

AUSTRALIA

The applications

1. The number of applications

Australia has designated Central Authorities in each of its States and mainland Territories. There is also a Commonwealth Central Authority and all applications initially go through this body. According to the Commonwealth Central Authority for Australia, they received 64 incoming return and 14 incoming access applications in 1999, making a total of 78 incoming applications. Additionally, they made 81 outgoing return and 13 outgoing access applications in that year. Altogether, therefore, the Commonwealth Central Authority for Australia handled 172 new applications in 1999.

2. The Contracting States which made the applications

(a) *Incoming return applications*

Requesting States

	Number of Applications	Percent
New Zealand	22	34
UK - England and Wales	14	22
USA	11	17
Greece	4	6
Canada	2	3
Israel	2	3
Italy	2	3
Macedonia	1	2
Germany	1	2
Ireland	1	2
Sweden	1	2
UK - Scotland	1	2
Mexico	1	2
South Africa	1	2
Total	64	100

Over a third, (34%), of applications for return were made by New Zealand. While this is a substantial proportion, it is less pronounced than the 80% of applications to New Zealand which were made by Australia. Additionally over a fifth (22%) of applications were made by England and Wales.

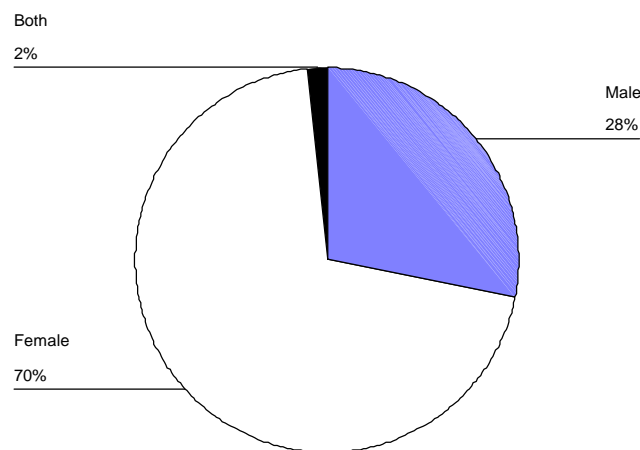
(b) Incoming access applications**Requesting States**

	Number of Applications	Percent
USA	4	29
New Zealand	3	21
Argentina	1	7
Finland	1	7
Macedonia	1	7
France	1	7
Italy	1	7
Netherlands	1	7
UK- England and Wales	1	7
Total	14	100

The proportion of return to access applications followed the global norm, with access accounting for less than 20% of all applications received. Combining return and access, applications from New Zealand amounted to 32% of the total number received, the USA and England and Wales both made 15 applications to Australia. Applications from these 3 Contracting States accounted for 71% of all applications received by Australia in 1999.

The taking person / respondent**3. The gender of the taking person / respondent****(a) Incoming return applications****Gender of the Taking Person**

	Number	Percent
Male	18	28
Female	45	70
Both	1	2
Total	64	100

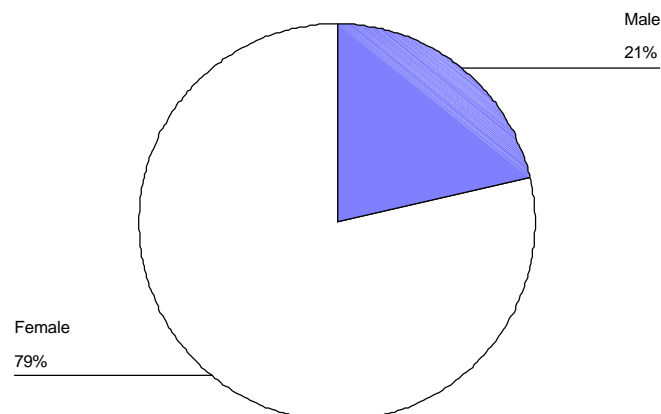


The above chart and table show¹ that 70% of taking persons involved in incoming return applications to Australia were female. This follows the overall global norm of 69%. Interestingly, however, in outgoing applications from Australia, the ratio of female taking persons was higher at 79%.

