

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS  
ATTORNEY-GENERAL'S DEPARTMENT

**Group 2**

**Program 1.4**

**Question No. 76**

**Senator Boyce asked the following question at the hearing on 18 November 2013:**

1. Does the Department accept that at the time of the decision to close the Australia/Ethiopia inter-country adoption program (the Program), there were 27 files in Ethiopia being processed?
2. Did not the Australian Government have an obligation under clause 4 of the bilateral agreement between Ethiopia and Australia (attached, Tab 1) to complete adoption procedures already in process at the time the decision was made to close the Program?
3. If the Department's answer to question 2 is "no" on the basis that the Australian Government did not terminate the bilateral agreement when it closed the Program, so that the bilateral agreement remains on foot today, then is not the Australian Government continuing to breach the bilateral agreement by failing to process applications from prospective parents (see clause 1.3 of the bilateral agreement)?
4. When I placed questions on notice on 30 October 2012 in relation to the closure of the Program, one of the answers given was : "In mid-January 2012, the Department (in consultation with the Australian Representative) came to the view that it would not be possible to continue the 12-month orphanage agreement with Tesfa Elderly and Children Support Organisation (Tesfa), which meant that the halt would remain in place while arrangements were explored with potential new orphanages".
  - a) Is it not the case that in April 2012, less than 3 months before the Australian Government's decision to close the Program, the Program entered into a 12 month Partnership Agreement with the Family Umbrella Association (attached, Tab 2) under which the Program committed itself to match children referred to the Program by the FUA orphanage for adoption with suitable Australian families?
  - b) Is it not the case that in the months prior to the closure of the Program, the Program provided 40,000 birr per month in orphanage support payments for the costs of caring for children at FUA in accordance with the Program's obligation under clause 2.3 of the Partnership Agreement?
  - c) Is it not also the case that after the Australian Government decided to close the Program in June 2012, representatives of the Department took steps to terminate the Partnership Agreement with FUA early?
  - d) Is it not also the case that this termination of the Partnership Agreement was in breach of Article 5 of the Partnership Agreement, which required 1 month's notice of termination?

- e) if the Department's answer to question (d) is that one month's notice was given, please provide particulars of that notice (ie who gave it, when, to whom and by what mode).
  - f) Is not the Department's answer to my questions on notice, extracted in question 4 above, misleading in that it suggests that arrangements with potential new orphanages were still being explored as at the time when the Australian Government decided to close the Program, whereas in fact as at that time such arrangements with the FUA orphanage had already been completed and consummated in the Partnership Agreement?
5. Look at the documents attached at Tab 3. Do not these documents evidence the fact that at the time of the decision to close the Program, a number of children from the FUA orphanage:
- a) had been referred to the Program by the FUA orphanage;
  - b) had been matched by the Program with prospective Australian adoptive parents?
6. Does the Department dispute the authenticity of any of the documents annexed at Tab 3?
7. If so, which documents and on what basis?
8. Did Mr Peter Arnaudo of the Department travel to Ethiopia shortly before the decision was made to close the Program?
9. In the course of that visit:
- a) did Mr Arnaudo meet with the Australian Government's Program Representative, Lem Lem Fesseha?
  - b) did Mr Arnaudo visit the FUA orphanage and meet some or all of the children named in the documents annexed at Tab 3?
  - c) was Mr Arnaudo photographed with some or all of the children named in the documents annexed at Tab 3?
  - d) was Mr Arnaudo told, or was he otherwise aware, that some of those children had been told they would be coming to Australia to live with Australian families?
  - e) did Mr Arnaudo sight the document at Tab 3 entitled "Matched Families July, 2011-June, 2012"?
  - f) did Mr Arnaudo cross out the matchings on that document? If the answer to this question is yes, why did he cross out the matchings?
  - g) if the answer to question 9(d) is no, did Mr Arnaudo instruct the Program Representative to cross out those matchings? If the answer to this question is yes, why did he give that instruction?
10. When the Department announced the decision to close the Program on its website on 28 June 2012, it stated that "The Australian Government has decided to close the Program at

this time because it will not impact on any individual Ethiopian children as there are none currently referred to the Program”. In light of the documents annexed at Tabs 2 and 3, does the Department accept that the decision to close the Program did impact on the children named in the documents at Tab 3?

