adoption came into effect on 1 July 2004. The new fees are \$9,700 for a first adoption and \$6,900 for subsequent adoptions. NSW DoCS has advised that the old fees had not been increased since 1991 and were \$2,853 for the first child and slightly less for subsequent children. These fees are in addition to any legal fees which parties incur.

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**Question No. 29**

**Senator Harradine asked the following question:**

As NSW DoCS has responsibility for administering the requirements of the Hague Convention as delegated to them by the office of the Attorney-General, will the fee increase have any implications for adoptions arranged as a result of the Hague Convention?

**The answer to the honourable senator's question is as follows:**

Article 8 of the *Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption* (the Convention) requires the Central Authority for the Convention to take all appropriate measures to prevent improper financial gain.

Article 32(2) permits the recovery of costs and expenses, including reasonable professional fees. The Department has been advised that the fees charged by NSW are on a cost recovery basis.

The fee increase will have no effect on the manner in which adoptions are arranged, but NSW DoCS advises that adoptions are expected to be processed more quickly than has previously been the case.

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**Question No. 30**

**Senator Harradine asked the following question:**

Does the Department consider that such a significant increase could have a negative impact on couples considering intercountry adoption?

**The answer to the honourable senator's question is as follows:**

The increase in fees will be a matter for individuals considering adoption. The Department has been advised by NSW DoCS that it has considered the impact on low income couples and that the NSW Government is considering a fee relief scheme for low income families.

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**Question No. 31**

**Senator Harradine asked the following question:**

Does the Department have any ability to express an opinion on the proposed increase with the NSW department?

**The answer to the honourable senator's question is as follows:**

The primary function of the Department, as the Federal Central Authority for the Convention, is to administer the overall operation of the Convention and to ensure that Australia as a whole complies with the requirements of the Convention.

In accordance with the arrangements set out in the *Commonwealth-State Agreement for the Implementation of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* (the Commonwealth-State Agreement), the Department and the State and Territory Authorities consult regularly on matters of intercountry adoption law and procedure.

The State and Territory Authorities retain responsibility for all practical aspects of the adoption process and therefore have their own adoption legislation to regulate intercountry adoption. This separation of responsibilities is reflected in the Commonwealth-State Agreement. The role of the State and Territory Central Authorities is to manage adoption applications and to ensure compliance with all legal and administrative aspects of the adoption process.

So long as they are reasonable and do not involve improper financial gain, the charges imposed by the NSW Government for the services it provides are a matter for that State.

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**Question No. 32**

**Senator Harradine asked the following question:**

Is the Department able to pass on concerns of intercountry adoption groups about the lack of community consultation prior to the proposed increase and the failure to notify existing DoCS clients of the proposal?

**The answer to the honourable senator's question is as follows:**

NSW DoCS has advised that it undertook consultations. A consultation paper produced by DoCS was put on its website and distributed throughout the adoption sector to all the intercountry adoption support organisations, adoption agencies, other related agencies such as the Post Adoption Resource Centre and the NSW Committee on Adoption and Permanent Care. The paper invited interested parties to make submissions to the Director-General by Friday 21 May 2004.

In addition, DoCS arranged a public information session on 17 May 2004 and sent a senior representative to a public information session for Australian Families for Children on 23 May 2004.

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**Question No. 33**

**Senator Harradine asked the following question:**

Does the Department accept the view of some groups that there is a conflict of interest between the [NSW] department's role as a central authority overseeing Hague-related intercountry adoptions as well as being the sole intercountry agency in NSW and involved in the accreditation process?

**The answer to the honourable senator's question is as follows:**

It is not unusual for government bodies to be both regulators and service providers. There is no conflict of interest in DoCS providing services with respect to intercountry adoptions.

Article 11 of the Convention requires that an accredited body *be subject to supervision by competent authorities as to its composition, operation and financial situation*. DoCS is the competent body in NSW and has responsibility for child welfare and protection measures within NSW. It is therefore appropriate that DoCS accredit bodies operating in NSW under the Convention.

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**Question No. 34**

**Senator Harradine asked the following.**

As DoCS NSW is not increasing fees for local adoptions, does the increase in fees and apparent move toward full cost recovery signal a discriminatory approach to couples seeking to form a family through inter-country adoption?

**The answer to the honourable senator's question is as follows:**

This is primarily a matter for the NSW Government. However, the Department can make the following comments based on information supplied by NSW DoCS.

In the financial year 2002/2003 in NSW there were 61 intercountry placement adoptions (ie adoptions by non related persons). In the same period there were 22 local placement adoptions.

Additional costs are involved in intercountry adoptions. These include costs in establishing programs with foreign countries, monitoring existing programs and maintaining relationships with the relevant countries. These costs include substantial translation and travel costs for departmental travel and correspondence. The preparation of intercountry adoption applications is more time consuming than domestic applications because of the complexity of the process and the need to comply with NSW State requirements, as well as the requirements of the overseas country.

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**Question No. 35**

**Senator Harradine asked the following question:**

Intercountry adoption has constituted 70% of Adoption Branch services in NSW. What percentage of resources does DoCS allocate to the provision of these services?

**The answer to the honourable senator's question is as follows:**

This is a matter for the NSW Government.

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**Question No. 36**

**Senator Harradine asked the following question:**

Does the Department provide funding to DoCS NSW specifically to carry out the role delegated to it by the Government to administer the Hague Convention provisions? If so, what is the amount provided? Has DoCS sought any or additional funding from the Federal Government to carry out this role?

**The answer to the honourable senator's question is as follows:**

The Department does not provide funding to NSW DoCS. The Department is not aware of any request from DoCS (or the NSW Government) for funding to implement the Convention.