(b) Incoming access applications

Gender of The Respondent

	Number	Percent
Female	11	79
Male	3	21
Total	14	100



¹ One application involved both a male and a female taking person.

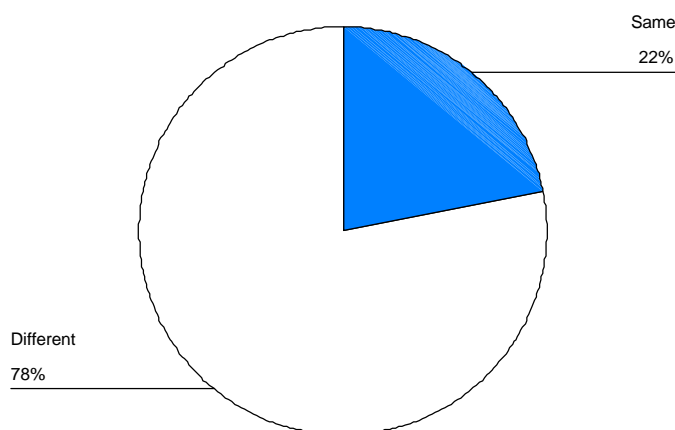
Globally, 86% of respondents in access applications were female. In applications to Australia, this proportion was marginally lower at 79%.

4. The nationality of the taking person / respondent

(a) *Incoming return applications*

Taking Person Same Nationality as Requested State

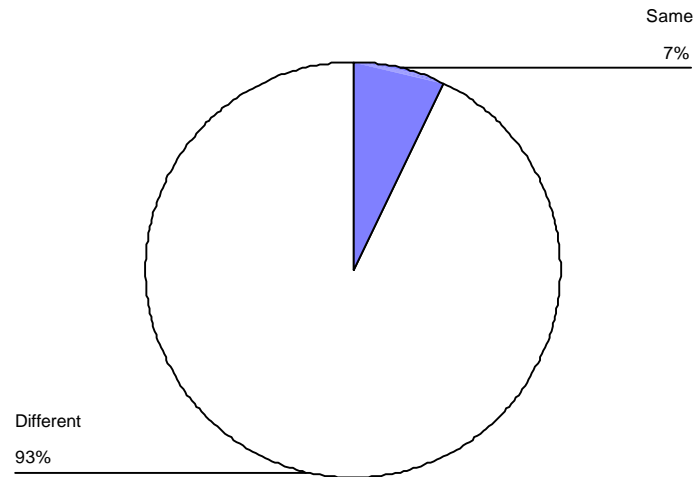
	Number	Percent
Same Nationality	14	22
Different Nationality	50	78
Total	64	100



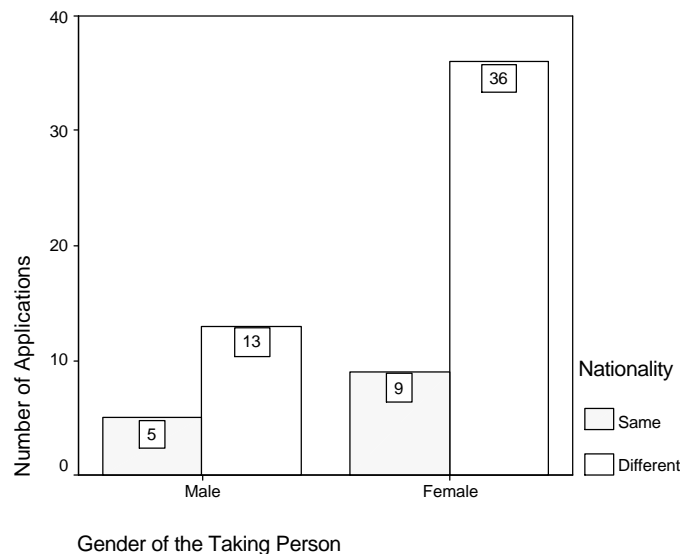
Globally, 52% of taking persons had the nationality of the requested State. In applications to Australia the proportion was much lower at only 22%. In other words, the majority of taking persons, taking children into Australia were not Australian nationals. Australia is the Contracting State in this analysis where the lowest proportion of taking persons were of the same nationality as the requested State. Why this should be so is unclear. Of the 22 applications made by New Zealand, only 3 involved Australian taking persons. While visas to enter Australia are easier to obtain by New Zealanders, than by nationals of any other State, 74% of taking persons from Contracting States other than New Zealand, were also not Australian nationals. Conversely, 84% of taking persons entering New Zealand were New Zealand nationals, including 87% of those who had come from Australia. The reason for such a difference is unclear.