11. Does the Department maintain that the decision to close the Program was in the best interests of the children named in the documents at Tab 3? If so, on what basis?
12. In Mr Arnaudo’s answers to my question in the Senate on 18 November 2013, he denies that any children were referred to the Program at the time of the decision to close the Program on the basis that “At the time of the closure of the program, there were no children referred to the program because the program did not have the authority of the regional government in Ethiopia to operate”. Does the Department accept that the relevant “regional government in Ethiopia” at the time of the closure was the Tigray regional government, given that the FUA orphanage was in the Tigray region?
13. Look at the documents at Tab 4, which include a letter from the Regional Government of Tigray Bureau of Labor and Social Affairs to the Ministry of Women, Children and Youth Affairs.
  - a) Does the Department dispute the authenticity of these documents? If so, on what basis?
  - b) Does the Department agree that the substance of the letter from the Regional Government of Tigray to the Federal Ministry of Women and Children and Youth Affairs was to support the adoption of the 3 Ethiopian children named in the letter under the Program?
  - c) If the Department’s answer to question 13(b) is no, state what the Department says was the substance of the letter.
  - d) Does the Department agree that the 3 children named in the letter were from the FUA orphanage?
  - e) Does the Department agree that the 3 children named in the letter are 3 of the children named in the documents annexed at Tab 3?
  - f) In light of the letter from the Tigray Regional Government at Tab 4, on what basis does the Department contend that “the program did not have the authority of the regional government in Ethiopia to operate”?
  - g) If the Department continues to maintain that “the program did not have the authority of the regional government in Ethiopia to operate”, please specify all evidence upon which the Department relies in support of that position, including any correspondence or emails between the Department or the Program and the Tigray Regional Government relied on in support of that position.
14. What steps, if any, has the Department taken after the closure of the Program to check upon the welfare and circumstances of the children named in the documents in Tabs 3 and 4?
15. If the Department has not taken any steps to check upon the welfare and circumstances of those children, why has not it done so?

16. Look at the document at Tab 5.

- a) Does the Department accept that this is a copy of an agreement between the Program (and signed on behalf of the Program by its Representative, Lem Lem Fesseha) and the Axum Youth and Sports Office, for the development of a Youth Recreation Centre in Axum Town?
- b) Does the Department accept that this agreement was on foot at the time of the decision to close the Program?

17. When I placed questions on notice on 30 October 2012 in relation to the closure of the Program, one of the answers given was : "...there were a number of resource intensive steps ... which would have needed to be completed before the Program could operate, even to process a limited number of files. These included:

- Identifying and establishing a community development project with appropriate separation between the Program and the children referred to it for intercountry adoption (in order to avoid the unintentional effect of encouraging communities to relinquish children for adoption)."
- a) Did not the community development project the subject of the Agreement at Tab 5 have appropriate separation between the Program and the children referred to the Program by the FUA Orphanage? If the Department's answer to this question is no, state why there was no such appropriate separation.
  - b) Why did/does the Department consider there was a need to identify and establish a community development project with appropriate separation between the Program and the children referred to it for intercountry adoption having regard to the existence of the Agreement at Tab 5?
  - c) When Mr Arnaudo visited Ethiopia shortly prior to the decision to close the Program, did he instruct the Program Representative not to perform the Agreement at Tab 5 and not to provide any funding to the Axum Youth and Sports Office under that Agreement? If the answer to this question is yes, why did Mr Arnaudo give that instruction?
  - d) If the answer to question 17(c) is no, did anyone else from the Department instruct the Program Representative not to perform the Agreement at Tab 5 and not to provide any funding to the Axum Youth and Sports Office under that Agreement? If the answer to this question is yes, why was this instruction given?

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

1.No.

2.No.

3.No.

4.

- a) Yes, but it was subject to operating within the framework of relevant Ethiopian laws, regulations and guidelines (see clause 3.2 of the agreement annexed at Tab 2). As approval for the Program to operate in the Tigray region had not been obtained, no children were able to be referred to the Program.
- b) Yes.
- c) No. Following the Program's closure, the Australian Representative was instructed to terminate the partnership agreement with the Family Umbrella Association orphanage, by providing one month's notice in accordance with clause 5 of the agreement annexed at Tab 2.
- d) No.
- e) The Australian Representative advised the Department that she informed the Director of the Family Umbrella Association orphanage of the Program's closure in late June 2012. At this time, she also notified him of the termination of the partnership agreement between the Program and the orphanage, and that the orphanage would receive their final month's payment in July 2012.
- f) No. The answer to Question on Notice 2161 relates to the status of orphanage agreements in mid-January 2012.