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**Question No. 37**

**Senator Harradine asked the following question:**

The proposed fee increase is 250% more than the current fee and over \$2,000 more than the highest fee payable in any state. Is this because extra funding is required to administer the Hague Convention?

**The answer to the honourable senator's question is as follows:**

This is a matter for the NSW Government. See also the response to Question 29.

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**Question No. 38**

**Senator Harradine asked the following question:**

As DoCS NSW is acting on behalf of the Federal Government to administer the Hague Convention, is it appropriate that applicants are having to fund DoCS in its Federal Government-appointed role through the increase in fees?

**The answer to the honourable senator's question is as follows:**

During the consultations between the Commonwealth and State and Territory governments prior to Australia's ratification of the Convention, the States and Territories made clear that their support for ratification depended on their retaining legal and practical responsibility for intercountry adoptions. On this basis, the States and Territories bear the cost of providing appropriate resources to carry out their responsibilities under the Convention.

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**Question No. 39**

**Senator Harradine asked the following question:**

Has the Department seen the KPMG report, which is the basis of the intercountry adoption reform proposal, recommending the fee increase? Does the Department agree with the report's recommendations?

**The answer to the honourable senator's question is as follows:**

The report deals with the practical aspects of managing intercountry adoption in NSW. It does not impact on Australia's obligations under the Hague Convention. The report is therefore a matter for the NSW Government and the Department does not have a view on its recommendations.

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**Question No. 40**

**Senator Harradine asked the following question:**

It has been six years since Australia ratified the Hague Convention in 1998. Is the Department concerned that details regarding accreditation provisions and processes are still not available?

**The answer to the honourable senator's question is as follows:**

Accreditation of bodies is not mandatory under the Convention. Hence, decisions as to whether State and Territory Central Authorities accredit bodies to undertake intercountry adoption work is a matter for each State or Territory. The Department understands that the majority of States and Territories have decided not to implement an accreditation process.

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**Question No. 41**

**Senator Harradine asked the following question:**

Is the Department concerned that groups which lodged an application to become accredited bodies under the Convention have still not received an answer six years later? Is there anything the Department can do to determine the reasons for this? What implications do such delays have for adoptions under the Hague Convention?

**The answer to the honourable senator's question is as follows:**

Accreditation of bodies to carry out functions under the Convention is regulated by Articles 6-13 of the Convention. Accreditation of bodies is not mandatory and it is a matter for the States and Territories whether to accredit bodies to carry out certain functions under the Convention that otherwise would be undertaken by the States and Territories.

Any application for a group to be accredited is therefore a matter for the relevant State or Territory.

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**Question No. 42**

**Senator Harradine asked the following question:**

How many intercountry adoptions have been arranged since ratification of the Hague Convention? Please provide a breakdown by country from ratification to present.

**The answer to the honourable senator's question is as follows:**

Australia ratified the *Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption* (the Convention) on 25 August 1998 and the Convention entered into force for Australia on 1 December 1998.

The Australian Institute of Health and Welfare (AIHW) in Canberra publishes annual statistics in relation to intercountry adoption. The following tables are from the AIHW's publication, 'Adoptions Australia'. Table 1 shows the breakdown of intercountry adoptions by country for 2002-2003. Table 2 shows how many children were adopted from overseas in each State and Territory.

**Table 1 – Intercountry adoptions, by country of birth and state and territory, 2002-03**

Country of origin	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total
<b>Hague adoptions</b>									
Bolivia	1	—	—	—	—	—	—	—	1
Burkina Faso	—	1	—	—	—	—	—	—	1
Colombia	7	—	—	—	—	—	—	—	7
Philippines	4	4	—	1	4	3	2	—	18
Sri Lanka	—	—	—	1	—	1	—	—	2
<b>Non-Hague adoptions</b>									
China	11	16	1	4	4	6	4	—	46
England	—	—	—	—	—	—	—	1	1
Ethiopia	5	4	7	3	12	3	4	1	39
Guatemala	2	2	—	—	—	—	—	—	4
Hong Kong	—	1	—	1	2	—	—	—	4
India	1	13	2	2	11	—	1	3	33
South Korea	21	15	15	12	30	2	4	2	101
Romania	1	—	—	—	—	—	—	—	1
Taiwan	2	—	1	—	—	—	—	—	3
Thailand	6	3	3	—	5	—	—	—	17
<b>Total</b>	<b>61</b>	<b>59</b>	<b>29</b>	<b>24</b>	<b>68</b>	<b>15</b>	<b>15</b>	<b>7</b>	<b>278</b>

**Table 2 – Intercountry adoptions, by state and territory, 1987-88 to 2002-03**

Year	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total
1987-88	105	n.a.	22	37	83	34	15	12	n.a.
1988-89	148	31	48	36	64	41	17	9	394
1989-90	216	50	30	20	41	23	32	8	420
1990-91	162	105	25	22	43	16	16	4	393
1991-92	145	67	27	24	50	13	10	2	338
1992-93	95	37	19	14	40	9	9	4	227
1993-94	89	30	26	16	34	14	10	3	222
1994-95	85	59	21	9	35	2	9	4	224
1995-96	105	57	37	29	29	9	4	4	274
1996-97	81	56	41	13	49	15	12	2	269
1997-98	69	64	43	14	37	8	10	—	245
1998-99	57	59	36	20	45	12	11	4	244
1999-00	55	76	60	26	56	13	11	4	301
2000-01	85	60	40	20	44	14	18	8	289
2001-02	71	74	33	29	54	16	9	8	294
<b>2002-03</b>	<b>61</b>	<b>59</b>	<b>29</b>	<b>24</b>	<b>68</b>	<b>15</b>	<b>15</b>	<b>7</b>	<b>278</b>