(b) Incoming access applications**Respondent Same Nationality as Requested State**

	Number	Percent
Same Nationality	1	7
Different Nationality	13	93
Total	14	100

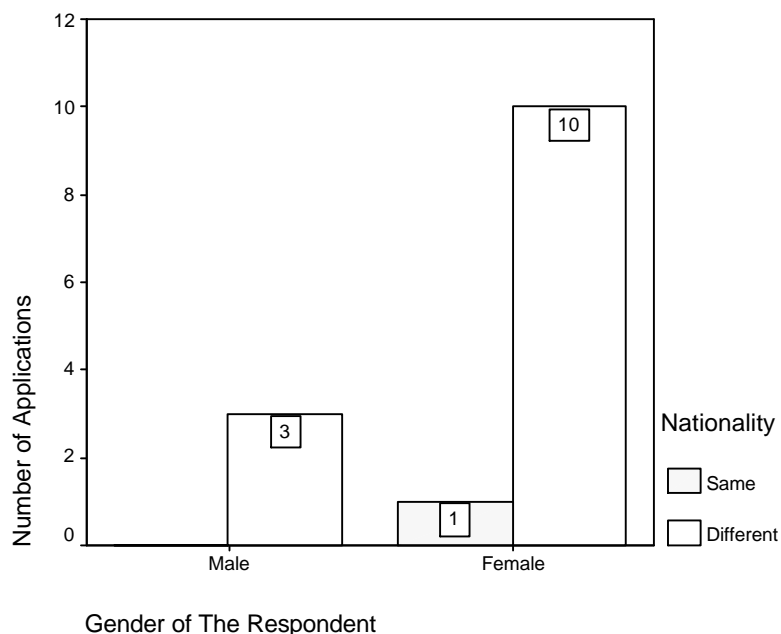


The table and chart above, show that 7% of respondents were Australian nationals, and, as with return applications, this proportion was far lower than the global average of 40%. Combining return and access applications, less than 20% of taking persons / respondents had Australian nationality.

5. The gender and nationality of the taking person / respondent combined**(a) Incoming return applications**

The chart above shows that female taking persons were more likely to have a different nationality to the requested State, than male taking persons. Globally, 53% of males and 52% of females had the nationality of the requested State.

(b) Incoming access applications



Only one respondent in an application to Australia was an Australian national.

The children

6. The total number of children

There were 98 children involved in the 64 return applications and 18 children involved in the 14 access applications. Altogether, therefore, 116 children were involved in new incoming applications received by Australia in 1999.

7. Single children and sibling groups

(a) Incoming return applications

Single Child or Sibling Group

	Number	Percent
Single Child	34	53
Sibling Group	30	47
Total	64	100

Number of Children

	Number	Percent
1 child	34	53
2 children	26	41
3 children	4	6
Total	64	100

Globally, 63% of applications involved single children, whereas, only 53% of applications to Australia involved a single child. Nevertheless, as with the global percentage, over 93% of applications involved no more than 1 or 2 children.

(b) Incoming access applications

Single Child or Sibling Group

	Number	Percent
Single Child	11	79
Sibling Group	3	21
Total	14	100

Number of Children

	Number	Percent
1 Child	11	79
2 Children	2	14
3 Children	1	7
Total	14	100

Globally, 69% of applications involved a single child, which is lower than the percentage of single children involved in access applications to Australia (79%). Interestingly, this is the converse of the situation for return applications.

8. The age of the children

(a) Incoming return applications

Age of the Children

	Number	Percent
0-4 years	31	32
5-9 years	39	40
10-16 years	28	29
Total	98	100

The proportion of children in each of the categories roughly follows the global norms. However, there were fewer children aged between 0 and 4 years, 32% as opposed to the global norm of 38%, and more children aged between 10 and 16 years, 29% as opposed to the global norm of 21%.