5.

- a) No.
- b) No.

6. The Department is not in a position to confirm the authenticity of each of the documents annexed at Tab 3. It is not certain who created each of these documents, when they were created and for what purpose.

7. See response to Question 6.

8. The former Attorney-General made an in-principle decision to close the Program on 24 April 2012. Mr Arnaudo travelled to Ethiopia as part of a pre-scheduled delegation visit from 27 April to 11 May 2012. On 12 June 2012, the former Attorney-General made the final decision to close the Program. Mr Arnaudo travelled to Ethiopia from 25 June 2012 to 1 July 2012 to advise the Australian Representative and the Ethiopian Government of the closure of the Program.

9.

- a) Yes (in relation to both visits).
- b) Mr Arnaudo visited the Family Umbrella Association orphanage in Mekele on 4 May 2012 for about two to three hours as part of the April-May 2012 delegation visit. During that time, he met a number of children in the orphanage. If some or all

of the children named in the documents annexed at Tab 3 were at the FUA orphanage in Mekele at that time, it is possible that Mr Arnaudo met them.

- c) If some or all of the children named in the documents annexed at Tab 3 were at the Family Umbrella Association orphanage in Mekele at that time, it is possible that Mr Arnaudo was photographed with them.
  - d) No.
  - e) No.
  - f) No.
  - g) No (the Department has assumed that this Question was intended to refer to Question 9(f)).
10. There were no children referred to the Program at the time of closure, because it did not have approval from the Tigray Regional Government to operate. The Department cannot comment on the impact of the closure on the three children named, as these children were not referred to the Program.
11. See response to Question 10.
12. Yes.
- 13.
- a) The Department is not in a position to confirm the authenticity of each of the documents annexed at Tab 4. It is not certain who created each of these documents, when they were created and for what purpose they were created.
  - b) See response to Question 13(a).
  - c) See response to Question 13(a).
  - d) See response to Question 13(a).
  - e) See response to Questions 6 and 13(a).
  - f) On 4 May 2012, Mr Arnaudo (together with the Australian Representative, Ms Lemlem Fesseha) were advised in person by Tigray Regional Government officials that the Program did not have regional government approval to operate.
  - g) The Department holds the following records which reflect that the Program did not have regional government approval to operate in the Tigray region of Ethiopia:
    - Email exchanges between the Department and the Australian Representative.
    - A file note of a telephone conversation with the Australian Representative.
    - Informal notes from meetings with the Australian Representative, the Family Umbrella Association Orphanage Director and Tigray Regional Government officials during the April-May 2012 delegation visit.

- The official travel minute for the April-May 2012 delegation visit.

14. The welfare of Ethiopian children is the responsibility of the Ethiopian Government and its relevant authorities.

15. See response to Question 14.

16.

- a) Yes, in relation to the English version, but subject to Question 16(b) below.
- b) No. In June 2011, the Department instructed the Australian Representative not to proceed with the agreement annexed at Tab 5. No funds were released. In meetings with Tigray Regional Government officials on 4 May 2012, it was confirmed that the Program did not have any community development agreement in place and therefore was not able to be approved to operate in the Tigray region.

17.

- a) The Australian Representative had not completed a formal assessment of the suitability of the project prior to signing the agreement annexed at Tab 5, including whether it had appropriate separation from the community within which the orphanage operated and children would be referred to the Program.
- b) At the time of closure, the Program did not have a community development project in place. The community development project outlined in the agreement annexed at Tab 5 was not commenced, and the Australian Representative was instructed not to proceed with the project in June 2011. As such, the Program needed to identify a community development project, with appropriate separation from the Program.

The separation of a community development project from the Program was crucial to the ethical operation of the Program. Separation minimised the risk that a community development project could potentially indirectly, or directly, encourage mothers or families in the community to inappropriately relinquish their children in order to receive or continue to receive much needed development assistance.

- c) No, the Australian Representative was instructed to not proceed with this project in June 2011, not during the April-May 2012 visit.
- d) Yes. The Australian Representative was instructed by the Department to not proceed with the agreement in June 2011, because the Program could not responsibly financially commit to the project. The project substantially exceeded the Program's budget for a community development project.