(b) Incoming access applications

Age of the Children

	Number	Percent
0-4 years	1	6
5-9 years	7	39
10-16 years	10	56
Total	18	100

The children involved in the access applications tended to be older than the global norms. Globally, 29% of children were aged between 10 and 16 years, while in applications to Australia the proportion was 56%. In contrast to the global norm of 21%, only 6% of children were aged between 0 and 4 years.

In both return and access applications received by Australia, the children were older than the global norms.

9. The gender of the children

(a) Incoming return applications

Gender of the Children

	Number	Percent
Male	48	49
Female	50	51
Total	98	100

The proportion of male and female children involved in applications to Australia was not dissimilar to the global norms of 53% and 47% respectively.

(b) Incoming access applications

Gender of the Children

	Number	Percent
Male	8	44
Female	10	56
Total	18	100

There was a marginally smaller proportion of male children involved in applications to Australia than the global norm of 50%.

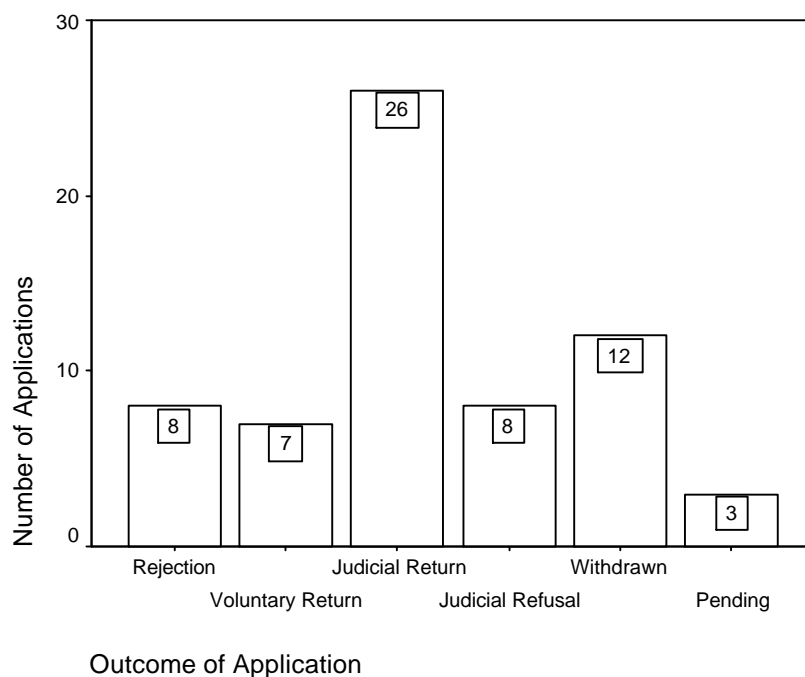
The outcomes

10. Overall outcomes

(a) Incoming return applications

Outcome of Application

	Number	Percent
Rejection	8	13
Voluntary Return	7	11
Judicial Return	26	41
Judicial Refusal	8	13
Withdrawn	12	19
Pending	3	5
Total	64	100



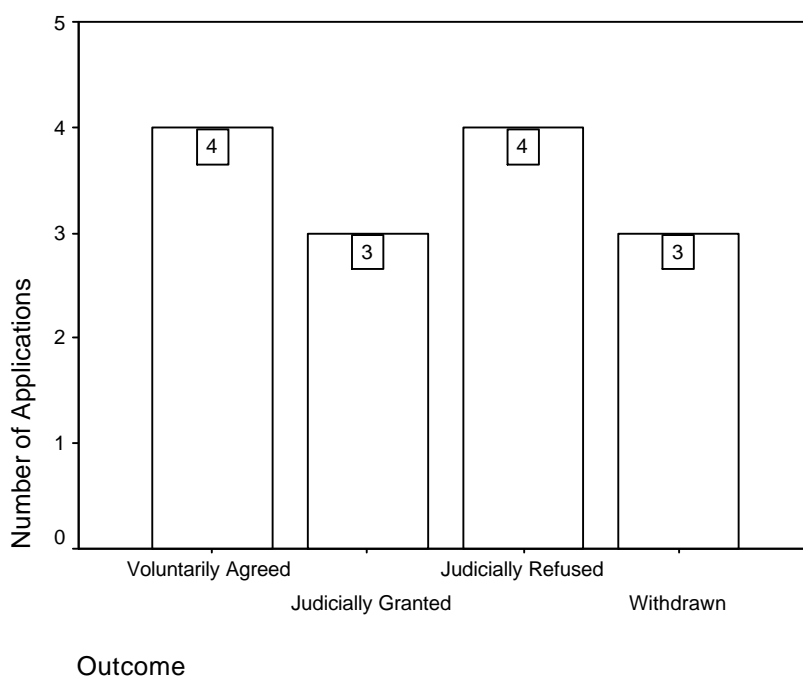
Globally, 18% of applications ended in a voluntary return, whereas in Australia only 11% of applications were so concluded. The judicial return rate at 41% was however, significantly higher than the global norm of 32% and the overall percentage of children returned either voluntarily or by court order was 52% which is above the global average of 50%. Altogether, 34 cases went to court, 76% of which ended in a judicial return, compared with 74% globally. 19% of applications were withdrawn which is above the global norm of 14%. The proportion of refusals and rejections at 13% each were above the global norm of

11% for each of these outcomes. 3 case were still pending at 30th June 2001 which may give pause for thought.²

(b) Incoming access applications

Outcome of Application

	Number	Percent
Rejection by the Central Authority	0	0
Access Voluntarily Agreed	4	29
Access Judicially Granted	3	21
Access Judicially Refused	4	29
Pending	0	0
Withdrawn	3	22
Total	14	100



There was a high proportion of judicial refusals, (29%), compared with the global norm of 9%. There was also a high proportion of cases where access was either granted or agreed, 50% compared with a global norm of 43%. It is to be noted that there were no pending cases.

² One of these cases has since been withdrawn, and another has resulted in a judicial refusal to return, after being appealed to the highest court in Australia, the High Court of Australia. The refusal was based on Article 13 b.

11. The reasons for rejection

(a) *Incoming return applications*

Reason for Rejection by the Central Authority

	Number	Percent
Child over 16	0	0
Child Located in Another Country	2	25
Child Not Located	2	25
Applicant Had No Rights of Custody	2	25
Other	2	25
More Than One Reason	0	0
Total	8	100

The reasons for rejection were diverse. One of the applications rejected under the 'other' category was rejected on the grounds of Article 27.³ We do not know the reason in the other case.

³ A Central Authority is not bound to accept an application when it is manifest that the requirements of the Convention are not fulfilled or that the application is otherwise not well founded.

12. The reasons for judicial refusal

(a) Incoming return applications

Reason for Judicial Refusal

	Number	Percent
Child Not Habitually Resident in Requesting State	1	13
Applicant had No Rights of Custody Article 12	0	0
Article 13 a Not Exercising Rights of Custody	2	25
Article 13 a Consent	0	0
Article 13 a Acquiescence	2	25
Article 13 b	0	0
Child's Objections	1	13
Other	0	0
More Than One Reason	2	25
Total	8	100

As with the reasons for rejection the reasons for refusal were spread across a range. No refusal was based on Article 13 b, the sole ground most often relied upon in the global analysis. Both of the applications which fell under the 'more than one reason' category were refused on the basis of the fact that the child was not habitually resident in the requesting State and because of Article 13 a consent. A third ground for refusal in one of these applications was the objections of the child who was aged between 13 and 16 years. The child in the application that was refused solely on the basis of the child's objections was also aged between 13 and 16 years.

13. The reasons for judicial refusal and the gender of the taking person

(a) Incoming return applications

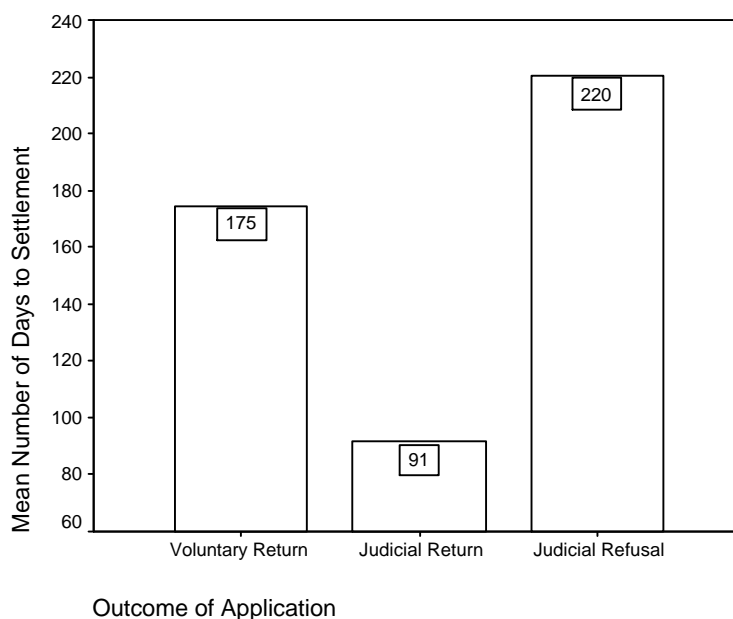
Count	Gender of the Taking Person		Total
	Male	Female	
Child Not Habitually Resident in Requesting State		1	1
Article 12	1	1	2
Article 13 a	1	1	2
Aquiescence			
Child's Objections	1		1
More Than One Reason	1	1	2
Total	4	4	8

In 50% of the refusals, the taking person was male. This is a high proportion considering that only 28% of taking persons in applications to Australia were male. Nevertheless since the numbers are small, meaningful conclusions cannot be drawn.

Speed

14. The time between application and outcome

(a) Incoming return applications



Compared with the global norms, Australia was slow in relation to voluntary returns and judicial refusals. At a mean of 175 days, voluntary returns from Australia took over double the global mean of 84 days and at 220 days, judicial refusals were considerably slower than the global mean of 147 days. On the other hand, judicial returns from Australia were faster than the global mean of 107 days. It is also to be noted that only one application is still pending.

	Outcome of Application		
	Voluntary Return	Judicial Return	Judicial Refusal
Mean	175	91	220
Median	141	53	181
Minimum	24	1	53
Maximum	392	609	606
Number of Cases	4	24	7

The table above shows the number of cases in each category for which we had information on timing, the mean and median averages, and the minimum and maximum number of days. This shows that there were some slow cases, one judicial refusal taking 606 days and one judicial return taking 609 days. This may explain why the mean number of days taken to reach outcomes were slow compared with the global norms. In other words it would appear that the slow disposition of cases relates to one or two individual cases rather than the system as a whole. Indeed it is to be noted that some cases were resolved extremely quickly, notably a judicial return which was concluded the day after the application.

(b) Incoming access applications

Timing to Voluntary Settlement

	Number	Percent
0-6 weeks	2	50
6-12 weeks	0	0
3-6 months	1	25
Over 6 months	1	25
Total	4	100

Timing to Judicial Decision

	Number	Percent
0-6 weeks	0	0
6-12 weeks	1	14
3-6 months	2	29
Over 6 months	4	57
Total	7	100

The above tables show the time taken to reach voluntary settlements and judicial decisions in access applications. Given the small number of applications it is difficult to draw many meaningful conclusions, nevertheless, it can be seen that the applications which ended in a voluntary settlement were concluded quicker than judicial decisions, most of which took over 6 months. Globally, 42% of voluntary settlements took over 6 months to be reached, while in applications to Australia 25% took over 6 months and 50% were resolved in under 6 weeks, compared with a global norm of 18%. The timings for judicial decisions were more similar to the global norms. Globally, as in Australia, most applications took over 6 months to reach a judicial decision. Nevertheless the percentage of applications taking over 6 months globally at 71% was significantly higher than the 57% of applications which took over 6 months in Australia.

15. Appeals

(a) Incoming return applications

Four cases were appealed, two of which ended in a judicial refusal, the other two ending in a judicial return. One of the return decisions upheld a return given at first instance, the other overruled a first instance decision to refuse return. Both the refusals overruled first instance decisions to return. The two return decisions on appeal took a mean of 204 days from initial application to final hearing, this was similar to the global mean of 208 days. The two refusal decisions on appeal took a mean average of 312 days from initial application to final hearing, which was considerably slower than the global mean of 176 days.